

# STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

Internet Address: <http://www.dps.state.ny.us>

## PUBLIC SERVICE COMMISSION

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*Secretary*

October 5, 2001

Honorable David P. Boergers  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Room 1-A209  
Washington, D.C. 20426

Re: Docket No. RT01-99-000 - Regional  
Transmission Organizations

Dear Secretary Boergers:

For filing, please find the Comments of the New York State Public Service Commission in the above-entitled proceeding. Should you have any questions, please feel free to contact me at (518) 473-8178.

Very truly yours,

David G. Drexler  
Assistant Counsel

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

REGIONAL TRANSMISSION ORGANIZATIONS ) Docket No. RT01-99-000

**COMMENTS OF THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF NEW YORK**

INTRODUCTION

Pursuant to the Notice Regarding Mediator's Report (Report) issued September 27, 2001, the New York State Public Service Commission (NYPSC) hereby submits its comments on the Report. The Federal Energy Regulatory Commission's (FERC or Commission) initiative to form a single northeast energy market is a major step forward. Creating a single, region-wide organization operating under the same set of market rules will maximize the potential efficiencies associated with larger markets. A regional organization can efficiently utilize existing generation and transmission facilities, and can plan and promote development of transmission and generation that will best serve the interests of the entire region.

Toward that end, the NYPSC participated in a 45-day mediation initiated by the Commission. Our interests in moving to a region-wide structure are to ensure that the new organization will maintain the existing high level of

reliability; that effective market monitoring will be in place to instill confidence in the market; that the ongoing work to improve efficient commerce in electricity across the northeast will not languish during the transition to a Northeast Regional Transmission Organization (NERTO); and finally, that a truly independent Board of Directors (Board) be established, which receives input from interested stakeholders, but is not hampered by a cumbersome committee structure. Although the Judge's Report and the accompanying Business Plan do not adopt specific rules for the NERTO, our comments make recommendations that reflect these interests.

The "Mediator's Report" presented several alternatives regarding the makeup of the transition Board and its authority to petition FERC for approval to act (Federal Power Act (FPA) §205 filings). The NYPSC supports a transition Board that has an equal number of members (i.e. parity) from the three existing northeast Independent System Operators (ISOs). The Commission should adopt Option 2-G, which would give equal representation to each ISO (3-3-3) and would provide for four additional independent members selected by the stakeholders. The proposal that favors the PJM Board (Option 3-G) should be rejected.<sup>1</sup>

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<sup>1</sup> According to the Report, Option 3-G proposes an eleven (11) member Board comprised of five representatives from the PJM Board, three from the NYISO Board, and two representatives from

Furthermore, the Board should have the exclusive authority to file additions or revisions to the documents governing the NERTO under §205 of the FPA, without stakeholder approval.<sup>2</sup> Such an approach will bolster the Board's independence and avoid unnecessary delay.

In addition, the NYPSC endorses Judge Young's recommendation that the NERTO incorporate essential best practices from the existing ISOs prior to NERTO operation. Finally, we wish to clarify the Report's suggestion that the NYPSC is a supporter of a NERTO transition Board with membership weighted heavily in favor of PJM.<sup>3</sup> The NYPSC supports equal representation by PJM, ISO-NE and NYISO on the NERTO transition Board and is not a supporter of Option 3-G.

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the ISO-New England Board, with a CEO who would be the eleventh voting member of the Board.

<sup>2</sup> The Report noted that several supporters of Option 2-G favor exclusive filing rights under FPA §205 for the transition Board, including New York. Report at fn 19.

<sup>3</sup> Report at fn 21. The Report states that "Option 3-G is the most satisfactory to a group of Northeast state commissions... [including the] New York State Public Service Commission." Id. This mischaracterization was clarified in a September 24, 2001, letter from John A. Levin, Assistant Counsel for the Pennsylvania Public Utility Commission, to Judge Young (attached).

## DISCUSSION

### I. An Equal Number of Members from PJM, ISO-NE and NYISO Should be Included on the NERTO Transition Board.

Section C of the Report describes three options for governance and composition of the Board that have been identified as Options 1-G, 2-G, and 3-G. The Judge, however, did not recommend an Option. Although the NYPSC firmly supports the Board composition embodied in Option 2-G, the Report inaccurately suggests that the NYPSC supports Option 3-G.<sup>4</sup> As the Report explained, "Option 2-G has significant and diverse stakeholder support."<sup>5</sup> That includes the NYPSC's support.

We believe that Option 2-G, which proposes a 13-member transition Board comprised of three members each from the PJM, ISO-NE and NYISO Boards, along with four independent members elected by the stakeholders, will provide the necessary structure for an independent and unbiased Board.<sup>6</sup> The advantages of numerical parity among the three existing ISO's include: "enhanced Board credibility among all sectors; diminished Board member ability to impose ISO-specific biases/practices or to

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<sup>4</sup> Report at fn 21.

<sup>5</sup> Report at p. 13.

<sup>6</sup> "Option 2-G reserves permanent Board composition decisions to the 'going forward' process and to the transition Board and stakeholders." Report at pp. 11-12.

favor ISO-specific interests, views, technologies, etc; and more balanced consideration of ISO-specific circumstances and concerns (e.g., load pockets, market degradation, reliability)."<sup>7</sup> Also, the Report indicates that "[a]n obvious potential advantage of [Option 2-G] is direct stakeholder influence on the Board," given that four independent Board members would be selected by stakeholders.<sup>8</sup>

In contrast, implementing a Board, as proposed in Option 3-G, whereby PJM members would heavily influence the Board,<sup>9</sup> could potentially compromise the legitimate interests of New York and New England. Board domination by any one ISO could interject favoritism toward that ISO's practices. For example, a Board controlled by PJM would tend to favor the practices used in PJM due to the Board's familiarity and comfort with those practices. Exacerbating matters further, the Board would likely be capable of implementing only those practices it saw fit, despite what the subordinate ISOs regard as "best practices," given the allocation of votes. Dominance by a single ISO could adversely impact reliability in the control regions for the same reason.

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<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Under Option 3-G, PJM would have the same number of votes as ISO-NE and NYISO combined, even before a CEO is chosen. Assuming that a PJM member becomes the CEO, PJM would effectively control the NERTO.

In sum, to further achieve the necessary impartiality and independence required, the Board should be structured to prevent one ISO from controlling the outcome of an issue.

II. The NERTO Transition Board Should Have Exclusive Authority to Make Additions or Revisions to the Documents Governing the NERTO Under Section 205 of the Federal Power Act, Without Stakeholder Approval.

The NYPS&C favors the Board's independence to file additions or revisions to the NERTO's governing documents, such as tariffs and market rules, pursuant to FPA §205. Stakeholder support should not be a prerequisite. The Report, however, is silent on the most efficient approach.

The NERTO must be able to decide the proper course of action to take, even when it disagrees with a majority of stakeholders. In fact, the Commission has emphasized that stakeholders are to serve in an advisory capacity, not as decision-makers.<sup>10</sup> It may be difficult for an RTO to reach the best result when stakeholders have inordinate influence on decision-making. We recognize, however, the important role that stakeholders play. They live by the rules and know which rules advantage or disadvantage them. However, stakeholders have a duty to favor their own corporate interests, even if they are

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<sup>10</sup> PJM Interconnection, LLC, 96 FERC ¶ 61,060 (2001); PJM Interconnection, LLC, 96 FERC ¶ 61,061 (2001); Bangor Hydro-Electric Co., 96 FERC ¶ 61,063 (2001); ISO New England, Inc., 95 FERC ¶ 61,384 (2001).

not in the public interest. On the other hand, the Board must look at the big picture and balance the concerns of all the parties while considering the public interest. Our experience in New York has been that the stakeholder process provides valuable input, but at times the process favors larger and well-financed parties at the expense of smaller, poorly financed interests. Moreover, decision-making is highly inefficient because the Board cannot make FPA §205 filings, without committee approval, except in exigent circumstances.<sup>11</sup> In addition, delay and uncertainty could result from a two-step process dependent on stakeholder approval before the independent Board may act.

III. Existing ISO Essential Best Practices Must Be in Place Prior to NERTO Start-Up.

In the section on Market Design, the Judge emphasized that the "PJM paradigm will prove a more than adequate platform for the Northeast RTO *provided* it incorporates essential best elements from the other ISOs, and provided further that impatience, haste and greed are not permitted to drive RTO implementation at the expense of sound policy."<sup>12</sup> The NYPSC

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<sup>11</sup> Although the Board is authorized to make the filing, the proposed amendment submitted by the Board expires 120 days after it is filed unless the Management Committee approves the amendment. NYISO Agreement, Article 19.01.

<sup>12</sup> Report at pp. 18-19.

shares Judge Young's concerns and supports the implementation of essential best practices that currently exist in New York and New England prior to start-up of the NERTO.

We expect that the essential best practices, which must be in place prior to NERTO start-up, will be those that ensure that reliability and price are not negatively impacted because of inefficiencies resulting from the move to a regional organization. For example, while PJM has committed to recognizing local control areas and local reliability rules, there is a major question regarding its ability to fully optimize the transfer capabilities currently existing within New York. Therefore, various current New York best practices aimed at optimizing the use of generation resources and the bulk power system must be preserved as part of the NERTO design to ensure that New York's prices are not artificially high. Moreover, New York has worked hard to develop effective mitigation measures reflecting local market conditions. Consequently, it may be necessary to incorporate New York-specific measures into the NERTO market design.

Finally, we are painfully aware that the events of September 11, 2001, will require that security issues must be thoroughly and thoughtfully addressed prior to NERTO start-up. However, we do not believe these issues, in and of themselves, present an absolute barrier to the development of regional

markets, and will continue to work with the Commission and other interested parties to carefully develop regional markets with these security concerns in mind.

CONCLUSION

The NYPSC supports a NERTO Board with equal representation from each of the three existing ISOs. The Board should also be vested with adequate filing rights under FPA §205. In addition, the NERTO should incorporate the essential best practices from each ISO prior to operation.

Respectfully submitted,

Lawrence G. Malone  
General Counsel  
By: David G. Drexler  
Assistant Counsel  
Public Service Commission  
of the State of New York  
3 Empire State Plaza  
Albany, NY 12223-1305  
(518) 473-8178

Dated: October 5, 2001  
Albany, New York

**ATTACHMENT**

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

September 24, 2001

The Honorable H. Peter Young  
Administrative Law Judge  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

Re: Northeast Regional Transmission Organization Mediation Proceeding;  
RT01-99-000

Your Honor:

I am obligated to bring to your attention an error in your report regarding the support for governance Option 3-G sponsored by the Pennsylvania Public Utilities Commission. At pages 15-16 of your report (and accompanying note 21) you state that of the three governance proposals included in the Business Plan, Option 3-G is the "most satisfactory to a group of Northeast state commissions and consumer advocates" whom you define to include the six state commissions in New England, the New York Public Service Commission and the Vermont Department of Public Service.

These state agencies did not sign onto the comprehensive RTO board and stakeholder governance proposal which constitutes Governance Option 3-G. The supporters of that proposal were listed on the first page of that document, as revised orally by me on the last day's session on September 7, 2001.

Supporters and formal endorsers of Governance Option 3-G include the Delaware Public Service Commission, the New Jersey Board of Public Utility Commission Staff, the Mid Atlantic Power Supply Association (MAPSA), the New Power Company, the Maryland Office of Peoples Counsel (with the exception of the market monitoring section), the New Jersey Division of Ratepayer Advocate and the Pennsylvania Office of Consumer Advocate.

It is my understanding, stemming from discussions with representatives of the New York and New England state agencies, that those agencies support Pennsylvania's position with respect to Section 205 rights for an RTO Board, but have not endorsed Option 3-G.

I would note that New York has endorsed Option 2-G which gives equal representation on the transition board to each of the existing ISOs and adds four independent board members (with a qualification regarding Section 205 rights), while the New England Conference of Public Utilities Commissioners and the Vermont Department of Public Service have provided you and the parties with a statement of their own governance proposal, which is not in the Business Plan.

I would respectfully request that you consider issuing an erratum to your report to reflect the above-described facts.

Very truly yours,

John A. Levin  
Assistant Counsel

Counsel for the Pennsylvania  
Public Utility Commission

cc: As per Certificate of Service

CERTIFICATE OF SERVICE

I, Jacquelynn R. Nash, do hereby certify that I will serve on October 9, 2001, the foregoing Comments of the Public Service Commission of the State of New York by depositing a copy thereof, first class postage prepaid, in the United States mail, properly addressed to each of the parties of record, indicated on the official service list compiled by the Secretary in this proceeding.

Date: October 9, 2001  
Albany, New York

Jacquelynn R. Nash