

Proposal for “CANE,” a Tariff-Funded Consumer Advocacy Organization at ISO New England

Connecticut Office of Consumer Counsel

Maine Office of the Public Advocate

Massachusetts Attorney General’s Office

New Hampshire Office of the Consumer Advocate

Rhode Island Division of Public Utilities and Carriers



Background

- FERC Order 719 (2008): RTOs “must provide an avenue for customers . . . to present their views on RTO and ISO decision-making, and to have those views considered.”
- FERC approves ISO-NE Compliance Filing (2010)
 - Consumer Liaison Group approved “to help end-users and consumer representatives understand stakeholder processes and key issues.”
 - Ruling: CLG is “an improvement that should help address the concerns related to cost impacts that led to the request for a regional consumer advocate.”
 - ISO-NE: “while a regional consumer advocate may be desirable, there was a lack of support for it among stakeholders who would ultimately pay.”
 - NEPOOL: reject regional consumer advocate “without prejudice . . . allowing any interested party the opportunity to reintroduce such a proposal in the stakeholder process if the Consumer Liaison Group proves inadequate.”



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That 2010 FERC Order . . .

- Never explicitly rejected the “regional consumer advocate” idea.
- Never determined that the CLG would be a complete substitute for other forms of retail ratepayer empowerment and access to ISO-NE decisionmakers.
- Emphasized point made in Order 719 that “responsiveness to customers and other stakeholders should continually be evaluated for improvement.”
- Added that all RTOs “should continually evaluate their governance policies and stakeholder processes and consider how they may be improved. If parties continue to have concerns in these areas that are not being addressed, the Commission may revisit these issues.”



The Consumer Liaison Group

- Successful at bringing end-user interests together for informative meetings
- Excellent opportunity for ISO New England to deliver its message to *some* retail customers
- VP Anne George and her ISO-NE colleagues consistently answer questions and provide information
- As FERC made clear it understood in 2010, this is not a substitute for substantive involvement in ISO New England governance and NEPOOL
- BUT: Most consumers are neither NEPOOL members nor attendees of CLG meetings, so
- Most retail electric customers have no meaningful engagement with ISO New England, much less direct influence on decisions and decisionmakers of our Regional Transmission Organization



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In fact . . .

- The possibility explicitly acknowledged by FERC in 2020 is obviously the reality that has emerged, i.e.,
 - The Consumer Liaison Group has not provided consumers with direct access to the ISO New England Board of Directors
 - The Consumer Liaison Group has not served as a means for consumer participation in decisionmaking of ISO New England at either the Board or operational levels, even though . . .
 - Retail customers are different than other “stakeholders” because they (1) are the ultimate payers of all costs of having the grid, (2) are increasingly dependent on the grid as a provider of a vital public service, and (3) have no stake in any zero-sum controversies that erupt among generators, transmission owners, or others who collectively comprise the electric industry.



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Statutory ratepayer advocates = a distinct class of stakeholders

- Every New England state has established by statute an agency or a division within an agency with specific responsibility to advocate on behalf of ratepayers.
 - Connecticut (CGSA § 16-2a); Maine (35-A MRSA §1702); Massachusetts (MGLA 12 § 11E); New Hampshire (RSA 363:28); Rhode Island (RIGL §39-1-1); Vermont (30 VSA § 2(b))
- This public policy recognizes the key distinction between the public good in general (and the exercise of state police powers) and the interests of customers
- This is a matter of near-national consensus, as evidenced by the National Association of State Utility Consumer Advocates having 44 members representing states/DC



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Issues & Concerns w/ ISO-NE Governance

- NEPOOL meetings conducted behind closed doors
- Only dues-paying members of NEPOOL may sponsor proposed changes to market rules
 - Four of the region's six ratepayer advocate offices (CT, ME, MA, and NH) are members of NEPOOL end-user sector – but their voting power is small in relation to the percentage of energy, capacity, ancillary services, and transmission costs ultimately borne by the consumers represented by the ratepayer advocates
- Market rules were developed to gain buy-in from legacy interests (generation, transmission)
- NEPOOL meeting burden: Typically 8-10 days per month, not counting between-meeting preparations, consultations, etc.
- No Board member with a background as a ratepayer advocate on ISO-NE Board
- New England States Vision Statement of 10/2020: ISO-NE's mission statement has “no explicit relationship to or recognition of the need for consumer cost-consciousness.”



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The concerns are real and pressing

- ISO New England was specifically structured to further industry restructuring.
- Susan Baldwin research in Massachusetts has demonstrated that residential customers have not benefited from electric industry restructuring.
- Professor Stephanie Lenhart expressed concern about “potential for vote dilution in functionally defined stakeholder sectors” at NEPOOL.
 - Industrial and commercial users dominate NEPOOL end-user sector.
 - Contrast with PJM where state-authorized consumer advocates comprise nearly 40 percent of participants in end-user sector.
 - Among the federally regulated RTOs, ISO New England has the highest share of electricity sold by competitive suppliers (vs. IOUs, co-ops, community choice aggregators, &c.) and notably “closed” governance.
 - ISO-NE, PJM and NYISO are the three RTOs that evolved from tight power pools; suppliers and power marketers are the largest sector in the stakeholder bodies of each.

Baldwin: <https://www.mass.gov/doc/2019-ago-competitive-electric-supply-report/download>

Lenhart: <https://newenglandenergyvision.files.wordpress.com/2021/02/lenhart-presentation.pdf>



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Addressing the infrastructure bias

“One clear pattern in RTO governance is a tendency to favor building traditional infrastructure. Recall that most RTO governance processes utilize weighted sectoral voting, with demand and supply sides of the market ostensibly checking one another. However, this theory of self-checking has never really had a grounding in reality . . . [G]eneration and transmission-owning entities generally *all* want to build more infrastructure, and those selling electricity generally prefer to sell more of it. . . . [O]nly end-use customers have a strong incentive to favor demand-reducing technologies. The other natural watchdog against overbuilding tendencies is consumer advocates. However, in most regions, consumer advocates have no voting power, and at most they hold 8 percent (in MISO).”

Shelley Welton, “Rethinking Grid Governance for the Climate Change Era,”
109 Calif. Law Rev. 209 (2021)

[Current ratepayer advocate voting power in NEPOOL: Four votes (CT, MA, ME, NH) in the End-User Sector, with each sector having 16.7 percent voting power]



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New England States Committee on Electricity

- Creation approved by New England governors in 2003
- FERC in 2004 approved RTO organizational structure that included a Regional State Committee
- 2005: FERC defers request for declaratory order approving NESCOE to “encourage[e] further stakeholder discussions”
- 2007: NEPOOL Participants Committee approves NESCOE term sheet and “Schedule 5” tariff (81% vote); FERC accepts Schedule 5 filing



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Consumer Advocates of the PJM States (CAPS)

- Key precedent for CANE
- Nonprofit organization; funded via PJM tariff
- Staff = executive director and (sometimes) consultants on specific projects/initiatives (e.g., peak load forecasting, resource adequacy reform, market design for financial transmission rights)
- Board of Directors: One member from each state ratepayer advocate office.
- CAPS purpose, per bylaws: “to facilitate participation in PJM stakeholder processes for the consumer advocate offices through education, meeting attendance and stakeholder outreach and engagement. CAPS is intended to provide participation in the PJM process for member offices that cannot attend the PJM stakeholder processes and to create efficiencies for the individual Members by centralizing the tasks, including but not limited to, PJM stakeholder meeting attendance, data collection, issue briefing, and information dissemination. CAPS is organized to enable its Members to develop informed advocacy and policy-making concerning issues administered and determined by PJM.”
- CAPS typically does not *represent* ratepayer advocates or take independent positions; any position taken by CAPS must be by unanimous vote of its board. Any such vote NOT binding on individual state ratepayer advocates.
- CAPS does not litigate at FERC as an organization (though individual ratepayer advocates do).
- PJM also has OPSI (Organization of PJM States, Inc., counterpart to NESCOE)



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Straw Proposal for CANE

- Similar to CAPS: Incorporated nonprofit with six-member board, one **member** per state.
- Tariff-funded with budget sufficient to support a full-time executive director, office, and limited consultant support.
- Access to NEPOOL meetings for CANE Exec.Dir., who can hold proxies for individual ratepayer advocate offices in end-user sector
- Regularly scheduled meetings with ISO New England Board



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Financial Context

- NESCOE 2021 Budget = \$2.5 million
 - 5 employees, office space in MA and NH
 - \$1m salaries, \$351k consultants, \$351 legal (FERC)
 - 2018-2022 budget pro forma supported by NEPOOL and accepted by FERC in 2017
 - Committed not to seek increase over pro forma budget of more than 10% in any one year
- CAPS 2022 Budget = \$587k
 - 1.5 employees, \$253k salaries/benefits
 - \$176k consultants
- CANE proposal
 - CAPS-size budget; NESCOE budgeting process



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Next Steps

- NESCOE Managers
- Congressional Delegation(s)
- NEPOOL
- ISO-NE Board of Directors
- NECPUC Symposium 10/27 to 10/29



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Time to launch this vessel!



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