

**INCORPORATING ENVIRONMENTAL CONCERNS
INTO WHOLESALE ELECTRIC MARKETS:
RECOMMENDATIONS FOR INCREASING
EFFECTIVE PARTICIPATION OF ENGOS IN RTO
GOVERNANCE STAKEHOLDER PROCESSES
(PART II)**

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Synopsis: This, the second of our two companion articles focusing on the role of environmental non-governmental organizations (eNGOs) in RTOs, recounts our interviews with key market participants and observers to hear their views on where RTO governance structures hinder and help effective participation of eNGOs. Those interviews form the basis of the recommendations we present below on how to improve RTO governance processes.

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I. SECTION I

A. Introduction

Regional Transmission Organizations (RTOs)¹ operate the transmission grid and manage the electricity markets for more than 60% of the electricity supply in the United States. For a number of reasons, including ensuring nondiscriminatory open access to the transmission system, these organizations were developed with elaborate stakeholder consultation and decision-making processes. Given the complexity of these processes, standing outside of an RTO and trying to understand how the governance system is designed and operated is akin to guessing what is happening inside a black box. You can read the rules and memorize the

1. References to RTOs in this article include both Regional Transmission Organizations and Independent System Operators (ISOs) in the states of New York and California.

procedures, but that does not mean that you understand how those rules and procedures work in practice. Practical experience is critical to understanding how rules and procedures translate into or limit effective participation opportunities. We conducted multiple interviews with persons representing environmental non-governmental organizations (eNGOs) in RTO stakeholder governance processes to better understand how eNGOs participate in these processes today. We used those interviews to gather insight on how eNGOs can effectively engage in RTO governance as we transition to a clean energy future. Our interview subjects work in every RTO in the country and collectively represent hundreds of years of experience in the energy law and policy field.² Interviewees were asked a standardized set of questions and given the opportunity to share their personal experiences and viewpoints.³ The lessons they share were learned by engaging in RTO stakeholder meetings. This article starts with the position that there is a need for an expeditious clean energy transition, and it accepts the principle that enhancing effective participation by eNGOs is an important step to accelerating that transition.⁴

Effective participation starts well before any votes are taken. The issues RTOs tackle from transmission planning and cost allocation, generator interconnection reform, to system reliability in high renewable energy scenarios are first addressed in lower-level working group and task forces. Participation in those processes shapes the proposals that receive formal votes and are filed with FERC. Opportunities for stakeholder participation in the decision-making process are determined by the rules and structure of the governance processes and that is the focus of this article.⁵ Section I introduces the importance of institutional design in facilitating effective participation. Section II discusses the collected recommendations of our interviewees and provides analysis and examples of how to implement their suggestions. Section III summarizes key conclusions.

B. The Importance of Institutional Design

In our interviews of eNGOs that participate in RTO governance processes, we heard a statement that encapsulates the theme of our analysis. Upon being asked about voting on proposed measures, the eNGO stated that “[h]aving a vote is a weak tool.” This statement captures what we gleaned from more than a dozen

2. See *infra* Appendix I (containing a complete list of interviewees).

3. See *infra* Appendix II (containing the list of questions posed to each interviewee). Please note that comments and recommendations are not attributed to individual interviewees as part of our agreement with interview subjects to enable a free-flowing conversation.

4. E.g., Mark James et al., *How the RTO Stakeholder Process Affects Market Efficiency*, 112 R ST. POL'Y STUD. 1 (2017), <https://www.rstreet.org/wp-content/uploads/2018/04/112-1.pdf> [hereinafter James et al.]; Michael H. Dworkin & Rachel Aslin Goldwasser, *Ensuring Consideration of the Public Interest in the Governance and Accountability of Regional Transmission Organization*, 28 ENERGY L.J. 543 (2007); Christina Simeone, *PJM Governance: Can Reforms Improve Outcomes?*, UNIV. OF PA. KLEINMAN CTR. FOR ENERGY POL'Y (May 19, 2017), <https://kleinmanenergy.upenn.edu/wp-content/uploads/2020/08/PJM-Governance-Reforms-1.pdf> (discussing the value of eNGO participation and, in general, enhanced stakeholder participation to ensure that RTO governance serves the public interest) [hereinafter Simone].

5. See Mark James et al., *Integrating Environmental Concerns into Wholesale Markets: The Impact of Regional Transmission Organization Governance Models on eNGO Participation in the Stakeholder Governance Process*, 44 ENERGY L.J. 463 (explaining how the governance processes work in each RTO); see also James et al., *supra* note 4.

interviews, that being able to vote on key issues is a good tool, but by itself it is not sufficient to guarantee effective participation. Effective participation depends upon having adequate resources; consistent and meaningful access to key decision-makers; access to key RTO processes; transparency in RTO decision-making processes and accountability for decision-makers; and a board prepared for and attuned to the interests of all stakeholders. Having a vote is an important right and tool for effective participation, but without other measures that equalize resource, information, and access asymmetries, a voting right is not a direct pathway for effective participation. This article does discuss voting right differences, but the focus is on key barriers to enhancing eNGO participation in RTO stakeholder governance in addition to voting rights. Before any vote is called, there are opportunities to influence decision-making and seizing those opportunities depends on how participation is encouraged and supported.

Our analysis demonstrates the importance of institutional design in creating participation opportunities and determining process outcomes. The study of institutional design examines how the shape and form of institutions and institutional processes influence which stakeholders participate; how stakeholders share information, deliberate, and make collective decisions. Institutional design shapes and influences the connection between stakeholder engagement and policy decisions and outcomes.⁶ RTOs are “both a novel form of energy system governance and” a central player in the clean energy transition.⁷ RTO governance processes must balance multiple and sometimes competing interests of a multitude of different organizations and entities.⁸ RTOs rely on stakeholder participation to resolve problems through discussion, deliberation, negotiation, and consensus-building. Variations in the institutional design of RTOs, attributable to the different histories from which RTOs emerged and the openness of the guidance and instruction provided by FERC on the essential elements of RTO governance processes, create an opportunity to evaluate and compare governance structures and the operation of governance processes.⁹

Effective participation in the governance system is critical to being able to influence decisions and outcomes. However, effective participation requires adequate resources, an engagement process that facilitates informed participation, and that stakeholder participation is viewed as more than just a formality. Institutional design can negate the tendency for certain stakeholders to maintain privilege

6. E.g., Elizabeth Baldwin, *Exploring How Institutional Arrangements Shape Stakeholder Influence on Policy Decisions: A Comparative Analysis in the Energy Sector*, 79 PUB. ADMIN. REV. 1, 1 (2018), https://www.researchgate.net/profile/Elizabeth-Baldwin-3/publication/325084346_Exploring_How_Institutional_Arrangements_Shape_Stakeholder_Influence_on_Policy_Decisions_A_Comparative_Analysis_in_the_Energy_Sector/links/5c950d2e92851cf0ae910314/Exploring-How-Institutional-Arrangements-Shape-Stakeholder-Influence-on-Policy-Decisions-A-Comparative-Analysis-in-the-Energy-Sector.pdf [hereinafter Baldwin]; see Stephanie Lenhart & Dalten Fox, *Participatory Democracy in Dynamic Contexts: A Review of Regional Transmission Organization Governance in the United States*, 83 ENERGY RSCH. & SOC. SCI. 1, 2 (2022), <https://www.sciencedirect.com/science/article/pii/S2214629621004369>.

7. Lenhart & Fox, *supra* note 6, at 1.

8. *Id.* at 2.

9. *Id.*; see also *Electric Power Markets*, FERC, <https://www.ferc.gov/electric-power-markets> (last visited Sept. 21, 2023).

within the stakeholder process. Institutional design can improve stakeholder engagement by addressing the rules for participation (“which stakeholders are allowed to participate and how they are selected”); the scoping rules (how final policy decisions are derived from prior, lower-level decisions); the information rules (“what information is available to” stakeholders and how stakeholders can contribute information); and voting aggregation rules (how stakeholder contributions are weighed and considered).¹⁰

We acknowledge that the sheer size of RTO governance processes prevents us from providing a comprehensive analysis of all available options for supporting effective participation by eNGOs. Scholarship shows that variations in design matter for addressing problems with governance and that effective stakeholder participation can “increase legitimacy, efficiency, effectiveness, and justice.”¹¹ RTO stakeholders recognize the importance of RTO governance on addressing consumer costs, consumer choice, environmental impacts, and innovation while simultaneously asserting that RTO governance processes lack open access, fairness, and transparency.¹² We interviewed multiple RTO stakeholders on the obstacles to effective participation and our research focuses on opportunities to reduce or remove those hurdles to increase participation opportunities and boost legitimacy in the stakeholder process.

II. SECTION II

A. *Recommendations for Overcoming Resource Burdens*

A consistent issue identified by our interviewees was the high cost of participating in RTO stakeholder governance processes. In 2007, Dworkin and Goldwasser wrote “the complicated, technical, and expensive structure of the stakeholder process results in serious challenges for public representation.”¹³ The resource burdens of effective participation have only grown in concert with the range and complexity of issues being addressed by RTOs. Effective participation requires participation at the early stages of proposal and issue development, subject-matter expertise, an understanding of RTO processes and organization, and a constant presence throughout the governance process. This type of participation requires financial and staffing resources that have not been consistently available to eNGOs. In this section, we discuss the problem and present a couple of potential models for resolving this hurdle.

10. Baldwin, *supra* note 6, at 3 (describing the extensive research into different aspects of institutional design and their impacts on the effectiveness of stakeholder engagement).

11. Lenhart & Fox, *supra* note 6, at 4 (citing recent research into the impact of stakeholder governance design on stakeholder participation opportunities and governance process outcomes).

12. Kate Konschnik, *RTOGov: Exploring Links Between Market Decision-Making Processes and Outcomes*, NICHOLAS INST. FOR ENV'T POL'Y SOL., DUKE UNIV. 2-3 (2019), https://nicholasinstitute.duke.edu/sites/default/files/publications/RTOGov_Exploring_Links_Final.pdf (discussing long list of stakeholder concerns including lack of access to key processes and low visibility into decision-making process, and suggestions for improving structure of RTO governance processes and how RTOs engage, listen to, and are directed by their stakeholders).

13. Dworkin & Goldwasser, *supra* note 4, at 583.

Our interviewees repeatedly mentioned how funding and staffing constraints limit participation and can prevent effective participation. Lack of full representation by interested parties limits input from these parties, depriving them of the opportunity to fully access information, process that information and advocate for their positions with other stakeholders, RTO Boards and ultimately FERC and the courts, ultimately skewing decision-making processes and biasing governance outcomes.¹⁴ The resource constraints on eNGOs and public interest groups are magnified by disparity in the level of resources available to other stakeholders. Utilities can employ attorneys and consultants to construct, present, and support their positions in regulatory proceedings with the assurance that those costs are recoverable from their ratepayers and customers. Similarly, large private generating companies have office buildings full of analysts, engineers and energy traders who can quickly analyze the impact of stakeholder proposals on the market and the grid. This is an advantage not available to eNGOs who must manage budget and staffing limitations when participating in stakeholder governance processes. Effective participation requires direct involvement and representation in the different levels of RTO stakeholder governance, as proposals are being developed and shaped and as they are being debated and adopted. Shrinking the resource advantage of utilities and other market participants would create a better balance between stakeholders.

1. Intervenor Compensation Programs

Targeted intervenor funding has been used to increase the participation of public interest groups in RTOs and state public utility commissions. Many RTOs provide financial and administrative support for state consumer advocates. At the state level, sixteen states have authorized the creation and operation of intervenor compensation programs in statute or administrative code with eight states actively operating compensation programs (California, Idaho, Michigan, Minnesota, Oregon, Wisconsin, Illinois, and Washington).¹⁵ In this article, we discuss two intervenor funding programs that were identified in our interviews, the Consumer Advocates of PJM States (CAPS) program and the California Public Utilities Commission's Intervenor Compensation Program (CPUC ICOMP).¹⁶ The programs share a similar focus on improving participation and representation from public interest groups, but there are differences in their approaches that could provide some guidelines for developing a public interest intervenor compensation program in an RTO.

14. FTI Consulting, Inc., *State Approaches to Intervenor Compensation*, NARUC 4 (2021), <https://pubs.naruc.org/pub/B0D6B1D8-1866-DAAC-99FB-0923FA35ED1E> (last visited Sept. 30, 2023) [hereinafter NARUC].

15. *Id.* at 5 (identifying 6 states with active programs as of 2021); Illinois and Washington commenced programs after 2021, see *Consumer Intervenor Compensation Fund*, ICC, <https://www.icc.illinois.gov/informal-processes/Consumer-Intervenor-Compensation->; see also *Participatory Funding*, WASH. UTIL. AND TRANSP. COMM'N, <https://www.utc.wa.gov/participatoryfunding> (program was implemented in 2023) (last visited Sept. 30, 2023).

16. *Consumer Advocates of the PJM States*, PJM, <http://pjm-advocates.org/home.html> (last visited on Sept. 30, 2023); *Intervenor Compensation Program*, CPUC, <https://www.cpuc.ca.gov/proceedings-and-rulemaking/intervenor-compensation> (last visited on July 5, 2021).

Instituting an intervenor compensation program can face pushback from market participants and incumbent stakeholders. In our interviews, we heard concerns from other market participants about the level of funding required, who would provide the funding, how to ensure that the supported participants would make a meaningful contribution to shaping governance outcomes, and whether parties would demonstrate actual financial need. Similarly, we heard concerns on how any support program should minimize administrative burdens while creating a stable and consistent source of funding. Both concerns can be managed through program design.

2. Structure of an Intervenor Compensation Program

Differences in the design and operation of state programs create a mosaic of potential design options that can be leveraged to address stakeholder concerns including program administrative and financial costs. The key design variables discussed in this article are when funding is available, eligibility screening, determination of financial hardship, cost containment practices, and program spending caps.

The first opportunity to share the design of a program starts with determining how and when participants will be compensated. States can opt for either a cost reimbursement program or a grant-based program. Cost reimbursement programs compensate intervenors at the conclusion of the proceeding while grant-based programs can provide funding in advance of participation in a proceeding.¹⁷ While advanced funding creates budget certainty, it is not the standard practice as most programs compensate participants at the conclusion of a proceeding. Eligibility determinations are the next opportunity to shape program design. Every state compensation program restricts participation in their programs through an eligibility determination. Specific parties may be restricted from even applying for a determination of eligibility. In most states, utilities in direct competition to the utility or utilities involved in a proceeding are prohibited from applying for compensation and in some states, municipalities and other government entities are barred from participation.¹⁸ Parties who are eligible may be subject to additional screening to determine whether they have or will make a significant, and unique, contribution to the proceedings and that their participation was necessary for a fair determination in the proceeding.¹⁹ Additionally, some states require a demonstration of financial hardship that would result from uncompensated participation.²⁰ The process for making eligibility determinations often includes deadlines for filing notices of intent to participate and to seek compensation and deadlines for the commission to issue its decision.²¹

Once a party is deemed eligible for compensation, the next issue can be establishing what costs are compensable. Often, limiting compensation to reasona-

17. NARUC, *supra* note 14, at 11.

18. *Id.* at 11-12.

19. *Id.* at 12.

20. *Id.*

21. NARUC, *supra* note 14, at 12.

ble costs is used to manage program expenditures. Some states establish prevailing market rates and limit cost reimbursements to those rates while other states leave the determination of what is a reasonable cost to the commission or an administrative law judge.²² Some states limit costs to rates paid by the commission for third-party services.²³ Clarity in compensable costs creates additional budget certainty for parties using third-party attorneys and expert witnesses. After a party has been deemed eligible and rates for compensation have been set, the final design option is in whether a state opts to cap individual compensation amounts in a proceeding or create annual budgets for their compensation programs.²⁴ Caps on available compensation can artificially reduce participation as complex proceedings may require the longer participation times and greater usage of third-party attorneys and expert witnesses.

Where states do not vary is with respect to the funding source for the state intervenor compensation program. Every state collects the program funds from jurisdictional utilities which then pass the costs onto their ratepayers. However, which utility pays to support participation in a specific proceeding can vary. Some states recoup the approved costs of intervenor participation from the utility or utilities participating in the proceeding. Other states recover the costs from a general assessment placed upon all jurisdictional utilities.²⁵ The final design decision is whether utilities can recover costs in the same proceeding in which they were incurred or in a future proceeding. In either situation, costs are categorized as operational costs passed through to ratepayers.

The following case studies demonstrate how an RTO might implement an intervenor support program and how program design is critical to supporting eNGO participation.

3. Consumer Advocates of PJM States

The CAPS is an example of how an intervenor support program could be funded through charges on existing RTO transactions. CAPS was started in 2013 to address the lack of direct representation of consumer interests in the PJM stakeholder process. The push for greater consumer advocate involvement in PJM stakeholder governance followed the formal formation of the organization. Early on, it was recognized that there were two points of engagement opportunities for consumer advocates: in PJM stakeholder governance processes or in litigation before FERC.²⁶ The initial funding for CAPS came from a FERC market manipulation settlement and as a condition of a merger agreement.²⁷ As the original pool of funds was dwindling, a consistent source of funding was needed to continue its

22. *Id.* at 13.

23. *Id.*

24. *Id.*

25. NARUC, *supra* note 14, at 13.

26. FTI Consulting, Inc., *Model Corporate Governance for Regional Transmission Organizations and Independent System Operators*, NAT'L ASSOC. STATE UTIL. CONSUMER ADVOC. 3 (Jan. 2009), <https://nasuca.org/wp-content/uploads/2009/01/Model-RTO-.pdf>.

27. *A Brief History and Overview of the Consumer Advocates of the PJM States*, CAPS 5 (March 17, 2019), https://0201.nccdn.net/1_2/000/000/09c/f55/CAPS-History-and-Overview-Report-v1-052919--002-.pdf [hereinafter CAPS].

operations. Individual state contributions were considered but deemed to be insufficiently reliable to create a stability for the organization.²⁸ In 2016, CAPS sought and “received stakeholder and PJM Board support for permanent funding” through the PJM tariff.²⁹ CAPS’ funding source was switched to a charge on each customer “using Network Integration and Point-to-Point Transmission Service under” the PJM Tariff.³⁰ CAPS submits a preliminary annual budget to the PJM finance committee and receives comments back from the finance committee before submitting its annual final budget to PJM which then includes the CAPS funding in its annual budget submission to FERC.³¹ CAPS program funding was \$450,000 in 2016 and has risen to \$500,000 in PJM’s 2021 FERC approved budget, before declining to \$400,000 for 2022.³² The funding model was based on the funding arrangement for the Organization of PJM States, Inc (OPSI).³³

CAPS’ eligibility requirements and restrictions on the usage of funds address some of the stakeholder concerns expressed in our interviews. CAPS membership is voluntary and open to all state-approved consumer advocate offices representing end use consumers within PJM’s territory.³⁴ CAPS funds can only be used to provide educational support, attend meetings, and provide stakeholder outreach and engagement.³⁵ For example, funds are used to provide CAPS members with internal written briefings prior to meetings of the PJM’s Members Committee and the Markets and Reliability Committee.³⁶ The briefings review each issue scheduled for voting and prepare members for the organization’s conference call to discuss voting strategies.³⁷ CAPS may not use its Tariff-derived funds to contest PJM’s filings at FERC,³⁸ but individual CAPS members are not prevented from making filings to FERC.³⁹

The CAPS program is an example of how RTO tariffs could be amended to create a stable source of funding to facilitate participation of public interest groups in RTO stakeholder governance processes. Limits on how the funds might be

28. *Id.*

29. *Id.* at 6.

30. *Schedule 9 – CAPS, CAPS Funding*, PJM OPEN ACCESS TRANSMISSION TARIFFS 1, <https://www.pjm.com/directory/etariff/MasterTariffs/23TariffSections/26422.pdf>.

31. *Id.*

32. *Id.*; *Approved 2021 Federal Energy Regulatory Commission (FERC) Rate, Consumer Advocates of PJM States (CAPS) Rate and Organization of PJM States (OPSI) Rate*, PJM 2, <https://www.pjm.com/-/media/committees-groups/committees/fc/postings/2021/2020-9-ferc-9-opsi-and-caps-rates.ashx> (last visited Sept. 30, 2023); *Approved 2022 Federal Energy Regulatory Commission (FERC) Rate, Consumer Advocates of PJM States (CAPS) Rate and Organization of PJM States (OPSI) Rate*, PJM 2, <https://techtstac1.pjm.com/-/media/committees-groups/committees/fc/postings/2022/2022-9-ferc-and-preliminary-9-opsi-and-caps-rates.ashx> (last visited Sept. 30, 2023).

33. CAPS, *supra* note 27, at 4.

34. *Consumer Advocates of PJM States, Inc. (CAPS)NSUMER ADVOCATES OF BYLAWS*, CAPS 1, (effective Mar. 20, 2018) https://0201.nccdn.net/4_2/000/000/01e/20c/approved.2018-03-20-CAPS-Bylaws-Revised.pdf.

35. *Id.*

36. CAPS, *supra* note 27, at 7.

37. *Id.*

38. *Id.*

39. *Id.* at 8.

used, such as a bar on using RTO tariff funds on FERC litigation, could alleviate concerns from the parties contributing to the fund. The constraints on which parties may use the funds does not align with the diversity of environmental NGOs that do or could participate in RTO stakeholder governance. However, the next case study presents options for addressing this concern.

4. CPUC Intervenor Compensation Program

CPUC's ICOMP is the most active intervenor compensation program in the country. In 2022, CPUC administrative law judges received 117 claims for compensation and issued 147 compensation decisions.⁴⁰ Commenters have heralded ICOMP as the gold standard in utility commission intervenor support programs because of the pool of funds available to intervenors, the range of compensable services, and how the program is administered.⁴¹ ICOMP has a lengthy history in California, starting as a Commission program in 1981 before being codified by the state legislature in 1985.⁴² The program was established to provide "compensation for reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs to public utility customers of participation or intervention in any proceeding of the commission."⁴³ The program is available to all formal proceedings of the commission involving electrical, gas, water, and telephone utilities.⁴⁴

ICOMP's purpose is to increase participation that enhances commission outcomes. ICOMP rules define who can participate in the program and set out guidelines to ensure that the funds are used to advance and improve commission decisions and orders. Funding eligibility is limited to customers. Under California public utility law, a "customer" is broadly defined to cover participants representing consumers, customers, or subscribers of electric, gas, telephone, telegraph, or water utility subject to commission jurisdiction, a representative authorized by a customer, and a representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers or small commercial customers.⁴⁵ Customers must pass two gatekeeping tests at the beginning and end of the proceedings to become eligible for compensation and to receive compensation. First, the customer must demonstrate significant financial hardship, which is defined as being unable to afford, without undue hardship, to pay the costs of effective participation or in the case of a group or

40. *California Public Utilities Commission 2022 Annual Report*, CPUC 22 (2022), <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/safety-and-enforcement-division/reports/annual-reports/2022-cpuc-annual-report.pdf>.

41. Tyson Slocum, *National Energy & Utility Affordability Coalition State Level Advocacy: Interaction with PUCS & Beyond*, PUB. CITIZEN (June 26, 2017), <https://www.citizen.org/wp-content/uploads/migration/tyson-slocum-presentation-intervenor-funding-neuac-annual-conference-2017.pdf>.

42. *Intervenor Compensation Program Guide*, CPUC 4 (Apr. 2011) <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/administrative-law-judge-division/documents/icomp-materials/updated-icomp-program-guide-april-2017.pdf> [hereinafter *ICOMP Guide*].

43. CAL. PUB. UTIL. CODE § 1801 (2023).

44. *Id.* § 1801.3(a) (2023).

45. *Id.* § 1802(b) (2023).

organization that the economic interests of individual members is small in comparison to the costs of effective participation in the process.⁴⁶ Second, customers must make a substantial contribution to the proceedings. A substantial contribution is deemed to be when a customer's presentation has substantially assisted the commission making its order or decision because the order or decision adopted in whole or in part one or more of the factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer.⁴⁷ Furthermore, there is a statutory requirement to administer the program in a manner that avoids unproductive or unnecessary participation that duplicates participation by other adequately represented interests or is not necessary to make a fair determination in the proceeding.⁴⁸ Determinations of significant financial hardship are made by administrative law judges and the commission issues a decision on the determination of significant contributions.⁴⁹ A finding of significant hardship can be made when the notice of intent is filed or when the claim is filed.⁵⁰ A finding of significant financial hardship creates a rebuttable presumption of significant financial hardship for commission proceedings initiated within one calendar year of the finding.⁵¹ The program has been most heavily used by parties advocating for consumer protections, but it also have supported organizations advancing environmental interests. As of July 5, 2023, pending customer requests for compensation include requests from Wild Tree Foundation, Sierra Club, Environmental Defense Fund, Green Power Alliance, Natural Resources Defense Council, and the California Environmental Justice Alliance.⁵²

The CPUC determines which utilities are responsible for compensation awards depending upon the nature of the proceedings. Single utility proceedings require that compensation awards are paid for by the utility in the proceeding.⁵³ When the proceeding applies to a utility category then the payment of the compensation award is shared between the jurisdictional utilities affected by the Commission's order.⁵⁴ The utility or utilities are permitted to recover the award paid as an expense in its rates and the amount of the award can be fully recovered within one year from the date of the award.⁵⁵

Reducing the administrative and financial burdens of participation in Commission proceedings is an intentional feature. Key program design elements include administrative support for participants, streamlined submission requirements, standardized submission forms, and a statutory deadline for processing compensation claims. The CPUC Public Advisor's Office provides procedural information to parties seeking to participate in CPUC proceedings and it offers

46. *Id.* § 1802(h) (2023).

47. CAL. PUB. UTIL. CODE § 1802(j) (2023).

48. *Id.* § 1801.3(f) (2023).

49. *Id.* § 1804(b)-(c) (2023).

50. *Id.* § 1804(a)(2)(B) (2023).

51. CAL. PUB. UTIL. CODE § 1804(b)(1).

52. California Public Utilities Commission, Intervenor Compensation Requests. July 5, 2023 (on file with author).

53. CAL. PUB. UTIL. CODE § 1807(a) (2023).

54. *Id.*

55. *Id.*

educational programs and services.⁵⁶ The CPUC publishes an *Intervenor Compensation Program Guide* that includes instructions on how to file a Notice of Intent to Participate and Requests for Intervenor Compensation as well as all the necessary forms to do so.⁵⁷ Customers have 30 days after the prehearing conference is scheduled to file and serve all parties to the proceeding with a notice of intent to claim compensation.⁵⁸ The notice of intent must include a statement on the nature and extent of the planned participation in the proceeding and an itemized estimate of the expected compensation request.⁵⁹ Hourly rates for each type of professional service are established and published by the Commission, so intervenors are able to more precisely develop their itemized estimates.⁶⁰ The Notice of Intent (NOI) and the Ruling of the NOI are combined into a single document to expedite the filing and the ALJ decision.⁶¹ Intervenor requests must be filed within 60 days of the Commission's final order or decision,⁶² and the Commission has a 75-day deadline for reviewing intervenor compensation requests and is responsible for paying interest when requests are not processed within the allotted time.⁶³

5. Summary

Alleviating resource burdens is the first step towards increasing the diversity of opinions and strengthening the outcomes of governance processes. Combining consistent, stable funding to support public interest group participation with manageable procedural requirements is a pathway to strengthening participation in stakeholder governance processes. Existing intervenor compensation programs like CAPs and ICOMP can serve as models for building up and out RTO support programs. Unless we take action to level the playing field, it is clear that eNGOs will be at a distinct disadvantage in the stakeholder process and ongoing decisions will not fully reflect the important input of this critical stakeholder interest.

B. Recommendations for Expanding Board Functional Diversity

Interviewees repeatedly stressed the missed opportunities of RTO boards to lead on key issues in the energy transition. Boards can serve as a lodestar for staff and stakeholders by establishing a long-term vision for the RTO. Interviewees commented on the tendency of boards to focus on short-term issues and to neglect responsibilities such as mission setting for the organization. Interviewees also mentioned that some boards were reluctant to deviate from the agenda and issues presented from incumbent stakeholders. Board composition was cited as a limitation on the ability and willingness of boards to tackle complex issues.

56. *Public Advisor's Office*, CPUC, <https://www.cpuc.ca.gov/about-cpuc/divisions/news-and-public-information-office/public-advisors-office> (last visited Sept. 22, 2023); *see also* CAL. PUB. UTIL. CODE § 321 (statute mandating duties of the Public Advisor's Office).

57. *ICOMP Guide*, *supra* note 42, at 2.

58. CAL. PUB. UTIL. CODE § 1804(a) (2023).

59. *Id.* § 1804(a)(2)(A)(I-ii).

60. *ICOMP Guide*, *supra* note 42, at 6, 12.

61. *Id.* at 5.

62. CAL. PUB. UTIL. CODE § 1804(e) (2023).

63. *Id.* § 1804(e).

Direct access to the board is an important element of facilitating effective participation. The value of direct access is elevated when there is a strong stakeholder-board relationship. That relationship is affected by the composition of the board. Providing parties with the opportunity to speak directly to the board is critical, but the history, experience, and interests represented by the members of the board is equally important. The experiences represented on the board must match the goals and purposes of the organization. In this section, we examine the potential of Federal Energy Regulatory Commission (FERC) to act based on its history and the options for RTOs to lead, but first we start with the importance of functional diversity and two options for increasing the function diversity of RTO boards.

1. Importance of Board Functional Diversity

Board diversity, and specifically functional diversity, can improve board performance and decision-making. Functional diversity refers to the backgrounds of the different board members and the differences in experience, knowledge, and skills that they bring to the organization.⁶⁴ A diverse group of directors has a wider range of outlooks, opinions, knowledge, and skills that can facilitate decision making and problem solving.⁶⁵ A study of corporate board members on the Financial Times Stock Exchange concluded that the “[f]unctional experience of roles performed and the industry in which board members are engaged professionally influence board members’ perspectives, actions, ability to contribute in boards, and as a result, board effectiveness.”⁶⁶ Other research into governing boards composed of decision makers with diverse functional backgrounds can have shared goals, but different worldviews push board members to acknowledge and reconcile dissimilar assumptions underlying issues.⁶⁷ The action of doing so can improve consensus making and decision outcomes.

Improving functional diversity of RTO boards would address a couple of issues identified by interviewees. Multiple interviewees noted the tendency of boards to avoid complex problems and to favor shorter term solutions. Functional diversity provides the board with an enhanced skill set and deeper intellectual capital. Boards composed of individuals with similar backgrounds are at a higher risk of developing groupthink. Groupthink is where members of a group strive towards unanimity and solidarity which can override the motivation to fully assess alternative options.⁶⁸ Research has shown that boards with varied professional experiences translates into diverse thinking styles which boosts the intellectual capital of

64. Rita Goyal et al., *Improving Corporate Governance with Functional Diversity on FTSE 350 Boards: Directors’ Perspective*, 3(2) J. CAP. MKT. STUD 113, 115, 117-18 (2019) [hereinafter Goyal et al.].

65. David Rock & Heidi Grant, *Why Diverse Teams Are Smarter*, HARV. BUS. REV. (Nov. 4, 2016), <https://hbr.org/2016/11/why-diverse-teams-are-smarter>; Lu Hong & Scott E. Page, *Groups of diverse problem solvers can outperform groups of high-ability problem solvers*, 101(46) PROC. NAT’L ACAD. SCI. U.S. 16385, 16389 (Nov. 16, 2004), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC528939/> [hereinafter Hong & Page].

66. Goyal et al., *supra* note 64, at 122.

67. Susan Mohammed & Erika Ringseis, *Cognitive Diversity and Consensus in Group Decision Making: The Role of Inputs, Processes, and Outcomes*, 85.2 ORG. BEHAV. & HUM. DECISION PROCESSES 310, 311 (2001).

68. *Only Skin Deep? Re-examining the Business Case for Diversity*, DELOITTE 13 (Sept. 2013) https://www.ced.org/pdf/Deloitte_-_Only_Skin_Deep.pdf.

the board and improves its problem-analysis and solving ability. Boards' members with differing backgrounds have different perspectives can change how information is digested, processed, and discussed which can lead to greater role-effectiveness.⁶⁹ Boards composed of members with similar functional backgrounds can create an environment where a common perspective leads to similar solutions to problems.⁷⁰ Furthermore, research indicates that there is a performance benefit in recruiting a functional diverse group of individuals over a group of the best performing individuals.⁷¹ As the complexity of the issues facing RTOs increases, so must the board's ability to adopt different viewpoints and perspectives on how to address problems.

Interviewees also commented that boards should better reflect the composition of the stakeholders. The public interest purposes of the board can be more effectively accomplished if the board is able to connect with different stakeholders, especially those who are not market participants. Functional diversity can boost board effectiveness by adding to the range of professional networks represented on the board. Board members are often recruited for their networks and not just for their competencies.⁷² Recruiting board members for their relational capital and for their intellectual capital improves the ability of the board to access external resources and to communicate with all potential stakeholders.⁷³ A board with more connections to the different stakeholders is better positioned to listen and respond to the different concerns and opinions of stakeholder groups. eNGOs may only have limited opportunities to speak to and meet with the board.⁷⁴ This increases the importance of having board members with varied professional networks who can import different viewpoints into every board meeting.

Board independence can be improved with greater functional diversity. Functional diversity can help RTOs overcome any potential principal-agent issues. A principal-agent problem can develop when the interests of the agent do not align with the interests of the principal.⁷⁵ James et al. identified that the presence of a principal-agent problem in RTOs could limit the ability of RTOs to adopt market rules that enhance efficiency.⁷⁶ In that report, interviewees expressed concern about how the misalignment of objectives between RTO staff and RTO boards could lead to RTO staff advancing positions that did not serve the public interest purposes which guide the board's decision-making.⁷⁷

Functional diversity can address some of the root causes of the principal-agent problem by giving the board a more complete set of tools. A potential source

69. Goyal et al., *supra* note 64, at 123.

70. *Id.* at 124.

71. Hong & Page, *supra* note 65, at 5.

72. Goyal et al., *supra* note 64, at 124.

73. *Id.*

74. For example, PJM's Public Interest Environmental Organization User Group has one 3-hour meeting per year with the board. See *PJM Public Interest Environmental Organization Users Group Charter*, PJM 5 (Jan. 5, 2021), <https://www.pjm.com/-/media/committees-groups/user-groups/pieoug/postings/pieoug-charter.ashx>.

75. Kathleen M. Eisenhardt, *On Agency Theory: An Assessment and Review*, 14(1) THE ACAD. MGMT. AND REV. 57, 58 (Jan. 1989).

76. James et al., *supra* note 4, at 17.

77. *Id.*

of the principal-agent problem is the information asymmetry derived from the accumulation of institutional capacity within the staff who have significantly longer tenure with the RTO than board members who may only serve for a limited period.⁷⁸ While it is unlikely that the information asymmetry can be eliminated, what can be done is to create the conditions and capacity within the board to question the assumptions of RTO staff on different matters. Functional diversity boosts the intellectual capacity of the board by adding different thinking styles and perspectives which can break up the tendency for groupthink and create an environment where boards are less likely to assume the positions promoted by staff and stakeholders without sufficient scrutiny.⁷⁹

2. Role of FERC

FERC has addressed board governance and responsiveness in the past and could do so again. In October 2008, FERC issued Order 719, Wholesale Competition in Regions with Organized Electric Markets,⁸⁰ to improve the operation of organized wholesale electric markets in the areas of demand response and market pricing during periods of operating reserve shortage, long-term power contracting, market-monitoring policies, and the responsiveness of RTOs and ISOs to their customers and other stakeholders.⁸¹ Order 719 was an acknowledgement of the lack of specificity provided in Orders 888 and 2000 on RTO board governance requirements and the need to provide additional direction on facilitating stakeholder input.⁸² In Order 719, FERC acknowledged that Orders 888 and 2000 did not mandate specific board governance requirements out of a concern that any such mandates would be counterproductive during the early state of RTO formation and that it would allow governance structures to be developed that reflected regional needs.⁸³ When FERC revisited board governance, it required RTOs and ISOs to establish, or demonstrate that they had, a means for customers and other stakeholders to have a form of direct access to the board with the purpose of increasing the board's responsiveness to those entities. FERC defined responsiveness as the board's willingness "to directly receive concerns and recommendations from customers and other stakeholders, and to fully consider and take action in response to the issues that are raised."⁸⁴ While RTOs can act on their own initiative to reform how boards are selected and to integrate more diverse representation onto their boards, only FERC can establish uniform guidance for all markets.

Since FERC issued Order 719, the complexity of issues before RTOs has only grown. RTOs are tackling generation, transmission, and distribution system technology changes, ever shifting federal and state energy law and policy, and the entry and exit of market participants. Grappling with these issues requires hearing

78. *Id.* at 17.

79. Goyal et al., *supra* note 64, at 124.

80. Order No. 719, *Wholesale Competition in Regions with Organized Electric Markets*, 125 FERC ¶ 61,071 (2008).

81. *Id.* at P 1.

82. *Id.* at P 248.

83. *Id.* at PP 248-49.

84. Order No. 719, *supra* note 80, at P 247.

from a diversity of interests and accommodating a multiplicity of viewpoints. To do so effectively requires gathering input from all interested parties, but it also requires a board with sufficient diversity to represent or balance a diversity of interests. While Order 719 focused on providing greater responsiveness to customer and stakeholder concerns, FERC opted to forego a one-size-fits-all approach to accommodate the varying structure and needs of each regional entity.⁸⁵ Order 719 did not offer direction on how boards should be constructed to maximize a diversity of viewpoints, experience, and expertise.⁸⁶ While FERC is unlikely to provide specific directions on what perspectives and characteristics should be found on a board, it could offer guidance on the nomination and selection of potential candidates to the board to maximize functional diversity.

3. Improving Functional Diversity

Our research identified two potential opportunities for RTOs to improve the functional diversity of their board. The first is to ensure that there are director positions reserved for specific stakeholder groups. The second is to expand who can nominate and vote on candidates to the board of directors.

C. RTO Board Structures and Board Member Selection Processes

The diversity in the composition of RTO boards and in the process for selecting directors creates an opportunity for comparison and identification of best practices in curating functional diversity. This section compares board composition requirements, and director nomination and selection procedures in California Independent System Operator (CAISO), Independent Operator System New England (ISO-NE), and Electric Reliability Company of Texas (ERCOT). It also examines board composition requirements for Vermont's transmission company and the California Energy Commission as potential alternatives to existing RTO practices. The section concludes with analysis of how the Western Energy Imbalance Market and Western Power Pool ensure that public interest groups have input into the nomination and selection process.

As is evidenced by the variation in processes, board diversity is greatly influenced by who nominates board members and the rules governing the composition of the board. The degree of political control of board composition and selection processes varies considerably. Some organizations engage with stakeholders to select nominating committees and board members while other organizations are subject to greater top-down control. Some organizations seek specific types of expertise while other organizations seek representation from specific sectors or with specific backgrounds.

1. CAISO

CAISO lists desirable types of expertise for its board members and includes public interest groups in the nominating process. In CAISO, members of the Board of Governors are appointed by the Governor and confirmed by the State

85. *Id.* at P 250.

86. *Id.* at PP 250-51.

Senate. That is the final step of a process that facilitates and receives input from public interest groups. The process starts with the Board Nominee Review Committee reviewing a list of potential Board candidates that was prepared by a search firm.⁸⁷ The search firm is tasked with seeking out candidates that meet specific qualifications such as electric industry expertise, markets expertise, general corporate/legal/financial expertise, and public interest expertise.⁸⁸ Additional guidance is given to the search firm by listing the types of backgrounds that may meet the public interest expertise requirement.⁸⁹ The search firm is also required to seek candidates that balance the existing expertise contained on the Board.⁹⁰ The list of candidates is then presented to the Nominee Review Committee who will review and rate the list of candidates and provide their ratings to the Governor. The structure of the Nominee Review Committee is established in CAISO policy with six different sectors being represented, including public interest groups (e.g., consumer advocates, environmental groups, and citizen participation groups) which are actively involved in the ISO balancing authority area.⁹¹ Each sector identifies a sector lead and five other individuals to serve on the Committee.⁹²

2. ISO-NE

ISO-NE suggests that Board members have specific expertise and experiences, but it does not establish requirements for board diversity. Under ISO-NE's Participant Agreement, the ten-person board "shall possess a cross-section of skills and experience" and an illustrative list is given which includes experience in public policy, renewable energy, and environmental affairs.⁹³ However, there is no requirement to recruit directors with a specific set of skills or experience other than requiring that at least three directors have prior relevant experience in the electric industry.⁹⁴ When it comes time to replace a board member, a nominating committee is formed which includes up to seven members of the ISO Board, up to six members of the New England Power Pool (NEPOOL) Participants, and one representative of the New England Conference of Public Utility Commissioners.⁹⁵ The Nominating Committee develops a slate of candidates for election as voting directors and presents the slate to the Participants Committee for a vote.⁹⁶ The

87. *Board Selection Policy Version # 5.1*, CAISO § 4.2 (Aug. 17, 2022), <http://www.aiso.com/Documents/Board-Selection-Policy.pdf> [hereinafter CAISO].

88. *Id.* § 4.1.

89. *Id.*

90. CAISO, *supra* note 87, § 4.1.

91. *Id.* at § 4.2.

92. *Id.*

93. *Participants Agreement among ISO New England Inc. as the Regional Transmission Organization for New England and the New England Power Pool and the entities that are from time to time parties hereto constituting the Individual Participants*, ISO-NE § 9.2.2 (Jan. 2011), https://www.iso-ne.com/static-assets/documents/2015/10/parts_agree.pdf [hereinafter *ISO-NE Participants Agreement*].

94. *Id.*

95. *Id.* § 13.1.2.

96. *Id.* § 13.1.5.

slate must win at least 70% of the aggregate Sector Voting Shares to receive the endorsement of the Participants Committee.⁹⁷

3. ERCOT

In ERCOT, the composition of the Board of Directors has less flexibility and no specific positions for public interest groups. ERCOT's Board composition requirements and director selection process were amended following the grid failures incurred during Winter Storm Uri.⁹⁸ ERCOT's board still consists of eleven members, but instead of the stakeholders selecting the different members, the directors are now appointed to the Board by the State of Texas' ERCOT Board Selection Committee.⁹⁹ The Board Selection Committee consists of three members, with the Governor, Lieutenant Governor, and Speaker each holding the power to appoint one member.¹⁰⁰ The composition of the board has also changed. Prior to the 2021 amendments, specific seats board were reserved for the different market participant segments with three seats designated for unaffiliated members.¹⁰¹ Seats were reserved for independent generators, investor-owned utilities, power marketers, retail electric providers, municipal owned utilities, electric cooperatives, industrial consumer interests, large commercial interests, and five members unaffiliated with any market segment and selected by the other members of the governing body generators.¹⁰² The unaffiliated members were given three-year terms on the Board while the segment-specific representatives received one-year terms.¹⁰³ Public interest groups were only eligible for an unaffiliated seat and had to be selected by the other members of the governing body. After the amendments, the reserved seat format was replaced by a requirement to select eight members with executive-level experience in any of the following professions: finance, business, engineering, trading, risk management, law, or electric market design.¹⁰⁴ Each member of the Selection Committee and the Governing Body must be a resident of the State of Texas.¹⁰⁵ To maintain its certification as an independent organization, the Governing Body is not permitted to contain more than two members who are employed by an institution of higher education.¹⁰⁶

4. Vermont Electric Power Company

Other energy system governance boards do reserve seats for representatives of public interest groups. The Vermont Electric Power Company (VELCO),

97. *ISO-NE Participants Agreement*, *supra* note 93, § 13.2.1.

98. Spencer Grubbs, *A Review of the Texas Economy, Winter Storm Uri 2021 – The 87th Legislature Takes on Electricity Reform*, COMPTROLLER. TEX. GOV. 2-3 (Oct. 2021), <https://comptroller.texas.gov/economy/fiscal-notes/2021/oct/winter-storm-reform.php>.

99. *Board of Directors*, ERCOT, <https://www.ercot.com/about/governance/directors> (last visited Sept. 23, 2023) [hereinafter *Board of Directors*].

100. TEX. UTIL. CODE ANN. §39.1513(a) (West 2021).

101. *Board of Directors*, *supra* note 99.

102. S.B. 2, 87th Legis., Reg. Sess. (Tex. 2021).

103. *Id.*

104. TEX. UTIL. CODE ANN. §39.151(g-1) (2021).

105. *Id.* §39.1513(b).

106. *Id.* §39.151(g-4).

which oversees the bulk transmission system in Vermont, has a thirteen-person board on which three seats are appointed by the Vermont Low Income Trust for Electricity (VLITE).¹⁰⁷ VLITE is a non-profit, public benefit corporation created as part of a merger approval between Vermont's two largest investor-owned utilities in 2012.¹⁰⁸ As part of the agreement, VLITE received an ownership interest in VELCO that provides significant dividend income that is used to fund projects and initiatives in Vermont.¹⁰⁹

5. California Energy Commission

California Energy Commission commissioners are appointed in the same fashion as the CAISO Board of Governors, the Governor of California appoints, with Senate confirmation, each of the five commissioners. However, unlike CAISO, the commissioners must come from and represent specific areas of expertise: law, environment, economics, science/engineering, and the public at large.¹¹⁰

D. Building Functional Diversity into Board Selection Processes

Changing the composition and thus the representativeness of a board often starts with how the board members are selected. The process for nominating and presenting potential candidates for membership on governing boards is a critical opportunity for addressing functional diversity. The following examples from the Western Energy Imbalance Market and the Western Power Pool highlight the process can be designed to give greater representation and voice to public interest groups.

1. Western Energy Imbalance Market

The Western Energy Imbalance Market (WEIM) is an example of how RTO governance can incorporate public interest organizations into the processes for identifying and nominating individuals to join the board of directors. The Western Energy Imbalance Market was the first real-time energy market in the western United States; established in 2014 by the CAISO, WEIM connects balancing authorities in ten states and two countries and provides region-wide grid reliability services.¹¹¹ In 2015, the California ISO adopted the Charter for Energy Imbalance Market Governance, which established the five-member EIM Governing Body, its responsibilities, mission, and procedures.¹¹² The Charter states that Members of the EIM Governing Body are to be selected in accordance with “the Selection Policy for the EIM Governing Body.”¹¹³

107. *Board of Directors*, VELCO (2023), <https://www.velco.com/about/leadership/board>.

108. *The History of VLITE*, VLITE (2023), <https://vlite.org/the-history-of-vlite/>.

109. *Id.*

110. *Commissioners*, CAL. ENERGY COMM’R, <https://www.energy.ca.gov/about/commissioners> (last visited on Sept. 20, 2023).

111. *About*, W. ENERGY IMBALANCE MKT (2023), <https://www.westerneim.com/Pages/About/default.aspx> (last visited Sept. 25, 2023).

112. *Charter for Energy Imbalance Market Governance*, CAISO (Sept. 23, 2021), <https://www.westerneim.com/Documents/CharterforEnergyImbalanceMarketGovernance.pdf> [hereinafter *CAISO Charter*].

113. *Id.*

The Selection Policy ensures that the voices and votes of public interest groups will shape the composition of the EIM Governing Body. The Selection Policy requires that the Members of the Governing Body are selected by a Nominating Committee and that the Nominating Committee contains representatives of specific stakeholder group.¹¹⁴ The Nominating Committee is comprised of eight members, each representing a specific sector or group: “Participating Transmission Owners, Publicly Owned Utilities; Suppliers and Marketers of Generation and Energy Service Providers; the Body of State Regulators” (a body comprised of one representative from a state public utility commission with a regulated utility that is participating in the EIM); and Public Interest Groups and Consumer Advocates.¹¹⁵ The Public Interest Groups and Consumer Advocates sector includes “all public interest or consumer advocate groups that are actively involved in energy issues within the balancing authority area of the ISO or an EIM Entity,”¹¹⁶ a definition which restricts the potential participants to the EIM’s geographic area. Members of each sector are authorized to develop their own procedures for selecting their representative and the terms of service.¹¹⁷ Operating on consensus, Committee members with voting privileges - the members drawn from the EIM Governing Body and ISO’s Board of Governor do not have voting privileges - present a slate of candidates to the Governing Body for final approval.¹¹⁸ The decision on the slate of candidates is by consensus, thus ensuring that each sector has an equal voice in the decision-making process.

The candidate selection process can be tailored to build diversity on the board. The Selection Policy lists the professional and personal qualifications that candidates should have. Governing Body members should have broad expertise in the following areas: the electric industry at an executive level; markets; and general corporate/legal/financial.¹¹⁹ Potential candidates are expected to have demonstrated excellence in their areas of expertise and should optimally reflect a diverse background and hold a diversity of viewpoints.¹²⁰ The executive search firm that will identify and vet candidates for the Nominating Committee is specifically instructed to consider candidates “with senior executive experience . . . provided that they otherwise have the relevant background.”¹²¹ The Nominating Committee can also provide further instruction to the search firm on the specific qualifications and characteristics it would like used to identify potential candidates.¹²² This ability, while optional, allows for the Nominating Committee to expand upon both the range of experiences and expertise, and upon the personal characteristics of potential candidates. If the directions on which attributes the

114. *Selection Policy for the EIM Governing Body, Version # 1.2*, CAISO 2 (July 15, 2021), https://www.westerneim.com/Documents/SelectionPolicy_EIMGoverningBody.pdf [hereinafter *CAISO Selection Policy*].

115. *Id.* at 2-3.

116. *Id.* at 3.

117. *Id.* at 4.

118. *CAISO Selection Policy*, *supra* note 114, at 8.

119. *Id.* at 6-7.

120. *Id.* at 7.

121. *Id.*

122. *CAISO Selection Policy*, *supra* note 114, at 5.

search firm should target come from the Nominating Committee, it makes sense that a Nominating Committee with greater functional diversity is more likely to propose characteristics that will improve the functional diversity of the Governing Body.

This process allows for the Nominating Committee to enhance the desired experience and expertise of potential board members. For example, in a March 2022 posting seeking candidates for a Governing Body member, the listing contained additional types of potential backgrounds including expertise in electric transmission systems operations and federal or state regulatory or policy.¹²³ The posting also details the types of personal characteristics that candidates should possess including the ability to view situations from different perspectives, forward thinking, broad perspectives, and intellectual inquisitiveness.¹²⁴ Characteristics that when paired with the requisite expertise will enhance the functional diversity of the Governing Body.

2. Western Power Pool – Western Resource Adequacy Program

The Western Power Pool's (WPP) efforts to develop a governance structure for the Western Resource Adequacy Program (WRAP) provide additional support for how the Western EIM has carved out dedicated positions for public interest organizations. WRAP is an effort to develop a governance structure for a regional energy market in the West. The WPP's tariff, including proposed governance structure, was filed in August 2022 with FERC and approved in February 2023.¹²⁵ The WPP explained that after the tariff is approved, "it will amend its bylaws to specify" the nomination process for members of the Board.¹²⁶ On May 26, 2023, WPP issued proposed bylaws which included the structure and function of the Nominating Committee.¹²⁷

The process for identifying and selecting candidates for the board is very similar to the nominating committee structure developed by the Western EIM with only a slight modification. However, there are a couple of key differences including one that ensures the public interest organizations will have direct input into the nomination process. As in the EIM, there are specific slots on the nominating committee reserved to different sectors. In the EIM, there were eight positions on the nominating committee and one position was allocated to Public Interest Groups and Consumer Advocates. In WRAP's proposed bylaws, the nominating committee size is expanded to have fourteen individuals representing twelve different sectors.¹²⁸ Instead of sharing a committee slot, public interest organizations

123. W. Energy Imbalance Mkt., *Confidential Position Specification: Independent Non-Executive Governing Body Member (WEIM)*, CAISO 5-6 (Mar. 2023), <https://www.westerneim.com/Documents/WesternEIMGoverningBody-PositionSpecification.pdf>.

124. *Id.* at 6-7.

125. *Northwest Power Pool*, 182 FERC ¶ 61,063 at P 1 (2023); letter from Wright & Talisman to Hon. Kimberly D. Bose, *Northwest Power Pool d/b/a Western Power Pool Docket No. ER22--000, Submission of Tariff to Establish Western Resource Adequacy Program*, 48 (Aug. 31, 2022) [hereinafter Wright & Talisman].

126. 182 FERC ¶ 61,063 at P 32; Wright & Talisman, *supra* note 125.

127. *Bylaws of Northwest Power Pool (dba Western Power Pool)*, WPP § 4.12 (Draft May 26, 2023, 3:39 PM) [hereinafter WPP].

128. *Id.*

receive one position on the nominating committee and there is a position reserved for a retail advocacy group representative and a position reserved for an industrial customer advocacy group representative.¹²⁹ The Nominating Committee is expected to adhere to specific guidelines in its selection process that are designed to increase the diversity of the members of Board. Selections are expected to ensure that there is not a predominance of Directors who specialize in one subject area.¹³⁰ The Board, in conjunction with the Nominating Committee, has the authority to “establish written policies that include additional criteria for” desired “qualifications of directors and on the composition of the board.”¹³¹

3. Summary

Our review of different board nomination and selection processes show that there are simple steps that can be taken to formalize the participation of public interest organizations. Board diversity is a function of the process for selecting boards and selecting who nominates boards. The authorities given to RTO boards is considerable and the challenges that boards must deal with are growing. Numerous studies and peer-review papers demonstrate that a more diverse board is better able to grapple with complex issues because it has a greater range of perspectives, experiences, and expertise to draw upon. Allocating slots in the nominating and selection committees for public interest organizations ensures that a vital stakeholder perspective is included in the process of how board members are chosen.

E. Recommendations for Improving Transparency

At the core of effective participation in RTO governance is access to information and access to decision-making processes and decision-makers. In this section, we discuss how RTO governance processes can and do differentiate between who gets access to information and who gets access to key processes, and how that creates barriers to participation. Our interviewees repeatedly told us how difficult it is to be an informed participant in RTO governance if one does not have access to key information and key processes. Our interviewees also highlighted how the administration of RTO governance processes impairs their ability to effectively participate. Administrative barriers vary by region, but many issues were repeated by interviewees working in different RTOS. Some of the administrative barriers identified include being excluded from certain meetings, not having access to key planning materials, the lack of meeting transcripts and recordings, the absence of any obligation to respond to all comments received on a proposal, the challenge of identifying who voted for or against a proposal, and the lack of explanation to support RTO decisions and votes.

1. The Importance of Transparency for Stakeholders

The discussion of transparency in RTO governance processes must start with the requirement to be transparent. Multiple interviewees presented the position

129. *Id.* § 4.12(g).

130. *Id.* § 4.12.

131. WPP, *supra* note 127, § 4.2.

that RTOs perform a public function in the public interest. Because of this, they argue that RTOs should be subject to the same rules as other public organizations, like FERC. FERC decisions are subject to judicial review and thus its order make findings of fact as it must build a record that can withstand a court challenge.¹³² For an RTO, that means having a standard of more fully justifying decisions whether it be through compliance with the Administrative Procedures Act (APA), or adoption of similar rules, on providing reasons for decisions that are based on supportable evidence/balance of evidence, providing access to the information used to make decisions, and providing access to the methodologies and the results of analyses. The requirement for transparency in public organizations does not fully or easily transfer to RTO governance because of the organizational structure of RTOs. As numerous commenters have stated, RTOs are quasi-governmental organizations or more specifically, quasi non-governmental organizations¹³³ in which a private organization is assigned attributes normally associated with the government sector.¹³⁴ An RTO is neither a governmental agency nor is it a wholly private entity. It acts similar to a utility when operating the transmission grid, which could be a private entity, and more like a regulator when administering markets and planning processes, similar to a government agency.¹³⁵

RTO governance is structured to create accountability to stakeholders. RTOs are not accountable to the public and there is limited accountability to state governments, which differs between multi-state and single state RTOs. RTOs are not self-regulating industries operating without government oversight.¹³⁶ RTOs are accountable to FERC, but FERC is limited in its ability to dictate RTOs board compositions and to influence RTO filings.¹³⁷ It is the stakeholders and RTO staff who shape and guide the development of rules and who participate in and direct planning processes. If RTOs are to be accountable to their stakeholders, then transparency for all stakeholders is critical. Inconsistent access to information and processes for different stakeholder groups can translate into inconsistencies in the ability to effectively participate. Furthermore, inconsistent or unequal access to information and processes can exacerbate existing resource burdens that already constrain participation from eNGOs and other public interest groups.

132. Review of Orders, 16 U.S.C. § 8251(b) (2005).

133. Dworkin & Goldwasser, *supra* note 4, at 555-56; Simeone, *supra* note 4, at 2, 22; Travis Kavulla, *R Street Policy Study No. 180, Problems in Electricity Market Governance: An Assessment*, R STREET 5 (Aug. 2019), <https://www.rstreet.org/wp-content/uploads/2019/08/FINAL-RSTREET180.pdf>.

134. Kevin R. Kosar, *The Quasi-Government: Hybrid Organizations with Both Government and Private Sector Legal Characteristics*, CONG. RSCH. SERV. 2 (June 22, 2011), <https://sgp.fas.org/crs/misc/RL30533.pdf> (discussing the differences between quasi-governmental organizations and quasi non-governmental organizations and provides an extensive list of resources on the topic in comparative international literature).

135. Simeone, *supra* note 4, at 22.

136. Dworkin & Goldwasser, *supra* note 4, at 578-79.

137. *NRG Power Mktg., LLC v. FERC*, No. 15-1452, slip op. at 3 (D.C. Cir. 2017) (holding that FERC's ability to make modifications to Section 205 proposals is limited); *California Indep. Sys. Operator Corp. Petitioner v. FERC*, No. 02-1287, slip op. at 2, 6 (D.C. Cir. 2004) (holding that FERC has no authority to replace the selection method or membership of the governing board of an ISO or RTO); *Atlantic City Elec. Co. v. FERC*, No. 97-1097, slip op. at 4, 6 (D.C. Cir. 2002) (holding that FERC lacked the authority to require approval of transmission owner withdrawal from an ISO).

2. Transparency in How to Participate

Transparency is a necessary element in facilitating participation where it matters. Multiple interviewees told us that the most important place to participate in RTO stakeholder governance was where issues were being discussed and proposals were being developed. Waiting to participate until the voting stage, was a strategy guaranteed to limit impact and the ability to influence outcomes.

Transparency in RTO stakeholder governance should start with transparency in the actual process of participating in stakeholder governance. Numerous interviewees commented on the complicated and complex nature of stakeholder governance processes and how it could be difficult to navigate complicated system of RTO committees and understanding how a proposal moves from discussion to vote. This complexity is magnified when attempting to work between different RTOs as each RTO has its own unique governance structure which requires participants with interests in issues in multiple RTOs to learn the nuances of each organization. A couple of examples highlight the complexity and uniqueness of RTO governance structures. SPP's Organizational Chart contains thirty-one committees, working groups, user forums, and advisory groups with additional task forces and subgroups.¹³⁸ PJM has sixteen committees, one user group, five forums, sixteen subcommittees, and nine task forces.¹³⁹ Conversely, CAISO has no stakeholder committee structure and proposals are developed through issue papers and working groups.¹⁴⁰

The impacts of lack of transparency are not equally distributed. Lack of transparency into the basic governance processes can create a barrier that excludes new entrants and can be particularly problematic for environmental justice groups seeking to participate for the first time.¹⁴¹ A simple way to reduce this burden is to publish and regularly update a stakeholder governance guide that explains an RTO's committee structure and governance processes. MISO and PJM have such

138. *Group Organizational Chart*, SPP, https://www.spp.org/documents/23115/spp_group_org_chart.pdf (last updated Aug. 25, 2023); *Stakeholder Groups*, SPP, <https://www.spp.org/stakeholder-groups/> (last visited Oct. 16, 2023).

139. *Committees*, PJM 1, <https://www.pjm.com/committees-and-groups/committees> (last visited Oct. 16, 2023).

140. *Policy Initiatives*, CAISO 1, <https://stakeholdercenter.caiso.com/StakeholderInitiatives> (last visited Sept. 20, 2023).

141. FERC has not issued any orders imposing similar requirements on RTOs. The environmental and public health impacts of energy generation disproportionately burden low-income and minority communities. With RTO management of dispatch procedures and control of market rules, they have considerable influence over which facilities operate and which communities are affected. Focus on competition and efficiency has often excluded consideration of environmental justice. See *FERC Chairman Acts to Ensure Prominent FERC Role for Environmental Justice*, FERC (Feb. 11, 2021), <https://www.ferc.gov/news-events/news/ferc-chairman-acts-ensure-prominent-ferc-role-environmental-justice> identifying need for action of environmental justice; *Glick Names Montana Cole to Top Environmental Justice Post at FERC*, FERC (May 20, 2021), <https://www.ferc.gov/news-events/news/glick-names-montina-cole-top-environmental-justice-post-ferc> (filling position of Senior Counsel for Environmental Justice and Equity); Notice, *Roundtable on Environmental Justice in Infrastructure Permitting; Second Supplemental Notice of Roundtable*, 88 Fed. Reg. 16618 (Mar. 20, 2023) (announcing Commissioner-led roundtable to discuss environmental justice and equity in FERC-jurisdictional infrastructure permitting processes); see James Moeller, *Public Utilities and Environmental Justice: Electric Restructuring and Deregulation and Low-Income Communities*, 21 U. D.C. L. REV. 1, 15 (2019).

guides, while the other RTOs do not have a single document that gathers information on the roles and responsibilities of different parties, describes how votes are conducted, shows how issues are prioritized, and collects key documents.¹⁴²

3. Issue Prioritization

Understanding how and where to participate unlocks the next potential hurdle to effective participation, knowing what issues are being discussed. The scope of issues that RTOs manage range from transmission planning, market participation rules, and the structure of energy and capacity markets. Stakeholders and interested parties should be able to contribute to which issues will be prioritized, easily identify what issues an RTO has prioritized, and track those issues through the proposal development and voting process. As a general practice, RTOs seek and incorporate stakeholder input into the development and prioritization of issues.¹⁴³ Stakeholder participation in the prioritization of issues allows for parties to express their preferences. An example of an open revision and comment process is CAISO's annual policy initiative roadmap. The roadmap captures the policy initiatives that the ISO will undertake in the following year and the approximate timelines for each initiative.¹⁴⁴ CAISO also maintains and twice a year updates its Policy Initiatives which contains current, planned, and potential policy initiatives that would require a stakeholder process. Stakeholders can propose potential policy initiatives throughout the year to be considered during the scheduled update.¹⁴⁵ The entire process and comment portal is open to the public.

Where there is variance between RTOs is in how those priorities are tracked and how stakeholders and members of the public can identify when and where issues are being discussed. RTOs should make it easy to track individual issues of interest. For example, PJM's issue prioritization tracker allows issues to be tracked across all PJM committees without searching specific stakeholder groups

142. The authors conducted a search for stakeholder governance guides in each RTO. While this information may be available, it is not collected into a single, easily locatable document. NYISO has a Stakeholder Governance Guide, but it does not contain the level of detail as the MISO and PJM guides. NYISO has a more detailed guide for market participants but that is focused toward a selection of total stakeholders. ERCOT also publishes an Overview of ERCOT Corporate Governance, but it does not contain granular information on participation practices. *Stakeholder Governance Guide*, MISO 10-12, 23-25, 27, 31 (May 6, 2009), <https://cdn.misoenergy.org/Stakeholder%20Governance%20Guide105455.pdf>; *PJM Manual 34: PJM Stakeholder Process*, PJM 31, 68-69, 73-75 (Jan. 25, 2023), <https://www.pjm.com/~media/documents/manuals/m34.ashx>; *Getting Started Guide: Market Participants & Stakeholders*, NYISO 4, <https://www.nyiso.com/documents/20142/2245428/2020-Getting-Started-Guide.pdf/d892e493-b99f-628c-9e6f-399933596efd?t=1602104467770> (last visited Sept. 28, 2023); see *Market Participants User's Guide*, NYISO 1 (Oct. 22, 2021), <https://www.nyiso.com/documents/20142/3625950/mpug.pdf>; *Overview of ERCOT Corporate Governance*, ERCOT 1-4, 9-13 (Jan. 18, 2022), <https://www.ercot.com/files/docs/2022/01/18/4-REVISED-Overview-of-ERCOT-Corporate-Governance.pdf>.

143. For example, in NYISO, the Budget & Priorities Working Group monitors progress on current project initiatives and prioritizes future projects, and in ISO-NE, the ISO's annual work plan incorporates feedback from stakeholders. *Budget & Priorities Working Group*, NYISO, <https://www.nyiso.com/bpwg> (last visited Sept. 28, 2023); *Annual Work Plan*, ISO-NE 1, <https://www.iso-ne.com/about/corporate-governance/annual-work-plan/> (last visited Oct. 20, 2023).

144. *Annual policy initiatives roadmap process – 2022*, CAISO 1 (May 11, 2021), <https://stakeholder-center.caiso.com/RecurringStakeholderProcesses/Annual-policy-initiatives-roadmap-process-2022>.

145. *Id.*

to monitor progress.¹⁴⁶ Once, stakeholders can track issues of interest, the next hurdle is to make sure that it is easy to follow when meetings are occurring. Including committee and working group meetings, RTOs conduct hundreds of meetings per year, which requires dedicated resources to track issues.¹⁴⁷ RTOs have public facing schedules detailing when meetings are scheduled, but that requires consistent monitoring by stakeholders. A method suggested during our interviews to alleviate the burden of knowing when a relevant meeting was occurring was to allow stakeholders and interested parties to subscribe to push notifications.

4. Meeting Participation and Access to Documents

Knowing when meetings are occurring and what issues are being discussed is the first step to effective engagement, but it must be paired with access to meeting materials and data sets and being allowed into meetings. Clarity in the presentation of this material and ease of access to the materials necessary to effectively participate in the discussions is critical to building more participation opportunities. Publicly available documents are a major step in reducing administrative costs that can become a barrier to participation.

Meeting materials should enhance participation of all stakeholders. This has not been the case. Several interviewees commented on the differential treatment of market participants and non-market participants in what information was made available. We propose a simple rule: Every stakeholder should have access to the same set of documents, meeting materials should provide sufficient detail for adequate preparation, and that transcripts and recordings of meetings should be made available. For example, in MISO, non-market participant stakeholders cannot sign non-disclosure agreements to gain access to key transmission planning documents.¹⁴⁸ Market participants can.¹⁴⁹ Based on our research interviews, we did not receive a clear articulation for excluding NGOs and it appears that the exclusion may be a carryover from who historically received access to this information, e.g., asset owners. Nor did we receive a clear explanation of a risk that would be created by providing access for eNGOs under the same conditions that market participants agree to. This practice put eNGOs and other public interest organizations at a disadvantage when participating in the MTEP Futures discussions, which is where the planning scenarios were developed. Lack of consistent meeting summaries and notes were another area identified by interviewees. Interviewees noted that RTO meeting agendas and minutes are typically sparse in their level of detail which can serve to limit engagement. To address this issue, RTO could prepare and share summaries of key meetings and governance decisions as well as sharing the schedule for upcoming meetings. This is what occurs in ISO-NE, which prepares and publicly distributes a written summary of each month's meeting of the

146. *Issue Tracking*, PJM, <https://www.pjm.com/committees-and-groups/issue-tracking> (last visited Oct. 20, 2023).

147. See James et al., *supra* note 4, at 14.

148. *NDA Descriptions*, MISO 1-2, <https://cdn.misoenergy.org/Non-Disclosure%20Agreement%20Types%20and%20Instructions68054.pdf> (last visited Oct. 2, 2023) (noting that only Members and Market Participants can sign the NDA and receive confidential information. eNGOs cannot become Members).

149. *Id.*

ISO Board and committees.¹⁵⁰ Multiple interviewees commented on the lack of transcripts and recordings of meetings, even meetings which are conducted in the public sphere. CAISO's Open Meeting Policy does allow for members of the public to record open sessions of Board meetings, but it does not establish a universal policy of meeting recordings.¹⁵¹ If the ISO chooses to record an open meeting, it is required to maintain the recording for thirty days following the date of the meeting and to allow members of the public to view at a time and location set by the ISO.¹⁵² As the COVID-19 pandemic pushed RTO meetings into the virtual sphere, adopting a policy of recording public meetings should not impose a significant technical or economic cost on the RTO. Furthermore, it would shift the administrative burden onto the party that is technically and economically capable to managing the task. The sheer number of meetings paired with institutional capacity challenges may prevent eNGOs and public interest organizations from attending live meeting sessions, but it does not lessen their interest in the discussions.¹⁵³ A system focused on building effective participation should meet stakeholders where they are and use available tools to strengthen engagement from all interested parties.

Every RTO must balance giving access to stakeholders and the public against protecting confidential information. Open meetings are the default policy in each RTO for committee and subcommittee meetings. For example, in MISO, Stakeholder meetings are open to all interested participants except for individual sector meetings discussing confidential or proprietary information.¹⁵⁴ In CAISO and the Western EIM, all meetings are to be conducted in accordance with CAISO's Open Meeting Policy.¹⁵⁵ There will always be a need for in camera sessions with restricted participation. CAISO and EIM meetings can be closed to the public, but

150. ISO New England Board of Directors, *ISO New England Governance Enhancements – Update to May 20, 2022 Memo*, ISO-NE 1-2 (July 6, 2022), https://www.iso-ne.com/static-assets/documents/2022/05/board_memo_to_nescoc_governance_enhancements_052022.pdf; see *Update on Recent and Upcoming Regional Activities*, ISO-NE (May 2022), https://www.iso-ne.com/static-assets/documents/2022/05/may_2022_necpuc_memo_final.pdf (The May 2022 memo can be viewed at ISO New England Board of Directors and contains a monthly summary.).

151. *Open Meeting Policy*, CAISO 3 (Mar. 26, 2010), <http://www.caiso.com/Documents/OpenMeetingPolicy-Redline.pdf>.

152. *Id.*

153. Benjamin A. Stafford & Elizabeth J. Wilson, *Winds of Change in Energy Systems: Policy Implementation, Technology Deployment, and Regional Transmission Organizations*, 21 ENERGY RES. & SOC. SCI. 221, 231 (2016). In 2009, PJM retained an independent facilitator to assess concerns regarding its governance and stakeholder processes. The Phase I report, published in October 2009, discussed the sheer number of meetings in the different RTOs (the report looked at PJM, MISO, NYISO, ISO-NE, and SPP) and identified that the number of meetings in each RTO ranged from a low of 184 in ISO-NE to a high of 611 in MISO. Johnathan Raab & Patrick Field, *An Assessment of PJM's Governance and Stakeholder Process*, RAAB ASSOC., LTD, CONSENSUS BLDG. INST. 12 (Oct. 1, 2009), <http://www.raabassociates.org/Articles/PJM%20GAST%20Final%20Phase%20I%20Report.pdf>.

154. *Stakeholder Governance Guide*, MISO 4 (May 17, 2021), <https://cdn.misoenergy.org/Stakeholder%20Governance%20Guide105455.pdf>.

155. CAISO *Charter*, *supra* note 112, at 7.

only when the specific circumstances detailed in the Open Meeting Policy are satisfied.¹⁵⁶ Under CAISO's Open Meeting Policy which mandates that the Board hold a vote to close meetings and to announce the general nature of the items to be discussed.¹⁵⁷ Multiple interviewees participating in other RTO governance processes stated they were often excluded from key meetings without receiving any reason for the exclusion. For example, SPP's bylaws mandate that meetings shall be open, but attendance can be limited by an "affirmative vote of the Organizational Group as necessary to safeguard confidentiality of information, including but not limited to Order 889 Code of Conduct requirements, personnel, financial, or legal matters."¹⁵⁸ Unlike CAISO, SPP bylaws contain no requirement to disclose the reason for closing the meeting. A requirement to provide a reason will enhance transparency and accountability while incentivizing the maximization of open meetings.

5. Transparency in the Decision-Making Process.

The final opportunity to increase transparency is to shine light into the decisions and the decision-making process. There are several opportunities to bring transparency into the decision-making process including how votes are recorded, disclosure of who is voting, and providing justification of decisions.

Board and committee votes are not required to be made public, which can obscure visibility into how different parties are voting. The onset of the COVID-19 pandemic brought changes into RTO Board and committee voting practices and many RTOs adopted a recorded vote policy as part of their shift to virtual governance practices. In ERCOT, the Technical Advisory Committee, which makes recommendations to the Board of Directors, switched from a practice of conducting mainly oral votes to have recorded votes.¹⁵⁹ If RTOs can make this switch to facilitate virtual participation in governance processes, then there is no reason not to continue this practice as RTOs return to in-person meetings. The TAC Procedures detail different vote recording requirements based upon how voting is conducted. Votes can be taken in-person, by electronic mail, or remotely.¹⁶⁰ Under TAC's procedures, only remote voting must be validated while electronic mail votes can be tabulated with only the final tally being shared.¹⁶¹ It is common practice that lower-level committees, working groups, and task forces work on a consensus-based decision-making process on which proposals should advance. The lack of

156. *Id.* at 4-6. Meetings can be closed for discussions on ongoing litigation, on personnel matters, and where trade secrets, or confidential or proprietary information is being discussed. *See Open Meeting Policy*, CAISO 4-6 (2010), <http://www.caiso.com/Documents/OpenMeetingPolicy-Redline.pdf>.

157. *Id.* at 6. In matters of litigation, the ISO's legal counsel must prepare and submit to the Board a memorandum explaining the specific reasons for closing the session to the public. In all meetings closed to the public, the Board must announce the general nature of the item or items to be discussed in the session. *Id.* at 4-6.

158. *Southwest Power Pool Governing Documents Tariff*, SPP 3.5 (Apr. 19, 2022), <https://www.spp.org/documents/13272/current%20bylaws%20and%20membership%20agreement%20tariff.pdf>.

159. *Technical Advisory Committee*, ERCOT 1, <https://www.ercot.com/committees/tac> (last visited Oct. 2, 2023).

160. *TAC Meeting by Webex Only*, WEBEX CONF. 1 (Jan. 27, 2021), https://commondatastorage.googleapis.com/document-uploads-001/uploads/video/agenda_file/112168/1-27_ERCOT_TAC_1_1.pdf.

161. *Id.*

recorded votes is intended to facilitate an open discussion of issues. Promoting open and honest discussion at the lower-level committees can be protected while taking other steps to boost transparency. For example, our interviewees noted that there was often a lack of clarity into who was participating in these committee meetings. RTOs allow alternative representatives and consultants to represent stakeholders and for stakeholders to cast proxy votes. While votes may not be recorded, at a minimum, parties should disclose who they are representing and if they are holding proxy votes from other stakeholders. Transparency in relationships can promote accountability without compromising open and honest discussions.

RTO board decisions are not subject to the same transparency requirements as FERC orders. Boards are not subject to the same duty as FERC to demonstrate that their decisions are based on substantial supporting evidence, nor are they required to consider and respond to all substantive comments received during the stakeholder feedback process. This runs counter to the requirements imposed upon FERC by the APA and Federal Power Act (FPA).¹⁶² FERC's obligation to comply with the APA was cited by multiple interviewees as a reason why they focused their resources and efforts at the Commission. In comparison, RTO decision making processes can be opaque and difficult for stakeholders to follow. For example, in CAISO, there is no obligation to discuss what alternatives were evaluated when determining which resources receive a Reliability Must-Run designation. CAISO is required to evaluate whether there are any more cost-effective options that could avoid the need for a Reliability Must-Run Contract, but it has no affirmative duty to disclose what options were considered.¹⁶³ Stakeholders could ask questions and seek this information, but that does not create an affirmative duty and instead shifts the burden of information seeking onto resource-constrained stakeholders. Clarity into the reasoning of the RTO enables more effective engagement from stakeholders seeking to advance options.

6. Summary

Transparency is a choice that must be actively taken and actively affirmed. RTO governance is designed to create accountability to stakeholders and accountability rests upon stakeholders have sufficient knowledge and information to exercise their rights. This section highlighted numerous steps that could instill transparency as a guiding value in RTO governance. Any of the steps taken individually would improve transparency, but multiple steps taken in concert can build a foundation for effective participation.

162. FERC's obligations under the APA are found in 5 U.S.C. § 706 (2013), which establishes that under the scope of review for courts reviewing federal agency action, a court shall hold unlawful and set aside agency actions, findings, and conclusions that are "arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with law, and "unsupported by substantial evidence . . ."; 16 U.S.C. § 8251(b) (2005) establishes any party to a FERC proceeding may seek judicial review of the order in the U.S. court of appeal of any circuit where it is located or has its principal place of business or in the in the U.S. Court Appeals for the District of Columbia and that the findings of the Commission will be conclusive if supported by substantial evidence.

163. *California Independent System Operator Corporation Fifth Replacement Electronic Tariff*, CAISO §41.3 (Aug. 15, 2022), <http://www.caiso.com/Documents/Section41-Procurement-of-ReliabilityMust-RunResources-asof-Aug15-2022.pdf>.

F. Recommendation for RTO Governance Reform and Addressing Complex Issues

In this section, we revisit the statement of one of our interviewees that “a vote is a weak tool.” Voting is an important tool when it is attached to a comprehensive set of rights. In interview after interview, we heard about the importance and value of membership as the first step in enhancing participation and in curating opportunities to influence processes and outcomes. One interviewee summed it up as “[m]embership is key to participation.” But membership alone does not guarantee equality and equity in participation rights, which is why this section starts with a discussion on membership and the different procedural and substantive rights attached to membership in the different RTOs. Next, the section addresses how stakeholder participation can be facilitated for specific, high-value processes by carving out participation opportunities for public interest and eNGO organizations. The section concludes with a focus on resolving complex issues and how that could be accomplished within and outside of the membership structure.

In the companion article, we reviewed and compared the different participation opportunities attached to membership in each of the seven RTOs. We also compiled the costs of becoming a member and maintaining membership. Lenhart and Fox completed a similar review of governance structure that compares RTOs across several different factors starting with governance structure and diving deeper into areas such as stakeholder opportunities to interact with their board, issue prioritization, and access to information.¹⁶⁴ In their review, Lenhart and Fox noted that their research relied exclusively on documents and did not collect data from RTO participants and that limited their ability to comment on “many current issues related to RTO governance or how institutional design works in practice.”¹⁶⁵ They highlighted that additional research could examine “the extent to which members actively participate in processes, strategic decisions about how and when to engage . . .”¹⁶⁶ Our interviews provide insight into these key questions and allowed us to zero in on specific leverage points for boosting effective participation by eNGOs.

Over the span of our interviews, we heard multiple suggestions on how to reform and improve RTO governance structures ranging from adjusting allocation of voting rights to adopting a hybrid governance model between the states and FERC to abolishing RTOs and starting over. Many of these comments were grounded in how the portfolio of responsibilities held by RTOs has become increasingly important, including planning for infrastructure to interconnect a massive build out of renewable energy generation. Much has been learned since the early days of RTO formation and given the increased importance of some of the RTO responsibilities these changes warrant a re-evaluation of what is the best form of stakeholder governance that supports inclusive, efficient, and effective decision-making.

164. Lenhart & Fox, *supra* note 6, at 1.

165. *Id.* at 11.

166. *Id.*

1. Votes Do Matter

Votes can and do matter and what voting sector eNGOs are placed in matters. eNGOs and public interest groups will only ever hold a small percentage of the total votes held by RTO stakeholders, but that should not mean that the votes can be diluted or minimized. MISO is the only RTO in which environmental organizations have their own sector.¹⁶⁷ PJM is the only RTO that does not allow eNGOs to become voting members.¹⁶⁸ In all the other RTOs that have formal stakeholder sectors, eNGOs, and public interest groups, are paired up with a variety of different stakeholders.

Our interviewees discussed the pressures of pairing eNGOs with other stakeholders who hold different interest, the impact of the influx of new stakeholders, and resistance to changing voting structures. A common pairing is to place eNGOs with groups that do not share the same perspectives and objectives. For example, in NYISO, environmental organizations are paired with Public Power and the two groups are assigned specific portions of the sector's votes. We heard in interviews how this structure reduces this incentive for cooperation and, in essence, creates two de facto sectors that do not work together the same way the other sectors do. Adding more pressure on the value of voting rights is the influx of new stakeholders into RTO governance processes. Those new members often end up in the same sectors as eNGOs, like in ISO-NE where environmental non-profits are placed in the End-User category which also contains state and local governments plus different industrial and manufacturing interests.¹⁶⁹ Interviewees also highlighted SPP's division of stakeholders into Transmission Owning and Non-Transmission Owning/Transmission Using for voting purposes in its Markets and Operations Policy Committee and Members Committee. This division creates two groups with significantly different membership levels, puts a wide range of diverse interests within the Non-Transmission Owning voting sector, and creates the risk that minority positions will be diluted. We fully acknowledge that it would be difficult to change the allocation of voting rights within existing RTOs. There would be considerable inertia to overcome as changes to sectoral categories, composition, or voting rights will require some groups to reduce their voting privileges so that other groups might gain additional rights. But, in a time where RTO expansion is a topic gaining momentum, the construction and composition of sectors should not simply be imported from existing governance structures without a full discussion of how to empower all voices and votes and how to ensure the rights of minority parties.

Protecting existing voting rights and ensuring that the votes of public interest groups are not diluted is a step that would maintain participation opportunities.

167. *MISO Region Engagement*, MISO 3, <https://www.misoenergy.org/stakeholder-engagement/miso-engagement> (last visited Sept. 22, 2023).

168. Mark James et al., *Incorporating Environmental Concerns into Wholesale Electric Markets: The Impact of Regional Transmission Organization Governance Models on eNGO Participation in Stakeholder Processes*, VT. L. SCH., INST. FOR ENERGY AND ENV'T 15-16 (2023), <https://appam.confex.com/appam/2020/media-file/ExtendedAbstract/Paper38208/James%20et%20al%20-%20APPAM%202020%20-%20eNGO%20Participation%20in%20RTO%20Governance%20-%20Draft.pdf>.

169. *Current Members NEPOOL Participants*, NEPOOL 1-8 (Aug. 1, 2023), https://nepool.com/participants/?_sectors=end-user&_per_page=-1.

Voting rights are still critical as even a small percentage can sometimes be the decisive vote on critical issues. For example, in NYISO, the 58% voting requirement can sometimes require public interest sector votes to reach the threshold even though public interest sector votes only account for 2% of the total stakeholder votes in NYISO.¹⁷⁰ While, as discussed above, NYISO's pairing of eNGOs and public power creates two separate groups within a single stakeholder group, the allocation of specific voting rights ensures that minority positions will not be over-ridden by the majority. In RTO sectors, this could be an option for managing the influx of new stakeholders, which are often concentrated in a small number of sectors such as in PJM where new membership growth was concentrated in two sectors.¹⁷¹

2. Improving Stakeholder Input Opportunities

Targeted participation opportunities are an option for empowering stakeholders with limited resources and capacity without changing voting rules. In our interviews, we asked what RTO governance processes were of most interest to the stakeholders and where did they focus their resources. The responses received included market rules for new generation resources, capacity market rules, and transmission planning. Participation in the early stages of this processes enables stakeholders to make recommendations and direct outcomes while key decisions are still be made and before proposals are finalized and voted on. As we were repeatedly told, by the time a proposal arrives at the voting stage there is often little that can be changed. Participation is connected to membership because of the attached privileges and rights that it offers. Membership enables access into meetings, the ability to make presentations to committees, the opportunity to participate in the working groups, subcommittees, and task forces that discuss issues and shape solutions, and to cast votes.

Participation opportunities should be easy to access and when possible formalized in the governance structure. Informal participation opportunities include the right to submit comments on governance proposals. Formal participation opportunities include the right to shape outcomes of governance processes. As we discussed earlier, significant differences in resources affect the ability to effectively participate in governance processes when the level of participation is connected to the ability to dedicate resources. This imbalance can be exacerbated by the nature of informal processes which can allow agency officials to favor these groups because of their historical relationship and perceived importance.¹⁷² The influence of transmission owners and generation owners was repeatedly cited in our interviews as creating outsized influence, beyond that guaranteed in the RTO tariff, bylaws, and business rules, especially for transmission owners based on the

170. Mark Seibert et al., *NYISO Governance: Frequently Asked Questions (FAQs)*, NYISO 5, <https://www.nyiso.com/documents/20142/1408883/NYISO-Governance-FAQ.pdf/471f13a1-5def-7358-b0a5-42221906ac0e?t=1546629718621> (last visited Sept. 22, 2023).

171. Simeone, *supra* note 4, at 34; James et al., *supra* note 4, at 15.

172. Elizabeth Baldwin, *Exploring How Institutional Arrangements Shape Stakeholder Influence on Policy Decisions: A Comparative Analysis in the Energy Sector*, 79.2 PUB. ADMIN. REV. 246, 247 (May 10, 2018), <https://onlinelibrary.wiley.com/doi/abs/10.1111/puar.12953>.

actual and perceived threat of departure from the RTO.¹⁷³ We also received comments that eNGOs were not seen as serious actors capable of contributing at the same level as market participants. In combination, these biases can be baked into governance processes unless active steps are taken to formalize participation opportunities and guarantee stakeholder input.

Formal participation opportunities on key committees should be reserved for public interest and eNGO organizations. Furthermore, the formal participation opportunities should not require executing other qualifying steps. For example, in MISO, the Steering Committee assigns issues to stakeholder groups for discussion and deliberation, assists in the development of the Advisory Committee agendas, provides advice and recommendations to the Advisory Committee regarding strategic plans, and annually reviews the Stakeholder Governance Guide and makes recommendations on revisions.¹⁷⁴ It is a powerful committee with significant duties and influence. The Steering Committee “consists of the Advisory Committee Leadership and the Chairs and Liaisons of the Entities reporting directly to the Advisory Committee and/or the Steering Committee.”¹⁷⁵ The Entities reporting directly to the Advisory Committee are the Resource Adequacy Subcommittee, Planning Advisory Subcommittee, Finance Subcommittee, Reliability Subcommittee, and the Regional Expansion Criteria and Benefits Working Group.¹⁷⁶ Representatives from those Entities and the two Advisory Committee Leadership positions make up the eight voting members of the Steering Committee. If an eNGO does not seek a Chair position and does not hold a leadership position on the Advisory Committee, then they will not have a vote on this key committee. If diversity of representation is to be encouraged, it should start with ensuring the governance structure ensures a right to participate in key committees. Reducing the burden on individual parties to create participation opportunities by standardizing and guaranteeing access for public interest and environmental groups would ensure a more diverse set of viewpoints is represented.

173. Ari Peskoe, *ISO-NExit: Exploring Pathways for a Utility's Withdrawal from New England's Regional Transmission Organization*, HARV. ELEC. L. INITIATIVE 2 (Apr. 3, 2020), <http://eelp.law.harvard.edu/wp-content/uploads/ISONexit-Memo.pdf> (discussing that FERC has approved or conditionally approved transmission utility withdrawals from an RTO in four separate proceedings). There have been numerous other explicit and implicit threats to withdrawal transmission utilities from an RTO, with some being made by individual utilities seeking better financial opportunities and some being issued by states seeking greater control over resource adequacy decisions. For an example of state threats, see Patrick Skahill, *CT taking 'a serious look' at exiting regional power market*, CONN. PUB. RADIO 1 (Jan. 16, 2020), <https://ctmirror.org/2020/01/16/conn-taking-a-serious-look-at-exiting-regional-power-market/> (discussing Connecticut's options in conflict with ISO-NE on how to achieve state climate goals); Amanda Durnish Cook, *La. Regulators Threaten MISO Departure over Tx Costs*, RTO INSIDER 1 (Oct. 21, 2021), <https://www.rtoinsider.com/articles/28914-la-regs-threaten-miso-departure-tx-costs> (discussing Louisiana's concerns about transmission expansion costs); Catherine Morehouse, *Maryland taking a 'serious look' at exiting PJM capacity market through FRR*, UTILITY DIVE 1 (Apr. 29, 2020), <https://www.utilitydive.com/news/maryland-taking-a-serious-look-at-exiting-pjm-through-frr-says-psc-chair/576957/> (discussing how Maryland, Illinois, and New Jersey all raised the possibility of leaving PJM over conflict with state clean energy goals).

174. *MISO Steering Committee Charter*, MISO 1 (Feb. 19, 2020), <https://cdn.misoenergy.org/2020%20SC%20Charter430976.pdf> [hereinafter *MISO Charter*].

175. *Stakeholder Governance Guide*, MISO § 6.1 (May 17, 2023), <https://cdn.misoenergy.org/Stakeholder%20Governance%20Guide105455.pdf>.

176. *MISO Charter*, *supra* note 174, at 2.

Diverse stakeholder participation in critical planning processes can influence RTO activities. Recent governance activity in MISO demonstrates how this can happen. The MISO Futures Development process produced forward-looking planning scenarios that were used to model future system needs. MISO's process has been applauded by eNGOs for its use of different assumptions to create a range of scenarios and pushed as a potential model for other planning regions to follow.¹⁷⁷ The Futures scenarios established different ranges of economic, policy, and technological possibilities for transportation, building, and industrial electrification over a twenty-year period.¹⁷⁸ Over a three-year long period, MISO hosted engaged stakeholders and the public in a series of workshops, information sessions, and public comment periods to produce the scenarios that would be applied to the MISO Transmission Expansion Plan cycles, the Long Range Transmission Plan Initiative, and other planning studies.¹⁷⁹ Stakeholder feedback pushed MISO to revise its assumptions on the role of storage, the level of penetration for renewable generation, and electrification trends.¹⁸⁰

3. When RTO Processes Don't Fit the Problem – Developing Alternative Methods for Discussing and Presenting Proposals

Some issues might not fit into existing RTO governance processes. We close our discussion of governance reforms with an exploration of alternative options for resolving complicated issues outside of the RTO governance process. The rigid nature and schedule of RTO governance processes does not always align with the complexity of the issue it is working on. Numerous interviewees commented on how as RTOs have taken on more complex issues, the governance processes have struggled to manage the growing complexity. Siloing in stakeholder governance processes can make it difficult to address complex issues that implicate different market functions and multiple stakeholder sectors. Cross-cutting issues can run into the rigidity of stakeholder governance organizational charts, which can limit the range of solutions presented and constrain input from interested parties. In this article, we have highlighted internal RTO efforts to develop governance processes that can address complex issues, including the MISO Futures Initiative. However, occasionally stepping outside of the RTO governance process may be the best way to start discussions on resolving complex issues.

The use of alternative processes for exploring and developing consensus on an issue is a way to enable engagement from different stakeholders and members of the public. When these alternative processes are employed, it is vital that they

177. Cullen Howe, *MISO Plans for a Clean Energy Future*, NRDC 9-10 (Mar. 25, 2022), <https://www.nrdc.org/experts/cullen-howe/miso-plans-clean-energy-future>.

178. *Future Planning Scenarios*, MISO 1, <https://www.misoenergy.org/planning/transmission-planning/futures-development>.

179. *Id.*

180. *MISO Futures – Final*, MISO 3-4 (Apr. 27, 2020), <https://cdn.misoenergy.org/20200427%20MTEP%20Futures%20Item%2002a%20Futures%20Presentation443760.pdf> (noting the changes in assumptions for percentages of state goals met, electrification, demand, and energy growth). The evolution of MISO's assumptions can be seen in how the draft and final Futures scenarios changed in response to stakeholder input. *Id.*

offer opportunities for eNGOs and other public interest organizations to meaningfully participate and contribute. We put forward the example of the New England Demand Response Initiative (NEDRI) as an alternative process that brought together a diverse group of stakeholders in a structured setting to produce recommendations on incorporating demand response resources into wholesale markets.

NEDRI is an example of how an inclusive and supportive participation governance model can be constructed to discuss a complex energy markets issue. NEDRI was established to address a concern that demand response resources were not being effectively integrated into restructured electricity markets, which could adversely affect the success of the markets.¹⁸¹ NEDRI's purpose was to develop a comprehensive and coordinated set of demand response programs for the New England regional power markets.¹⁸² The Initiative's stated goal was to outline "workable market rules, public policies, and regulatory criteria to incorporate customer-based demand response resources into New England's electricity markets and power systems."¹⁸³ NEDRI was not intended to replace or displace ISO-NE governance processes but to create a forum promoting best practices and coordinated policy initiatives.¹⁸⁴

NEDRI's structured supported an inclusive and effective stakeholder governance process. NEDRI was a facilitated process backed by technical expert assistance, which in combination were designed to support an expanded stakeholder group that included federal, state, public and private groups that did not normally participate in ISO-NE.¹⁸⁵ Stakeholders represented wholesale and retail market interests, which was a reflection of the nature of and regulation of demand response programs.¹⁸⁶ Technical assistance in the form of Framing Papers, draft recommendations, and guidance documents was provided to educate stakeholders and drive focused discussions on specific topics.¹⁸⁷

The design and order of the stakeholder meetings facilitated effective participation. NEDRI began with a process to establish clear outcomes and goals before any substantive discussions started. At the start of the process, the assembled participants discussed and identified in "general terms the goals of demand response, and general principles that should guide policy and program development."¹⁸⁸ The stakeholders agreed on a set of cross-cutting general principles that could inform that design and implementation of demand-response programs.¹⁸⁹ The general

181. *Dimensions of Demand Response: Capturing Customer Based Resources in New England's Power Systems and Markets*, NEDRI 1 (Jul. 23, 2003), <http://nedri.raabassociates.org/Articles/FinalNEDRIREPORTJuly2003.pdf> [hereinafter NEDRI].

182. *New England Demand Response Initiative*, RAAB ASSOC., LTD. & REGUL. ASSISTANCE PROJECT, <http://nedri.raabassociates.org/> (last visited Oct. 2, 2023).

183. *Id.*

184. *Id.*

185. NEDRI, *supra* note 181, at 2-3, Appendix A (listing the participation of EPA, FERC, Department of Energy, NYISO, PJM, state agencies, consumer advocates, environmental advocates, industry representatives, utilities, and more).

186. *Id.* at 3.

187. *Id.*

188. *Id.* at 4.

189. NEDRI, *supra* note 181, at 4.

principles included focusing the development of market and public policies on enhancing productivity and efficiency, using market forces and competition to integrate demand response resources, and ensuring the demand response programs created no net harm in the immediate future and helped improve air quality over time.¹⁹⁰ The establishment of common, shared principles built the platform upon for making specific recommendations.

Consensus-based decision-making further enabled effective participation from stakeholders. NEDRI's structure stands out for its pairing of consensus-based decision-making with an educational program. By elevating the knowledge of every stakeholder, it made it easier to reach consensus on recommendations. In 2002 and 2003, NEDRI held sixteen plenary sessions, with working group meetings scheduled in between.¹⁹¹ The Initiative created focused discussion of and recommendations on specific demand response policy areas including: regional reliability, load participation in providing contingency reserves, energy efficiency, and retail pricing and metering.¹⁹² For each program area, the assigned group first established basic principles for program design and then work to develop consensus on specific recommendations and program features.¹⁹³ Overall, the initiative produced thirty-eight recommendations, of which thirty-seven were unanimously adopted.¹⁹⁴ The recommendations were made without requirement that they be adopted by ISO-NE, which offered a way to conduct the work without creating any obligations upon participating parties or creating pushback from the RTO.¹⁹⁵

4. Summary

As RTO stakeholder governance processes have taken on more responsibilities and had to manage growing complexity within and between issues, alternative platforms for productive and collaborative discussions may offer a new method for resolving difficult questions. The design and operation of alternative processes can determine whether eNGOs can effectively participate. The combination of education and consensus-based decision-making can knock down barriers to effective participation and produce outcomes that reflective the growing diversity of stakeholders.

III. SECTION III

A. Conclusion

Effective participation is larger than voting rights. Voting rights are critical to protecting minority positions and there is considerable variability in how eNGOs are treated in each RTO. Looking beyond voting rights to understand whether a governance system supports engagement and participation from eN-

190. *Id.* at 5.

191. *Id.* at 3.

192. *Id.*

193. NEDRI, *supra* note 181, at 3.

194. *Id.* at 9.

195. *Id.*

GOs, we find a multitude of important institutional design choices. Are there adequate resources for facilitating participation because effective participation? Is there sufficient transparency via access to documents and key meetings? Do Board selection policies promote functional diversity? Do all stakeholders have input into who sits on the board? Do RTOs facilitate engagement of all stakeholders in high-priority, high consequence governance processes? Addressing these issues will reduce barriers to participation without ever changing how voting rights are assigned.

If electricity is a public good that should be regulated in the public interest, then supporting eNGO participation is a natural conclusion. eNGOs represent an important sector of the population that is not fully represented by state governments or market participants. The increasing complexity of issues coming before RTO stakeholders and boards is stretching the original design of stakeholder governance processes. Formal and informal processes can limit or unlock capacity to accelerate clean energy transition. If RTOs are expected to manage new priorities, they will need full engagement from the stakeholder community. Increased transparency, support to fully participate, a Board attuned to the diversity of stakeholder voices, these are governance changes that can increase effective participation opportunities. The pressure on RTOs is not going to decline. New challenges await RTOs, and our recommendations can help ensure that all stakeholder voices are able to contribute on these important issues on an equitable basis.

APPENDIX I – LIST OF INTERVIEWEES

(Please note that interviewee affiliations may not reflect current position and are taken from time of interview)

1. Rich Cowart, Principal, Regulatory Assistance Project, Board Member, NYISO Environmental Advisory Council
2. Jennie Chen, President, ReGrid
3. Tyson Slocum, Director, Energy Program, Public Citizen
4. Cullen Howe, Senior Advocate, NRDC
5. Chris Casey, Senior Attorney, NRDC
6. Greg Cunningham, Conservation Law Foundation, Director, Clean Energy and Climate Change Program
7. Hannah Payne, Counsel, Fresh Energy
8. John Norris, Former FERC Commissioner, Former Chair of Iowa Utility Commission
9. Michael Colvin, Environmental Defense Fund
10. Josh Walter, Supervising Strategic Advisor – Regional Affairs, Seattle City Light
11. Dorothy Barnett, Executive Director, Climate + Energy Project
12. John Moore, Director, Sustainable FERC Project
13. Katie Southworth, Sustainable FERC Project, Energy & Climate Program Consultant
14. Natalie Karas, Senior Regulatory Attorney, Environmental Defense Fund
15. Ted Kelly, Senior Attorney, Environmental Defense Fund

16. Michael Jewell, Jewell & Associates, Environmental Defense Fund Consultant
17. Laura Ring Doll, past Chair, ERCOT Board of Directors; past Member of CAISO Board of Directors
18. Steve Gaw, former Missouri Public Service Commissioner
19. Natalie McIntire, Technical and Policy Consultant, Clean Grid Alliance
20. Casey Roberts, Senior Attorney, Sierra Club
21. Doug Howe, former commissioner, New Mexico Public Regulation Commission; former chair of Governing Board of Western Energy Imbalance Market

APPENDIX II – INTERVIEW QUESTIONS

Each interview was conducted using a standardized list of questions, which is posted below. Follow-up questions were asked based on answers received.

1. Could you provide us with a brief description of your position.
 - (i) What kinds of interaction do you have with ISO/RTOs?
 - (ii) Are you a stakeholder who participates in the governance process or an interested third-parties?
2. What is the appropriate role for ISO/RTOs in addressing important environmental issues and challenges?
3. How do environmental NGOs currently participate in the ISO/RTO(s) you are most familiar with?
4. What do you believe is the appropriate role for environmental NGOs in stakeholder governance?
 - (i) What are some of the current best practices in all RTOs?
 - (ii) What concerns you about environmental NGO participation in RTO governance?
5. What do you believe is the primary barriers for effective environmental NGO participation?
 - (i) How are the barriers environmental NGOs face different than other stakeholders?
 - (ii) Are those barriers substantive or procedural (access to documents, meetings, and RTO staff)?
6. Are there specific RTO/ISO functions where eNGO participation would enhance outcomes?
7. Can you comment on the effectiveness of states, renewable energy generators, alternative resource providers in advancing environmental issues in the stakeholder process?
8. Outside of the stakeholder governance process, how have RTOs tried to address or incorporate environmental interests and concerns?
 - (i) How successful has this been?
 - (ii) What concerns do you have with this approach?
9. What have been the major important recent environmental issues or market issues of environmental importance addressed by your RTO/ISO?
 - (i) How did the stakeholder process function in addressing these issues?
 - (i) How could it have been improved?

10. Outside of the RTO Stakeholder process what challenges do you see with RTOs addressing important environmental policies and challenges?

11. Do you have any comments on how the stakeholder governance process should be changed to function effectively in its role over governing RTO markets and operations?

12. Do you have any final thoughts for us on environmental NGOs and RTO governance?