

# **NEPOOL BOARD OF REVIEW**

## **RULES OF PROCEDURE**

### **Table of Contents**

Section 1. Scope and Purpose

Section 2. Notice of Appeal

Section 3. Intervenors

Section 4. Service of Appeal Notices & Related Documents

Section 5. Pre-Hearing Submissions

Section 6. Pre-Hearing Discovery

Section 7. Procedure Where No Hearing Required

Section 8. Procedure Where Hearing Held

Section 9. Failure to Comply with Board's Rules & Orders

Section 10. Review Board Consideration & Vote on Appeal

Section 11. Review Board Decision

Section 12. Time For Completing Review Board Proceedings

Section 13. Amendment of Rules of Procedure

Initial – Effective June 1, 2001

Revision 1 – Effective February 1, 2005; approved by Participants Committee February 4, 2005

Revision 2 – Effective March 1, 2006; approved by Participants Committee March 3, 2006

Revision 3 – Effective July 1, 2011; approved by Participants Committee June 10, 2011

## **NEPOOL BOARD OF REVIEW**

### **RULES OF PROCEDURE**

#### **Section 1. Scope and Purpose**

These Rules of Procedure are promulgated by the NEPOOL Review Board (hereinafter called the “Review Board”) pursuant to the authority contained in Section 7.5 and 11 of the Second Restated NEPOOL Agreement as amended (hereinafter called the “NEPOOL Agreement”). They are intended to govern the procedures of the Review Board for the determination of appeals from the action or failure to act of the Participants Committee that are filed with the Review Board, and as applicable, such other matters raised before the Review Board pursuant to the NEPOOL Agreement.

#### **Section 2. Notice of Appeal**

Any Participant (as defined in the NEPOOL Agreement) seeking review by the Review Board of action or failure to act by the Participants Committee shall serve in accordance with Section 4 of these Rules, not later than five (5) business days from the meeting at which the Participants Committee decided or considered the matter, a written or electronic notice of appeal with the administrative office of the Review Board. A copy of such appeal notice shall be also served upon the Secretary of the Participants Committee and the General Counsel of the System Operator. By no later than 5:00 p.m. on the next business day after the Secretary receives notice of the appeal, the Secretary shall distribute the appeal notice to each member and alternate member of the Participants Committee.

### **Section 3. Intervenors**

Any other Participant or entity that wishes to intervene in an appeal proceeding shall serve notice of its intention to intervene within five (5) business days from the advice of the Secretary as to the existence of an appeal. Such notice of intervention shall be sent to the administrative office of the Review Board and the Secretary. Intervention will be allowed absent any written objection being promptly served with the members of the Review Board by any of the parties to the proceeding. In such event the Board will consider the objection and decide if intervention should be granted.

### **Section 4. Service of Appeal Notices & Related Documents**

(a) All documents and materials related to an appeal that are required to be served upon or filed with the Review Board shall be sent either (i) by electronic mail to [nepoolreviewboard@gmail.com](mailto:nepoolreviewboard@gmail.com) or (ii) four (4) copies by express mail or courier service to the Board's Administrative Office at 10 First Avenue, Suite 12, Peabody, MA 01960. Copies shall also be served upon the Secretary of the Participants Committee as well as all parties and known Intervenors in a similar fashion. All filings shall be accompanied by a certificate of service.

(b) The Review Board upon timely motion, may grant extensions of time to file beyond the specified periods other than the initial notice of appeal, for good cause shown, provided no party will be disadvantaged and it will not delay the rendering of a decision beyond the time period in Section 12.

### **Section 5. Pre-Hearing Submissions**

(a) Each appealing party shall provide the Review Board at the same time as it is the serving its notice of appeal a written statement of its complaint and a statement of the remedies it seeks, accompanied by copies of any documents or other materials it wishes the Review Board to

consider. The Participants Committee will provide the Review Board and all intervenors and appealing parties within five (5) business days of the appealing party's submission copies of the minutes of all NEPOOL committee meetings at which the subject matter of the appeal was discussed together with a brief description of the action (or failure to act) being appealed and a brief statement explaining why the Participants Committee believes its action (or failure to act) shall be upheld by the Review Board, and copies of any supporting documents or other materials which the Participants want the Review Board to consider in connection with the appeal.

Intervenors at the same time as they file their notice of intervention shall also file a brief statement of position together with supporting documents and other materials with the Review Board and all appealing parties, the Participants Committee and all other intervenors. Failure to meet these service requirements may be subject to the issuance by the Review Board of an Order to Show Cause why the defaulter should not have its participation in the appeal terminated.

(b) In addition, each party and intervenor shall designate one or more individuals to be available to answer written questions the Review Board may have on the documents or other materials submitted to it. The Review Board will send copies of such questions to all parties and intervenors. The answers to all such questions shall be filed in writing with the administrative office of the Review Board and copies sent to all other parties and intervenors. Comments upon such answers may be filed with the Review Board by other parties and intervenors only with the prior permission of the Review Board.

(c) The Review Board may request in writing from the System Operator additional factual information in the possession of the System Operator that is deemed relevant by the Review Board to the appeal. Copies of any such information not provided on a confidential basis under the ISO New England Information Policy ("Information Policy") shall be provided to

the parties and intervenors. If any information is deemed to be confidential under the Information Policy, the Review Board shall require all parties and intervenors to agree to appropriate confidentiality covenants as a condition to the receipt of such information.

#### **Section 6. Pre-Hearing Discovery**

The timing, scope and methods of pre-hearing discovery to be utilized in Review Board proceedings shall be established by the Review Board after consultation with the Participants Committee and shall be incorporated as part of these Rules of Procedure.

#### **Section 7. Procedure Where No Hearing is Required**

When the Review Board determines that a hearing (as described below) is not required to decide the appeal, it will consider the appeal based upon the documents submitted by the parties and any intervenors, schedule a date on which to meet and vote on the appeal as set forth in Section 10 below. In the event no hearing is to be held on an appeal the Review Board will so notify all those participating in the appeal.

#### **Section 8. Procedure Where Hearing Will Be Held**

When the Review Board determines that a hearing is appropriate in connection with an appeal it shall give written notice of such hearing to the parties and any intervenors. Such hearing shall be held at a location as determined by the Review Board.

#### **Section 9. Failure to Comply with the Board's Rules & Orders**

If a party or intervenor fails to comply with any schedule, rule or procedure for a Review Board proceeding, or fails to attend a Review Board hearing or otherwise fails to comply with an

order issued by the Review Board that is within the scope of its authority, the matter may be referred to the Participants Committee for appropriate action.

**Section 10. Review Board Vote on Appeal**

The Review Board shall meet to vote on each appeal. Each member shall have one vote and a decision of the Review Board either to grant or deny an appeal, shall require affirmative votes by at least two (2) Review Board members. Members of the Review Board may participate in the meeting by any of the methods specified in the Review Board Bylaws.

**Section 11. Review Board Decision**

The Review Board's decision shall be in writing. It shall contain such information and rationale as the Review Board determines in its discretion may be useful to explain and/or justify its decision and identify how each Review Board member voted. Upon issuance, the Review Board shall provide its decision to the Secretary of the NEPOOL Participants Committee, the parties and intervenors in the appeal, and the General Counsel of the System Operator. In addition, the Review Board decision shall be submitted to the Federal Energy Regulatory Commission ("FERC") if the Review Board decision relates to an ISO filing with the FERC. Notice of such decision shall be given by the Secretary to other Participants Committee members and alternates and shall be posted on the Review Board section of the Participants Committee & Working Groups page of the ISO website.

**Section 12. Time For Completing Review Board Proceeding**

The Review Board process shall proceed expeditiously toward a final decision under its Rules of Procedure to permit a decision within thirty-five (35) business days after the service of a notice of appeal.

**Section 13. Amendment of Rules of Procedure**

(a) These Rules of Procedure may be amended by the affirmative vote of two Review Board members, provided that forty five (45) days prior written notice of any intended amendment shall first have been given to the Secretary of the Participants Committee and the Participants Committee has been afforded the opportunity to submit to the Review Board written comments as to each such proposed amendment. The Review Board shall consider such comments prior to its decision as to amending the Rules of Procedure.

(b) The Participants Committee may propose amendments to the Rules of Procedure. Such proposals shall be in writing and sent to the Secretary of the Participants Committee for transmittal to the Review Board which shall consider them and advise the Secretary of its decision.