

ISO-NE: The Most Powerful and Unaccountable Utility in New England

Five Needed Reforms To Protect Consumers & Decarbonize The Grid

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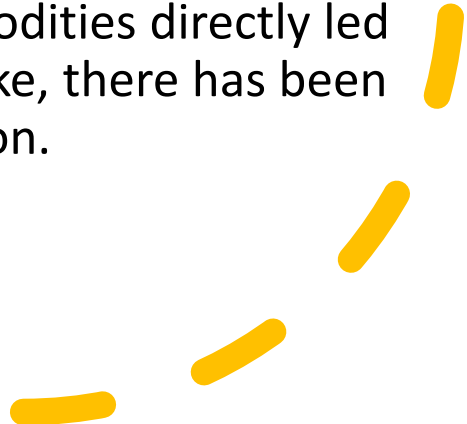
January 23, 2023

FERC Authorized The Creation of ISO-NE To Reduce Federal Oversight

In The Span of 12 Months in 1999-2000, Congress & FERC Pushed Sweeping Deregulation of the Economy

- In December 1999, FERC Order 2000 encouraged the creation of ISOs/RTOs to “[facilitate lighter handed regulation](#)” and “[reduce the need for Commission oversight and scrutiny.](#)”
 - One month before Order 2000, Congress repealed New Deal era regulatory oversight of the financial system by votes of [90-8 in the U.S. Senate and 362-57 in the House.](#)
 - Twelve months later, Congress gutted regulations over energy and other commodity markets at the behest of Enron, burying the [Commodity Futures Modernization Act](#) into a lame duck appropriations bill.

While the consensus among experts have since recognized that deregulating banking, insurance and commodities directly led to the 2008 financial crash and was a mistake, there has been no such reassessment of energy deregulation.



Energy Justice

- Energy justice is equity in both the social & economic participation in the energy system, while also remediating social, economic, and health burdens on those disproportionately harmed by our fossil-fuel intensive energy system—mitigating energy poverty by making access to energy a universal right.
- 44% of U.S. households—or 50 million families—are low-income. [According to the U.S. Department of Energy's](#) Low-Income Energy Affordability Data Tool, the national average energy burden for low-income households is 8.6%, three times higher than for non-low-income households. In some areas of the country, energy burden can be as high as 30%.
- COVID exacerbated these inequities, with a sharp rise in service disconnections.
- Communities of color disproportionately bear the brunt of harmful emissions and fossil fuel infrastructure pollution. According to the Biden White House Justice40, 93 million Americans living in 23,400 census tracts are disadvantaged.
- **Utility Service is a Human Right.**

New England's Privatized Electricity Policy Making Harms Clean Energy & Makes It More Expensive

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).

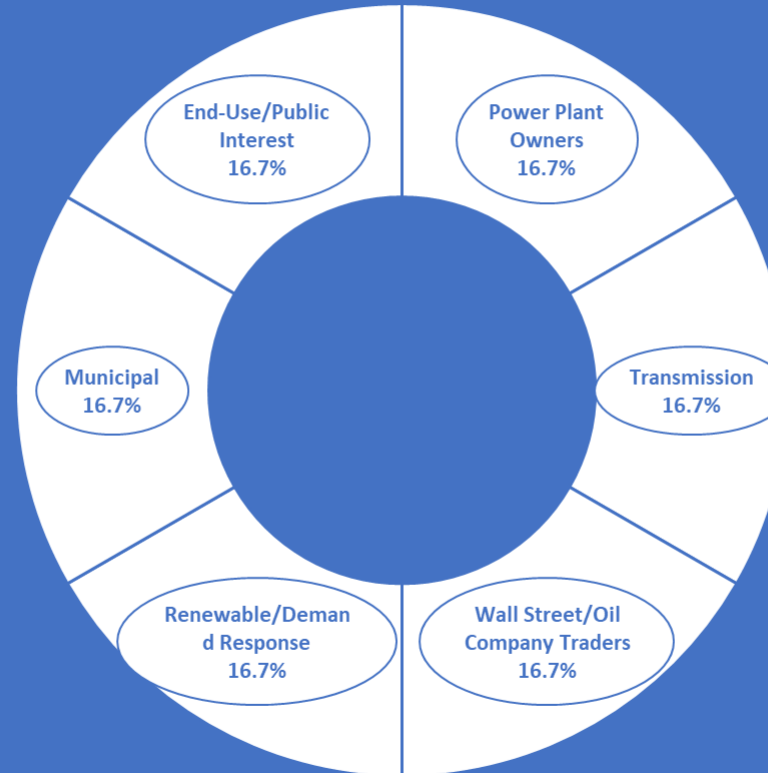
NEPOOL administers the stakeholder process where lobbyists representing the various market interests—power plants, transmission lines, Wall Street energy traders, end-users—meet to develop, deliberate and vote upon proposed market rule changes to send to the Federal Energy Regulatory Commission (FERC) for approval, effectively establishing policy for the region.

Both the public and non-member journalists are banned from attending 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 scheme designed to financially assist those entities that can afford a seat at the table.

If You're Not
At The Table,
You're On
The Menu

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



The World's Biggest Oil
Companies, Wall Street
Banks & Financial
Commodity Traders All
Have Prominent Voting
Rights To Decide on New
England's Energy Future

Companies With Voting Rights Over New
England's Future Include:

Oil giants BP & Shell.

Wall Street titans Bank of America,
Citigroup, Goldman Sachs, JP Morgan &
Morgan Stanley.

Global commodity traders Mercuria,
Trafigura & Vitol.

Hedge fund Castleton Commodities.

| In August 2018 NEPOOL Voted to Ban Journalists | From Becoming Members (ER18-2208)

In January 2019 FERC stopped NEPOOL from banning journalists from membership, but punted on whether NEPOOL could block the public from attending its meetings to a separate Docket, EL18-196.

“NEPOOL rules prohibiting press and public attendance at NEPOOL meetings do not directly affect” just and reasonable rates, and therefore the Commission lacks jurisdiction to order NEPOOL to open its deliberations to the public. “NEPOOL’s policies prohibiting press and public attendance at and reporting on NEPOOL stakeholder meetings are further removed from jurisdictional rates than the board selection practices at issue in *CAISO*” and so FERC dismissed challenges to allow the public and journalists to attend. (*RTO Insider LLC v. New England Power Pool Participants Committee*, Docket No. EL18-196, Issued April 10, 2019, at 48 and 50)

In April 2019 FERC Ruled That It Cannot Prevent NEPOOL From Banning Public Participation

Request for Rehearing of Public Citizen • May 10, 2019 • Docket No. EL18-196-___

1. The Commission erected a false distinction between the impact on rates of RTO stakeholder membership rules and RTO procedures barring non-members such as the general public and journalists. The Commission determined that while membership rules impact rates because it determines who is eligible to vote, it claims that press or public attendance at meetings does not impact votes and, therefore, cannot impact rates. But according to NEPOOL's own expert witness, allowing non-members such as the general public and journalists to simply witness and publicly report on NEPOOL's deliberations of electric rates would alter NEPOOL member behavior. Any variable impacting voting member's behavior in deliberations of or votes upon proposed electric rates impacts rates. Therefore, FERC has clear regulatory authority over any rules prohibiting non-members from witnessing and reporting on RTO stakeholder proceedings.
2. FERC's assumption that attendance of NEPOOL meetings by non-members of the general public would be passive is incorrect, and undervalues the contributions non-member attendance would have on rates. Other RTOs such as PJM allow non-members of the public to actively participate in stakeholder meetings, including granting non-member individuals the right to speak and ask questions. Active participation by non-members of the general public during the stakeholder process could alter outcomes of the debate and voting, and therefore allowing the general public would impact rates.
3. Banning the public from the NEPOOL stakeholder process impacts rates because it denies the public equal access to important, non-public details about the development of NEPOOL's rate filings, placing non-members at a distinct disadvantage relative to members when it comes time to intervene and participate in the relevant FERC proceeding.

The Commission reveals in its April 10 Order that it believes it has created RTO stakeholder Frankensteins: entities that it administratively fashioned, bestowing with numerous, important electric-rate making and influencing authorities, but which the Commission now concludes are somehow beyond its regulatory reach. FERC assigned sweeping authorities to the private RTOs and their stakeholder processes as the central component of the Commission's effort to ensure its market-based rate experiment would result in just and reasonable rates. For the Commission now to claim that it cannot regulate the very organizations it created could serve as a cautionary epilogue to Mary Shelley's seminal novel: FERC no longer contains the Frankenstein it made. Such a position has dire consequences not just for household consumers, but for the future of just and reasonable rates within FERC's RTO experiment.



ISO-NE, NEPOOL & FERC Actions Attack Renewables & Raise Prices By Hundreds of Millions of Dollars

- Competitive Auctions With Sponsored Policy Resources (CASPR) – ISO-NE successfully pushed this radical capacity market overhaul in 2018, claiming that New England states were so successful in requiring new renewable deployment that the clean energy mandates were making renewables too inexpensive and were unfairly lowering energy prices—and so CASPR forced renewables to bid at artificially high prices to allow more expensive natural gas and nuclear units to clear the auction.
 - ISO-NE pushed for “winter security” subsidies 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 2018.
 - ISO-NE botched the 2019 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.
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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

ISO-NE *Competitive Auctions With Sponsored Policy Resources*

- In March 2018, 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.**
- FERC's reliance on ill-defined *investor confidence* established a new universal income plan for uneconomic power generators.

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.

FERC approves ISO-NE plan to end MOPR in 2025 while accepting some renewables in capacity auctions

Published April 4, 2022 • Updated May 31, 2022



[Ethan Howland](#)

Senior Reporter



Judges Finally Toss ISO-NE Fossil Fuel Winter Giveaway

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

ISO New England Inc.

ER19-1428

Protest of Public Citizen, Inc.

ISO-NE has proposed a “winter reliability” rate design that would require New England ratepayers to pay \$148 million a year to certain coal, natural gas, oil and nuclear power plant owners that provide on-site fuel storage during three winter months. This absurd proposal was roundly rejected by stakeholders in ISO-NE,¹ as the ill-conceived plan provides as much empirical evidence that it will improve reliability as exists to prove the Easter Bunny is real. Absent an evidentiary hearing where such facts could be procured, FERC must reject the proposal as unjust and unreasonable. New Englanders already pay the highest electric rates in the contiguous lower-48 states, and simply cannot afford yet another ISO-NE “market” design that amounts to: “let’s throw a whole lot more money at certain generators and see if that works.”



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Appeals court partly strikes down FERC approval of ISO New England winter reliability program

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Senior Reporter





ISO-NE Has Compliance Problems

- On September 30, 2022, FERC forced ISO-NE to pay a [\\$500,000 penalty](#) for falsifying information and blocking access for the independent market monitor that allowed the 675 MW fossil fuel fired Salam Harbor power plant to improperly nab \$100 million in capacity payments (Docket No. IN18-8).



New England Ratepayers Pay For ISO- NE's Extravagant Spending

- ISO-NE charges ratepayers across New England \$200 million a year to fund its operations.
- Gordon van Welie's 2020 financial compensation (\$2.5 million)—paid by New England ratepayers—exceeded the combined salaries of all six New England Governors (\$1 million).
- ISO-NE has troubling conflict of interests:
 - ISO-NE ratepayers paid \$562,000/year for “software consulting” to GRT Inc, which is owned in part by Victor Litvinov, who was closely related to then- ISO-NE Chief Technologist Eugene Litvinov.
 - ISO-NE's general counsel Maria Gulluni (paid \$910,000/year) is directly related to ISO-NE's Principal Data Architect Ralph Slate (paid \$175k/year).
 - Catherine Simonelli, paid \$150k/year, is related to long-time ISO-NE executive John Simonelli.
- ISO-NE's 640 employees are paid by ratepayers an average annual compensation of \$183,000.
- The board of directors are paid as much as \$150,000/year to work 10 hours a week. The 10-member board features one person of color, and no one who is directly accountable to New England ratepayers or dedicated to climate action.
- ISO-NE charged ratepayers \$366,624 for travel expenses and \$334,896 for conferences in 2020.

ISO-NE Lobbyists Paid By Ratepayers

- DC lobbying firm [Owen Evans Ingols](#) \$120,000/year to [lobby Congress](#), with a senior George W. Bush White House official (Adam Ingols) on ISO-NE's retainer.
- Connecticut: [ISO-NE spent \\$250,000 lobbying in 2021-22](#), paying Craig Leroy & Dallas Dodge of Roy & Leroy Government Relations \$60,000/year to influence state government.
- Massachusetts: Paid the corporate lobbying firm [Karol Group Inc \\$45,000](#) in 2022.
- New Hampshire: retains Jodi E. Grimbilas & Adam J. Schmidt of J Grimbilas Strategic Solutions LLC.
- Vermont: [Patricia Komline & Gabrielle Malina](#) of Downs Rachlin Martin are on retainer.
- ISO-NE reports no active lobbying in Maine or Rhode Island.

Five Needed ISO Reforms To Protect Consumers & The Climate

1. Petition FERC for a Notice of Inquiry into Order 719, which was the 2008 order establishing bare-bones governance requirements for ISOs. A revamped Order 719 could require ISO-NE to:
 - All meetings open to free public participation.
 - Establish a board of directors for both NEPOOL and ISO-NE that are directly accountable to the people of New England.
 - Subject both ISO-NE and NEPOOL to the federal Freedom of Information Act.
 - Adjust weighted sector voting ratios to more realistically reflect true stakeholder involvement in energy markets. End users, environmental justice and climate advocates should encompass half of the voting shares.
 - Limit excessive ISO executive pay.
2. **Public funding of [intervenor compensation to assist with public interest participation](#).**
3. Improve data transparency.
4. Disallow ISO management & board from bypassing stakeholders for FERC tariff and other market design proposals under FPA Section 205.
5. Review of ISO costs/benefits.

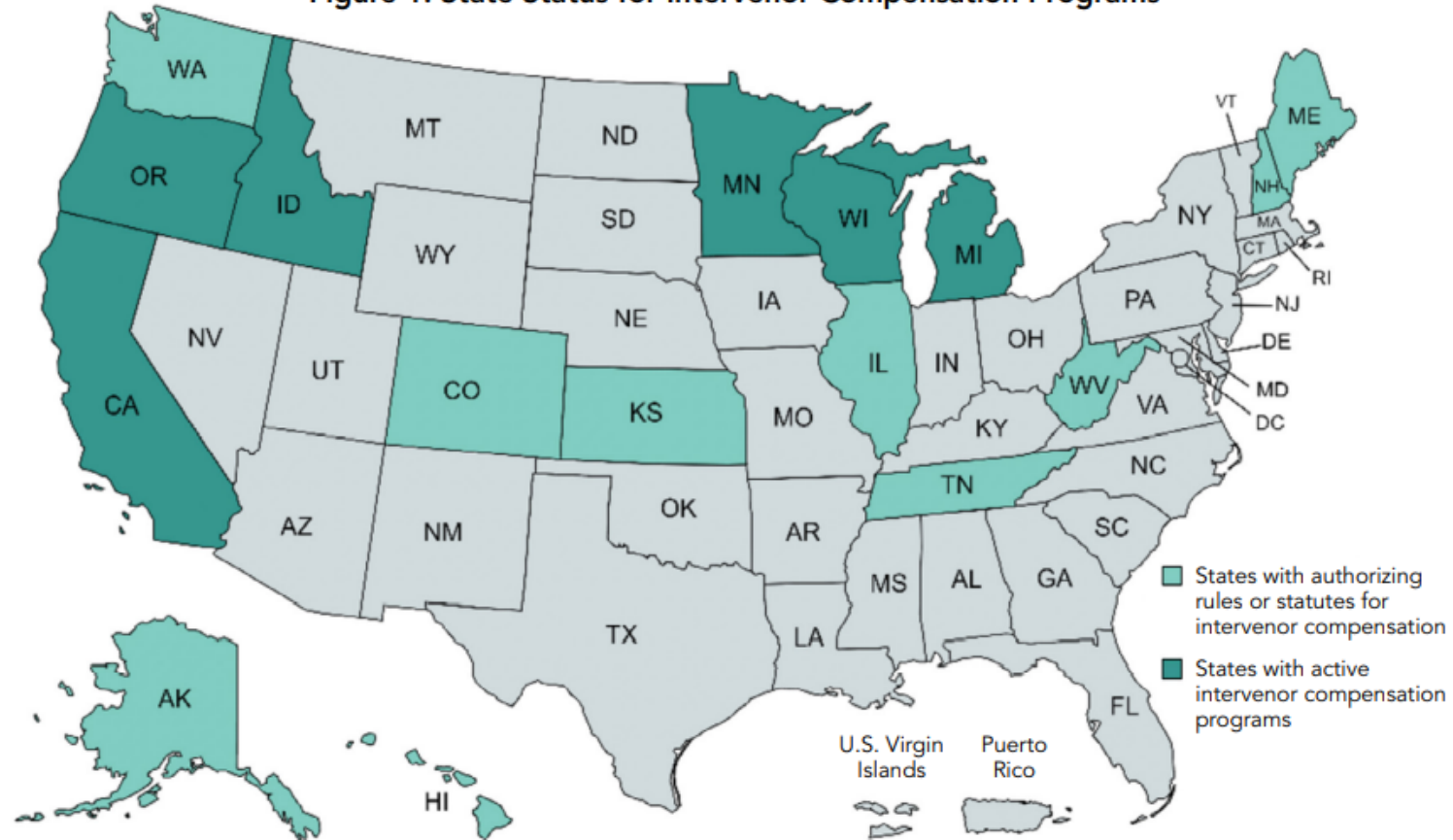
Urge FERC To Conduct a Notice of Inquiry of Order 719

- FERC hasn't examined RTO governance and responsiveness to customers since the 2008 Order.
- The intent of Order 719 was “to improve the operation of organized wholesale electric markets in the areas of . . . the responsiveness of RTOs to their customers and other stakeholders, and ultimately to the consumers who benefit from and pay for electricity services.”
- Public Citizen believes governance, transparency and public access standards should be uniform across all RTOs.
- A Notice of Inquiry is an opportunity to revisit RTO governance and public participation requirements.

“the Commission will require that RTOs and ISOs continue over time to consider customer and other stakeholder needs as the architecture or market environment of the RTO or ISO changes. This criterion is necessary to ensure that responsiveness continues into the future.” *Order 719, At 509.*

"we find that RTOs and ISOs must provide an avenue for customers and other stakeholders to present their views on RTO and ISO decision-making, and to have those views considered." *Order 719, At 503.*

Figure 1. State Status for Intervenor Compensation Programs



While sixteen states have authorized intervenor compensation plans, only six of them are actively being used, and two (Illinois and Washington) are currently being established. **Table 1. Features of Authorized State Intervenor Compensation Programs** shows a summary of the key features of authorized state intervenor compensation programs. The six states with active programs—California, Idaho, Michigan, Minnesota, Oregon, and Wisconsin—are discussed further in [Section 3.0](#).

17 States + FERC Authorize Intervenor Funding

- California is the gold standard (CA Public Utilities Code § 1801-1807), awarding \$12 million to public interest groups last year.
- Oregon recently [enacted HB 2475](#), amending its existing intervenor funding to provide up to \$500,000/year to advocates representing low-income households and EJ communities
- Michigan statute § 460.6L-M established a Utility Consumer Participation Board with members appointed by the Governor. The Board oversees a Utility Consumer Representation Fund, which disburses upfront grants to encourage the participation of public interest intervenors. EJ groups have received funding.
- New York doesn't offer it in utility proceedings, but Article 10 of the Public Service Law provides intervenor funding for community organizations seeking to participate before the Board on Electric Generation Siting

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.

New Hampshire Intervenor Funding

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.

ISO-NE Must Improve Public Data Transparency



Ari Peskoe
@AriPeskoe

Why doesn't ISO-NE disclose which power plants failed to perform? ISO-NE says non-disclosure "ensures market participants provide the ISO with accurate and timely information regarding their resources without concern the information will be shared with their competitors."



John Raymond Hanger @johnrhanger · Jan 9

Penalties totaling \$39 million will be assessed by ISO-NE to power plants with total capacity of 2150 MWs for not operating on December 24th. Plants had a duty to operate in return for capacity payments. They also lost revenues by not running. providencejournal.com/story/news/2023/01/09/iso-ne-penalties-2150-mw-plants-not-operating-dec-24th/10844440001 via @proj0

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FERC & Courts Rely
On The (incorrect)
Assumption That
the ISO
Stakeholder
Process Is Inclusive
And Represent All
Interests

- *NRG Power Marketing, LLC v. FERC* (2017) limits FERC's ability to alter ISOs § 205 filings, thereby vastly empowering the ability of ISOs to dictate the direction of market reforms. The court in *NRG* specifically mentions the rights of ISO stakeholders under § 205 in ruling against FERC.

Assess Costs/Benefits of ISOs

- A coalition of consumer advocates, pro-market groups and others is calling on Congress to direct an independent agency to conduct a first-of-its-kind cost analysis on organized power markets in the U.S.
- The letter, sent Thursday, was spearheaded by the Electricity Consumers Resource Council (ELCON) and includes a wide array of groups including Public Citizen, Energy Choice Coalition, R Street Institute, state-level consumer advocates and others. It asks Congress to direct the Government Accountability Office (GAO) to conduct a detailed cost analysis of organized markets that are under the Federal Energy Regulatory Commission's jurisdiction.
- The effort comes in the midst of rising debate in traditionally regulated, vertically integrated utility regions about whether forming or joining a regional transmission organization (RTO) could save customers money and accelerate the transition to clean energy.



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Groups ask Congress for first-of-its-kind cost analysis of RTOs amid market expansion debate

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Catherine Morehouse

