



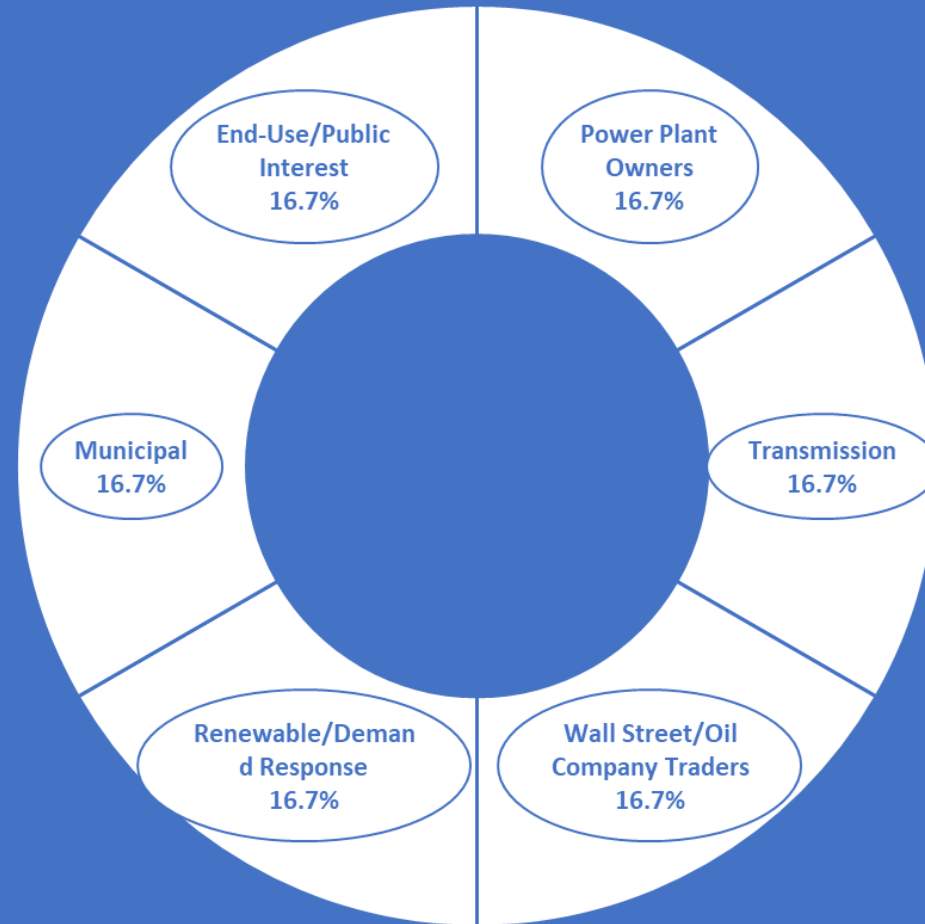
**ASSOCIATION OF ENERGY ENGINEERS 2019  
CONFERENCE – BOSTON, MA  
*DECIPHERING ISO-NE, NEPOOL & FERC: THE  
ACRONYMS DRIVING NEW ENGLAND  
ENERGY + CLIMATE POLICY*  
MARCH 21, 2019**

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## **NEW ENGLAND'S PRIVATIZED ELECTRICITY POLICY MAKING HARMS CLEAN ENERGY EFFORTS AND MAKES ELECTRICITY EXPENSIVE**

- In its December 1999 Order 2000, the Federal Energy Regulatory Commission encouraged the creation of Independent System Operators like ISO-New England to “facilitate lighter handed regulation,” as the ISOs would be performing key Federal Power Act functions instead of the federal government.
- When New England states deregulated in the late 1990s, the region ceded control of the bulk power market to a private company, ISO-NE. ISO-NE, in turn, outsourced its policy-making and market-tweaking process to another private group, the New England Power Pool (NEPOOL).
- ISO-NE administrative budget of \$185 million collected from New England ratepayers. Salaries, generous pension and expense accounts represent 59% of this. ISO-NE billed \$1.3 million in travel expenses to ratepayers last year, along with \$650,000 for “conferences, conventions and meetings.” Plus outside law firm was paid \$763,000 last year. Ratepayers also pay \$120,000 a year to the DC lobbying firm Owen Evans Ingols for ISO-NEs influence peddling.
- NEPOOL administers the stakeholder process where lobbyists representing the various market interests—power plants, transmission lines, Wall Street energy traders, end-users—meet to develop, deliberate and vote upon proposed market rule changes to send to the Federal Energy Regulatory Commission (FERC) for approval, effectively establishing policy for the region.
- Both the public and journalists are banned from attending all NEPOOL meetings where electricity market rule changes are developed and sent to FERC for approval.
- Under the influence of incumbent fossil fuel and nuclear generators, transmission owners and Wall Street traders, the New England power system is less a market than a constantly changing, overly-complex administrative system designed to financially assist those entities that can afford a seat at the table.

## NEPOOL'S VERSION OF DEMOCRACY: WEIGHTED SECTOR VOTING—DILUTES THE VOICE OF END-USERS AND THE PUBLIC INTEREST





## IN AUGUST 2018 NEPOOL VOTED TO BAN JOURNALISTS FROM BECOMING MEMBERS

- Public Citizen, Union of Concerned Scientists, New Hampshire Consumer Advocate, New England chapter of the Society of Professional Journalists, the Reporters Committee for Freedom of the Press and the media publication RTO Insider, Sustainable FERC Project, Conservation Law Foundation, Earthjustice, and Natural Resources Defense Council all filed protests in Docket No. ER18-2208.

- Ratepayer-funded, FERC-regulated entities that conduct formal, FERC-sanctioned stakeholder proceedings must not be allowed to deny access to members of the public who seek to attend and witness these proceedings, or ban journalists from being able to attend and freely report on such proceedings.
- NEPOOL has long concealed from FERC its non-public rules banning the general public and journalists from freely attending its meetings.
- NEPOOL's non-public rules to allow certain non-member guests to attend its proceedings are unnecessarily burdensome, feature conflicts of interests, and effectively serve to prohibit the general public from attending.
- When deliberative bodies are transparent and open to the public, information resources regarding details of their proceedings are inexpensive, reflecting the ease with which the information can be obtained and disseminated. Banning the public and journalists creates new "markets" for those permitted access to NEPOOL proceedings to financially commodify access and intelligence about NEPOOL's activities. NEPOOL's restrictions on public and media access allow those with privileged access to possess valuable information about NEPOOL activities that are non-public, which they can then sell for lucrative amounts to interested parties. NEPOOL is rife with a small army of well-connected consultants—many of whom trade on their former roles as NEPOOL officers in a "revolving door" scheme—who sell information gleaned from their exclusive access to private NEPOOL proceedings.
- Certain current and former NEPOOL officers that played a role in supporting efforts to ban journalists from becoming NEPOOL participants earn outside income selling "intelligence" about NEPOOL proceedings, creating financial conflicts of interest.
- The administrative structure of NEPOOL is highly unusual, and has the effect of maximizing financial payments to Day Pitney, the law firm well-compensated to run NEPOOL affairs. Efforts by Public Citizen to obtain details on NEPOOL's finances were unsuccessful because the Chairman of NEPOOLs budget and finance committee failed to return multiple phone messages.

NEPOOL offers a deceptively selective reading of FERC's intent under Order 719. FERC made crystal-clear in its Order Accepting Compliance Filing for ISO-NE that FERC intended under 719 to have ongoing evaluation of all aspects of RTO/ISO governance and stakeholder procedures:

*FERC stated in Order No. 719 that, "[a]s with the overall operations of each RTO and ISO, responsiveness to customers and other stakeholders should continually be evaluated for improvement." We recognize that existing RTO/ISO stakeholder and board processes present resource challenges for certain stakeholders, including many consumer advocates, and may present barriers to the full, open participation of stakeholders in RTO/ISO governance matters. In light of such concerns and consistent with our statement in Order No. 719 with respect to the ongoing responsiveness criterion, RTOs/ISOs, including ISO-NE, should continually evaluate their governance policies and stakeholder processes and consider how they may be improved. If parties continue to have concerns in these areas that are not being addressed, the Commission may revisit these issues. The Commission will also continue to monitor these matters and take appropriate action, as required. [emphasis added]<sup>5</sup>*

The plain reading of FERC's Order makes clear that FERC considered compliance with Order 719 not be a static event, but rather an ongoing evaluation process, and one that includes all aspects of RTO governance and stakeholder processes ("stakeholder AND board processes"), and therefore are not limited to only stakeholder or consumer relations with the RTO/ISO board of directors.



**ON JANUARY 29, 2019, FERC REJECTED NEPOOL'S DECISION TO BAN JOURNALISTS FROM BECOMING MEMBERS, BUT PUNTED ON ALL OTHER KEY ISSUES TO THE SEPARATE SECTION 206 COMPLAINT IN DOCKET NO. EL18-196**

166 FERC ¶ 61,062  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Cheryl A. LaFleur, Richard Glick,  
and Bernard L. McNamee.

New England Power Pool Participants Committee

Docket No. ER18-2208-001

**ORDER REJECTING REVISIONS**

(Issued January 29, 2019)

1. On August 13, 2018, pursuant to section 205 of the Federal Power Act (FPA), the New England Power Pool Participants Committee (NEPOOL) filed revisions to the Second Restated NEPOOL Agreement (NEPOOL Agreement) to state that members of the press are not eligible to become NEPOOL members and to define press (NEPOOL Press Amendments).<sup>1</sup> As discussed below, we reject the proposed revisions.

# MEANINGFUL STAKEHOLDER PARTICIPATION REQUIRES TIME AND MONEY

“...incumbents hold significant power in RTO stakeholder governance processes as compared to new entrants. Incumbent influence stems from their resource advantage, their history and connection with RTO staff and from sector-participation rules that are often defined to only include those who have assets in the market (particularly the transmission owner and generation sectors). Further, incumbents are generally large organizations that have the resources to participate effectively. Continual participation in RTO governance has created an opportunity for incumbents to develop and benefit from relationships with RTO staff. This adds to the resource and knowledge advantages and is further exacerbated by the voluntary nature of RTOs, as incumbent transmission owners can threaten to leave.”

—*How the RTO Stakeholder Process Affects Market Efficiency*, R St Institute



# NEEDED ISO REFORMS TO PROTECT CONSUMERS

- Intervenor compensation to assist with public interest participation.
- Adjust weighted sector voting ratios to more realistically reflect true stakeholder involvement in energy markets.
- Subject ISO-NE and NEPOOL to federal open meeting and Freedom of Information laws.
- Allocate ISO financial resources to stakeholders to fund studies, analyses, etc. to balance ISO-funded studies.
- ISO Board of Directors should be directly accountable to the public interest within the RTO geographic footprint.
- Disallow ISO management & board from bypassing stakeholders for FERC tariff and other market design proposals under FPA Section 205.
- Limit excessive ISO executive pay.



## **INTERVENOR FUNDING: A SOLUTION FOR PUBLIC INTEREST ADVOCATES TO PARTICIPATE IN FEDERAL, ISO AND STATE UTILITY COMMISSION PROCEEDINGS**

- Public interest advocates often lack needed staff, funding and expertise to participate.
- Eight states—including 2 in New England—feature laws that allow public interest advocates to be financially reimbursed for some costs associated with intervening before state utility regulators—a model we can use for ISO-NE/NEPOOL.
  - Outside of California, most existing state intervenor funding programs are limited and inadequate.
  - Using California as a successful model, initiate intervenor programs in your state and ISO.

# CALIFORNIA IS THE ~~GOLD~~ BITCOIN STANDARD OF INTERVENOR FUNDING

- California Public Utilities Code [§ 1801-1807](#)
  - Advocates can seek to recover legal, expert witness and any other reasonable costs associated with intervening.
  - Fees are awarded if the advocate's "participation makes a substantial contribution to a commission order or decision"
    - *Substantial contribution* is defined as: "substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation."
    - Intervenor contribution determinations are made by the internal and independent Administrative Law Judges within the Public Utility Commission.





## California Public Utilities Commission

Despite Administrative Weaknesses, It Has Generally  
Awarded Compensation to Intervenor in Accordance  
With State Law

Report 2012-118

This report concludes that despite administrative weaknesses, the commission has generally awarded compensation to intervenors—individuals and groups that represent the interests of utility ratepayers—in accordance with state law. We found that the commission has a process in place to ensure that intervenors meet the necessary statutory requirements before it awards compensation for work conducted during regulatory proceedings. In addition, the commission has a robust process for determining whether the costs and expenses intervenors claim are reasonable, as state law requires. However, we determined that the commission only issued 6 percent of its intervenor compensation decisions during 2008 through 2012 within the 75-day deadline required by state law. The commission has also not issued guidance to its staff or utilities on how to calculate interest appropriately for intervenor claim decisions issued after the 75-day deadline. The lack of formal guidance has led the commission to employ a flawed interest computation methodology, resulting in miscalculations and, ultimately, overpayments of interest on awards. Of the \$42,000 in interest that the commission paid for the 10 largest interest payments we reviewed, we estimate that it overpaid \$40,000.

**THE CALIFORNIA STATE AUDITOR DETERMINED  
THE ONLY ADMINISTRATIVE WEAKNESS WAS  
THAT, BECAUSE INTERVENORS WEREN'T BEING  
COMPENSATED FAST ENOUGH, THEY WERE  
BEING OVERPAID IN LATE INTEREST PAYMENT  
FEES**

**THE STATE INTERVENOR FUNDING PROGRAM IS A HUGE SUCCESS**

# COLORADO REVISED STATUTES § 40-6.5-105

TITLE 40. UTILITIES  
PUBLIC UTILITIES  
ARTICLE 6.5. OFFICE OF CONSUMER COUNSEL

C.R.S. 40-6.5-105 (2016)

40-6.5-105. Intervenor other than the office of consumer counsel

(1) If the office of consumer counsel intervenes and there are other intervenors in proceedings before the commission, the determination of said commission with regard to the payment of expenses of intervenors, other than the office of consumer counsel, and the amounts thereof shall be based on the following considerations:

- (a) Any reimbursements may be awarded only for expenses related to issues not substantially addressed by the office of consumer counsel;
  - (b) The testimony and participation of other intervenors must have addressed issues of concern to the general body of users or consumers concerning, directly or indirectly, rates or charges;
  - (c) The testimony and participation of other intervenors must have materially assisted the commission in rendering its decision;
  - (d) The expenses of other intervenors must be reasonable in amount;
  - (e) The testimony and participation of other intervenors must be of significant quality;
  - (f) The participation of other intervenors must be active during the proceeding and not merely an appearance for purposes of establishing legal standing; and
  - (g) The payment of expenses of other intervenors who are in direct competition with a public utility involved in proceedings before the commission is prohibited.
- (2) The commission shall promptly report the award of any intervenors' expenses to the executive director of the department of regulatory agencies.





# IDAHO INTERVENOR COMPENSATION

## TITLE 61 PUBLIC UTILITY REGULATION

### CHAPTER 6 PROCEDURE BEFORE COMMISSION AND IN COURTS

61-617A. AWARD OF COSTS OF INTERVENTION. (1) It is hereby declared the policy of this state to encourage participation at all stages of all proceedings before the commission so that all affected customers receive full and fair representation in those proceedings.

(2) The commission may order any regulated electric, gas, water or telephone utility with gross Idaho intrastate annual revenues exceeding three million five hundred thousand dollars (\$3,500,000) to pay all or a portion of the costs of one (1) or more parties for legal fees, witness fees, and reproduction costs, not to exceed a total for all intervening parties combined of forty thousand dollars (\$40,000) in any proceeding before the commission. The determination of the commission with regard to the payment of these expenses shall be based on the following considerations:

- (a) A finding that the participation of the intervenor has materially contributed to the decision rendered by the commission; and
- (b) A finding that the costs of intervention are reasonable in amount and would be a significant financial hardship for the intervenor; and
- (c) The recommendation made by the intervenor differed materially from the testimony and exhibits of the commission staff; and
- (d) The testimony and participation of the intervenor addressed issues of concern to the general body of users or consumers.

(3) Expenses awarded to qualifying intervenors shall be an allowable business expense in the pending rate case or, if the proceeding is not a rate case, in the utility's next rate case. Expenses awarded shall be chargeable to the class of customers represented by the qualifying intervenors.



# MAINE INTERVENOR COMPENSATION

◀ §1309

Title 35-A: PUBLIC UTILITIES  
Part 1: PUBLIC UTILITIES COMMISSION  
Chapter 13: PROCEDURE

§1311 ▶

## §1310. Funding of intervenors by the commission

**1. Intervenor funding.** Intervenor funding may be provided as follows.

A. In any commission proceeding in which standards under the United States Public Utilities Regulatory Policies Act of 1978, United States Code, Title 16, Section 2601, et seq., are implemented, the commission may order the utility to compensate the intervenor for reasonable attorney's fees, expert witness fees and other reasonable costs incurred in preparation and advocacy of the intervenor's position whenever the commission finds that:

- (1) The position of the intervenor is not adequately represented by the Office of the Public Advocate or the Public Utilities Commission staff;
- (2) The intervenor substantially contributed to the approval, in whole or in part, of a position advocated by the intervenor in the commission proceeding, except that, if no commission advocacy staff is appointed to a proceeding, the intervenor must be likely to contribute substantially to the conduct of the commission proceeding and to assist in the resolution of the issues raised in the proceeding; and
- (3) Participation in the proceeding by the intervenor would impose a significant financial hardship on the intervenor. [1997, c. 691, §4 (AMD); 1997, c. 691, §10 (AFF).]

B. In any proceeding in which the commission does not implement standards under the United States Public Utilities Regulatory Policies Act of 1978, United States Code, Title 16, Section 2601, et seq., the commission may compensate the intervenor for reasonable attorney's fees, expert witness fees and other reasonable costs incurred in preparation and advocacy of the intervenor's position whenever the commission finds that requirements of paragraph A, subparagraphs (1) to (3), are satisfied. Compensation may be provided from the commission's regulatory fund and filing fees subject to the commission's determination of the availability of the funds. [1989, c. 281, (NEW).]

[ 1997, c. 691, §4 (AMD); 1997, c. 691, §10 (AFF) .]

**2. Determination of eligibility.** A determination that an intervenor is eligible for an award of compensation pending the outcome of the proceeding shall be made by the commission at the earliest practicable time in the commission proceeding.





## MICHIGAN STATUTE § 460.6L-M

- Establishes a Utility Consumer Participation Board with members appointed by the Governor. The Board oversees a *Utility Consumer Representation Fund*, which can disburse reimbursement payments to public interest intervenors.



# MINNESOTA STATUTE § 216B.16(10)

**Subd. 10. Intervenor compensation.** (a) A nonprofit organization or an individual granted formal intervenor status by the commission is eligible to receive compensation.

(b) The commission may order a utility to compensate all or part of an eligible intervenor's reasonable costs of participation in a general rate case that comes before the commission when the commission finds that the intervenor has materially assisted the commission's deliberation and when a lack of compensation would present financial hardship to the intervenor. Compensation may not exceed \$50,000 for a single intervenor in any proceeding. For the purpose of this subdivision, "materially assisted" means that the intervenor's participation and presentation was useful and seriously considered, or otherwise substantially contributed to the commission's deliberations in the proceeding.

(c) In determining whether an intervenor has materially assisted the commission's deliberation, the commission must consider, among other factors, whether:

- (1) the intervenor represented an interest that would not otherwise have been adequately represented;
- (2) the evidence or arguments presented or the positions taken by the intervenor were an important factor in producing a fair decision;
- (3) the intervenor's position promoted a public purpose or policy;
- (4) the evidence presented, arguments made, issues raised, or positions taken by the intervenor would not have been a part of the record without the intervenor's participation; and
- (5) the administrative law judge or the commission adopted, in whole or in part, a position advocated by the intervenor.

(d) In determining whether the absence of compensation would present financial hardship to the intervenor, the commission must consider:

- (1) whether the costs presented in the intervenor's claim reflect reasonable fees for attorneys and expert witnesses and other reasonable costs; and
- (2) the ratio between the costs of intervention and the intervenor's unrestricted funds.



# NEW HAMPSHIRE STATUTE § 365:38-A

## TITLE XXXIV PUBLIC UTILITIES

### CHAPTER 365 COMPLAINTS TO, AND PROCEEDINGS BEFORE, THE COMMISSION

#### Reparations, Fees and Costs

##### Section 365:38-a

**365:38-a Proceeding Costs.** – The commission may allow recovery of costs associated with utility proceedings before the commission, provided that recovery of costs for utilities and other parties shall be just and reasonable and in the public interest. For purposes of this section, other parties shall be defined as retail customers that are subject to the rates of the utility and who demonstrate financial hardship; other parties shall not include New Hampshire municipalities. Recovery by other parties shall be deemed to be in the public interest when, in any commission proceeding, the other party substantially contributes to the adoption by the commission, in whole or in part, of a position advocated by the other party in that proceeding, or in a judicial review of that proceeding. Another party shall not recover more than \$10,000 from any utility for any single proceeding. The commission may allow recovery of less than \$10,000 depending upon the scope of the proceeding. The utility shall pay the other party an award of costs if such award is granted by the commission in accordance with the procedures and requirements of the commission and the award is subsequently approved by the governor and council. The utility shall not be liable for any award of costs except in accordance with the procedures and requirements of the commission. If the commission proceeding involves more than one utility, the liability of each utility for the award shall be determined by dividing the amount of the award among the utilities in a manner approved by the commission. If an award of costs is granted in a proceeding involving a change in a utility's rates, the entire amount of the award shall be recovered by the utility in that proceeding. If an award of costs is granted in a proceeding other than one involving a change in a utility's rates, the entire amount of the award shall be immediately recovered by the utility through measures approved on a timely basis by the commission.



# Intervenor Funding

## Key Cases

## Intervenor Funding

## Pro Hac Vice

## Intervenor Funding

The Oregon Public Utility Commission (PUC) is responsible for ensuring Oregon utility customers have access to safe, reliable and high quality utility services at just and reasonable rates. Intervenor funding is available to ensure that those qualified organizations who represent utility customers have the financial resources to participate in the PUC's proceedings. The PUC must approve any agreement before financial assistance can be provided. See [OAR 860-001-0120](#) and [860-001-0130](#) for qualification information.

View the specific intervenor funding agreements below:

- [4th Amended and Restated Intervenor Funding Agreement valid through 2022](#)
- [Idaho Power & Citizen's Advisory Board \(CUB\) Intervenor Funding Agreement \(2016-2020\)](#)
- [PacifiCorp Multi-State Process Fourth Amended and Restated Agreement \(2020\)](#)

The [Intervenor Funding Summary](#) provides fund distribution details to date.



## More In This Section

[Laws Relating to PUC](#)

[How to File](#)

[Submit a Public Comment](#)

[Submit Questions on Pending Dockets](#)



# WISCONSIN STATUTE § 196.31

## 196.31 Intervenor financing.

- (1) In any proceeding before the commission, the commission shall compensate any participant in the proceeding who is not a public utility, for some or all of the reasonable costs of participation in the proceeding if the commission finds that:
  - (a) The participation is necessary to provide for the record an adequate presentation of a significant position in which the participant has a substantial interest, and that an adequate presentation would not occur without a grant of compensation; or
  - (b) The participation has provided a significant contribution to the record and has caused a significant financial hardship to the participant.
- (1m) The commission shall compensate any consumer group or consumer representative for all reasonable costs of participating in a hearing under s. 196.198.
- (2) Compensation granted under this section shall be paid from the appropriation under s. 20.155 (1) (j) and shall be assessed under s. 196.85 (1), except that, if the commission finds that the participation for which compensation is granted relates more to a general issue of utility regulation rather than to an issue arising from a single proceeding, the cost of the compensation may be assessed under s. 196.85 (2). Any payment by a public utility for compensation under this section assessed under s. 196.85 (1) or (2) shall be credited to the appropriation under s. 20.155 (1) (j).
- (2m) From the appropriation under s. 20.155 (1) (j), the commission may make grants that, in the aggregate, do not exceed an annual total of \$300,000 to one or more nonstock, nonprofit corporations that are described under section 501 (c) (3) of the Internal Revenue Code, and that have a history of advocating at the commission on behalf of ratepayers of this state, for the purpose of offsetting the general expenses of the corporations, including salary, benefit, rent, and utility expenses. The commission may impose conditions on grants made under this subsection and may revoke a grant if the commission finds that such a condition is not being met.



# **FEDERAL ENERGY REGULATORY COMMISSION DOCKET NO. RM16-9 WOULD CREATE INTERVENOR FUNDING FOR THE PUBLIC INTEREST**

## **UNITED STATES OF AMERICA BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION**

### **Petition To Initiate A Rulemaking To Establish The Office Of Public Participation As Established By Congress And To Fund Its Work**

Pursuant to Rule 207 of the Commission's Rules of Practice and Procedure<sup>1</sup>, the undersigned organizations hereby petition FERC to implement 16 USC § 825q-1 by initiating a rulemaking to carry out the instructions from Congress to establish the Office of Public Participation and fund its work.

In 1978 Congress initiated sweeping changes to the Federal Power Act when it passed Public Law 95-617, the "Public Utility Regulatory Policies Act of 1978" (PURPA). Title II ("Certain Federal Energy Regulatory Commission and Department of Energy Authorities"), Section 212 ("Public participation before Federal Energy Regulatory Commission") of PURPA ordered the creation of an Office of Public Participation at FERC. The full text follows:



# CALIFORNIA ISO INTERVENOR FUNDING PROPOSAL

SENATE BILL

No. 520

Introduced by Senator Mitchell

February 16, 2017

An act to add Part 1.5 (commencing with Section 2600) to Division 1 of the Public Utilities Code, relating to electricity.

## LEGISLATIVE COUNSEL'S DIGEST

SB 520, as introduced, Mitchell. Electricity: intervenor funding.

Under existing law, the Public Utilities Commission (PUC) has regulatory authority over public utilities. Existing law requires the PUC to award reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs of preparation for and participation in a hearing or proceeding of the PUC involving an electrical, gas, water, or telephone corporation to a customer who complies with specified procedures when the customer's presentation makes a substantial contribution to the adoption, in whole or in part, of the PUC's order or decision and where participation or intervention without an award of fees or costs imposes a significant financial hardship.

This bill would establish a mechanism to provide compensation for reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs of participation in processes of the Independent System Operator (ISO), proceedings of the Federal Energy Regulatory Commission (FERC) that effect California's environment and consumers, and certain proceedings at the State Energy Resources Conservation and Development Commission (Energy Commission). The bill would require an organization intending to seek compensation to submit an annual notice of intent and eligibility to the Energy Commission containing specified information. The Energy Commission would be required to timely issue a finding as to whether the organization is an eligible group, as defined, that may file for

# ISO-NE AND NEPOOL CAN LEARN A LOT FROM CALIFORNIA

- California ISO is subject to the state's Public Records Act (FOIA).
- California ISO complies with the state's Open Meeting Act—meaning that **all** CAISO meetings are open to the public.



**SUBJECT ISO-NE AND NEPOOL TO OPEN MEETING LAWS; BOARD REFORM (INCLUDE MEMBERS REPRESENTING RESIDENTIAL, SMALL BUSINESS AND AGRICULTURAL CONSUMERS)**

**STATE OF NEW YORK**

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1185

2013-2014 Regular Sessions

**IN SENATE**

(Prefiled)

January 9, 2013

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Introduced by Sen. MAZIARZ -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

AN ACT to amend the public service law, in relation to providing oversight and monitoring the operations of an independent system operator





## RECENT ISO-NE, NEPOOL & FERC ACTIONS ATTACK RENEWABLES AND RAISE ENERGY PRICES BY BILLIONS OF DOLLARS

- CASPR – FERC approved this radical capacity market overhaul in March 2018, claiming that significant new renewable capacity was so cheap it was unfairly lowering energy prices—and so CASPR jacks up prices to assist natural gas and nuclear units.
- NEPOOL continues its push for “winter security” moves to justify bigger payments to natural gas power plant owners.
- FERC approved ISO-NE request for massive cost-of-service bailout for Exelon’s Mystic natural gas power plant in December 2018.
- NEPOOL still pushing its press and public ban (Docket No. ER18-2208).
- FERC and ISO-NE botched the recent capacity auction by preventing Vineyard Wind’s offshore resources from bidding. As an offshore, federal-jurisdictional wind farm, it was ineligible to qualify as a Renewable Technology Resource to submit an offer below the new CASPR MOPR. But FERC qualified RTRs to bid 6 days before the auction. But ISO-NE rules stipulate you must have qualified long before 6 days. But FERC refuses to grant the waiver necessary for you to compete. The failure to include Vineyard's cheap offshore wind resources increased the cost to ratepayers \$270 million.

# NEW ENGLAND'S "COMPETITIVE AUCTIONS WITH SPONSORED POLICY RESOURCES"

- In March 2018, a divided FERC voted 3-2 to approve New England's controversial CASPR plan.
- NEPOOL stakeholders pushed the plan claiming that renewable energy is unfairly subsidized and is making electricity too cheap in New England for natural gas and nuclear power plants to compete. So CASPR forces renewables to submit higher auction bids, allowing fossil fuel and nuclear power plants to clear the auction and get paid.
- It turns out that markets are not incentivizing all these renewable energy capacity additions—government policy is. This makes the entities controlling the markets upset.
- New England households and businesses will pay billions of dollars in higher rates under this CASPR scheme.
- FERC's reliance on ill-defined *investor confidence* establishes a new universal income plan for uneconomic power generators.



# NEPOOL VOTED 57.75% IN SUPPORT OF CASPR

Furthermore, within the vote to consider the ISO-NE CASPR experimental rate design, the vast majority of votes in support were cast by members in the power generation/supply and transmission sectors, while end users and municipal power entities overwhelmingly voted against.<sup>1</sup> NEPOOL relies on an undemocratic Sector Voting system that significantly dilutes the influence of end users and the public interest, and vastly empowers the relative voting strength of

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<sup>1</sup> Michael Kuser and Rich Heidorn Jr., "ISO-NE Effort to Accommodate States Leaves them Alienated," *RTO Insider*, January 10, 2018, [www.rtoinsider.com/caspr-iso-ne-nescocoe-83891](http://www.rtoinsider.com/caspr-iso-ne-nescocoe-83891)

those members in the power generation, supply and transmission business. Even as stacked this absurd and biased Sector Voting system is in favor of the generators who stand most to profit from the ISO-NE proposed CASPR change, they still couldn't even secure the needed votes,

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

ISO New England, Inc.

Docket No. ER18-619

**Request for Rehearing of Public Citizen, Inc.**

Public Citizen, Inc. intervened in this docket on January 8, 2018. We request rehearing of the March 9, 2018 Commission order in this docket under 16 U.S.C. § 825l and the Commission's rules at 18 CFR § 385.713.

**Statement of Issues**

1. The heart of the ISO-NE capacity market rewrite approved in the Order is the misguided, and wholly unproven claim, that state policies promoting the deployment of renewable energy capacity within the ISO-NE footprint results in that deployed renewable capacity being unfairly subsidized. Extending the tortured logic further, the Commission in its Order concludes that this proliferation of renewable energy is so unfairly inexpensive that resulting capacity auction prices will be too low for owners of non-renewable energy to compete. Therefore the premise is: electricity prices must be *higher* in order to foster effective competition.
2. Just because some powerful members of the private, ratepayer-funded organization ISO-NE aren't making as much money as they promised to their owners and shareholders, that doesn't mean it's just and reasonable to rework capacity markets to jack prices up to consumers.

5. Use of a Minimum Offer Price Rule (MOPR) was originally intended "to prevent the exercise of buyer-side market power." [Commissioner Glick dissent, at page 1]. Contorting application of a MOPR to force inexpensive renewable energy capacity to submit higher-priced bids is not just and reasonable. There has been no clear, evidentiary hearing-based finding in this docket demonstrating that a) renewable energy capacity deployed as part of state mandates are unfairly subsidized; b) lower capacity prices resulting from low-priced, technologically advanced renewable energy in any way harms system reliability, or threatens rates to become unjust and unreasonable; or c) renewable energy capacity deployed as the result of state policies constitutes some sort of buyer-side market power requiring a MOPR.
6. We must remember that entire premise of electricity restructuring was that harnessing the power of the "markets" would deliver efficiencies that would result in lower prices to consumers. That was the explicit political promise made to consumers. It is inconceivable that now the Commission appears to take the position that economic efficiencies of some new power generation technologies deliver prices that are too low, and artificial markets must be created to increase wholesale prices, in order to be fair to inefficient, competing resources. But that is not just and reasonable. And the Commission has failed to provide evidence that the state policies encouraging the widespread deployment of inexpensive renewable energy has resulted in that new capacity being artificially subsidized.
7. The Commission's Order fails to define the term "investor confidence," a key variable upon which the Commission relies to justify the approval of ISO-NE's capacity market re-write.]



# NEPOOL Debates Winter Energy Security Moves

March 5, 2019

*By Michael Kuser*

New England Power Pool stakeholders are this week discussing potential changes to [ISO-NE](#) wholesale energy markets that would include interim generator compensation to improve winter fuel security and the introduction of a multi-day-ahead market (M-DAM).

ISO-NE Principal Analyst Andrew Gillespie will on Wednesday [present](#) the NEPOOL Markets Committee conceptual details as well as a timeline for a fuel security [FERC](#) filing by Nov. 15, in line with the RTO's January [request](#) for a four-month extension to file a plan, currently pending before the commission (EL18-182).

In the motion for an extension, ISO-NE said, "New England's winter energy issues are fundamentally an energy supply problem, not a generation capacity shortfall problem," but the presentation to the MC acknowledges the RTO has "heard a number of questions and concerns about the length of the market horizon, primarily how this may not align with participants' hedging strategies ..."

ISO-NE filed the rule revisions after the commission last July denied a Tariff waiver to allow the RTO to enter a cost-of-service agreement to keep Exelon's 2,274-MW Mystic plant running after its capacity obligations expire in May 2022.

## Interim Compensation

Several NEPOOL stakeholders have proposed alternatives to the RTO's market mechanisms regarding interim compensation treatment to improve fuel security.

David Cavanaugh, vice president of regulatory and market affairs for energy services firm Energy New England (ENE), was slated Tuesday to [present](#) an amendment to the RTO's proposed Tariff language. The outcome of the planned



# STATEMENT

## Statement of Commissioner Cheryl A. LaFleur and Commissioner Richard Glick

**Date:** February 4, 2019

**Docket No.:** ER19-570

We are disappointed that the Commission failed to act on Vineyard Wind LLC's requests for a waiver and emergency motion in advance of ISO-New England's forward capacity auction. We recognize that the Commission can move forward only when it has a majority of votes for a particular action. Nevertheless, by failing to act, the Commission has introduced significant uncertainty into this auction. All parties, including New England's states, consumers, and auction participants, deserve better.