

FINAL AGENDA

Executive Session with attendance during discussion limited exclusively to Committee Members and Alternates, or their designates:

1. To consider a confidential slate of candidates for election to the ISO Board, as recommended by the Joint Nominating Committee, and to authorize such other actions as needed to permit the full slate, if approved, to be seated as recommended. Background materials and draft resolutions are included with the supplemental notice for this meeting. Confidential information has been circulated solely to Members and Alternates under separate cover and is being recirculated. Please note that two actions of the Participants Committee for this Agenda Item will be accomplished through confidential, written ballots. Forms of those two ballots are included with this supplemental notice. Each of those ballots should be completed and returned to pmgerity@daypitney.com, with the tally on the ballots for the slate completed and announced prior to the end of the meeting.
2. To transact such other business as may properly come before the meeting.

MEMORANDUM

TO: NEPOOL Participants Committee Members and Alternates

FROM: Dave Cavanaugh, Participants Committee Chair

DATE: July 14, 2021

RE: NEPOOL Process for 2021 Vote on Board Nominees

This memorandum describes the proposed process for the NEPOOL Participants Committee (NPC) to consider the recommendation of the Joint Nominating Committee (JNC) on the slate of nominees to the ISO Board for election later this year. NPC Members and Alternates should have all received a confidential memorandum from the JNC identifying (1) the slate of four candidates that is unanimously recommended by the JNC, (2) the reasons for the JNC proposing that slate, and (3) background information on each of the four nominees. NEPOOL and ISO counsel have also summarized for you in a separate memorandum the legal requirements that need to be satisfied for the slate to be elected to the Board. In order to act on the JNC recommendations and with the guidance of NEPOOL and ISO counsel, we anticipate the NPC holding a confidential discussion in executive session and, if ready, to vote by secret ballot at the NPC meeting scheduled for Wednesday, July 21 to endorse that slate.

As explained by counsel, an election of a slate of four board nominees in 2021 requires the NPC and ISO to waive provisions of the Participants Agreement (PA). Ahead of our July 21 meeting, you will receive from NEPOOL counsel a form of written waiver for discussion, along with a resolution directing counsel to ballot that waiver for NEPOOL approval. Any endorsement by the NPC of the JNC-recommended four-person slate will only become effective if, by members returning sufficient and timely completed ballots, NEPOOL approves the waiver to the PA by at least 70% Vote.

The members of the JNC welcome and encourage your feedback and questions in advance of, and during executive session discussions at, the July 21 meeting. If the NPC is prepared to vote on the JNC-recommended slate at the July 21 meeting, the Secretary will receive and tally the secret ballots and report the results of that vote by the end of the meeting, with those results being subject to completion of the balloting on and approval of the waiver to the PA by the required super-majority of our members. If there is a request, however, by any NEPOOL voting member at that July 21 meeting for additional time to consider and vote on the JNC's recommended slate, the Committee may defer the secret ballot vote on the slate endorsement until the August 5 NPC meeting.

By way of reminder, please maintain the confidentiality of the identity of the new nominees on the slate. The identity of any new Board members will be disclosed publicly only after the NPC has considered them and voted on endorsing the slate and the ISO Board has finally elected the slate. Please let me, any other JNC member, or NEPOOL counsel know if you have questions that you would like to discuss ahead of the our executive session discussion.

MEMORANDUM

TO: NEPOOL Participants Committee Members and Alternates

FROM: NEPOOL Counsel

DATE: July 14, 2021

RE: Vote on Recommended Slates of Candidates for ISO New England Board of Directors

As explained in the memorandum from the Chair of the Participants Committee that was sent to you, a copy of which is included with this memorandum as Attachment 1, Participants will be asked at the July 21, 2021 Participants Committee meeting to endorse a four-person slate of candidates for the ISO Board that has been recommended by the Joint Nominating Committee (“JNC”) and identified for Members and Alternates in a confidential package sent under separate cover. A NEPOOL endorsement of the slate requires a 70% Vote of the Participants Committee. If NEPOOL endorses the slate, it will then be presented to the ISO Board for final vote.

The process for selection of ISO Board members is set forth in the Participants Agreement. Under that Agreement, a JNC is convened to recommend a slate of candidates for NEPOOL’s endorsement. The JNC is comprised of seven incumbent ISO Board members, the Participants Committee Chair and Vice-Chairs (or their designates), and a representative of the New England Conference of Public Utilities Commissioners. Participants have already received a confidential package that includes a transmittal memorandum that further describes the JNC process, the Board candidates’ backgrounds and additional relevant information.

The temporary waivers of Participants Agreement provisions that are identified in the Chair’s memorandum are discussed more fully in the June 25, 2021 memorandum from ISO and NEPOOL Counsel, which is included with this memorandum as Attachment 2, and are reflected in the proposed Waiver Agreement included with this memorandum as Attachment 3,. Also, a form of ballot for voting on that Agreement is included with this memorandum as Attachment 4. The approval of the Waiver Agreement, like the vote to endorse the slate, requires a 70% Vote of the Participants Committee.

Per the Participants Agreement and prior direction from the Participants Committee, discussion and vote on this matter will be held in executive session, during which only representatives of Voting Participants are to be present. Participants will be asked to vote separately on the four-person slate proposed by the JNC, with the outcome of that vote conditioned on approval of the Waiver Agreement. Each member’s vote on the slate will be registered confidentially by paper or electronic ballot, rather than through a roll call or show of hands. A form of ballot for that vote is also included with this memorandum as Attachment 5. For ballots on the slate to be counted, they must be completed and sent to NEPOOL Counsel (pmgerity@daypitney.com) before the end of the meeting. If we receive more than one completed ballot from a Participant, we will count only the last ballot received. Before the meeting is adjourned, NEPOOL Counsel will announce the outcome of the vote solely as “passed” or “failed.” ***Out of respect for the rights of the ISO Board and nominees, Members and Alternates are requested to keep the identity of each member of the slate in confidence unless, and until after, the ISO publicly announces that the slate has been elected by the Board following a Participants Committee endorsement vote and approval of the Waiver Agreement.***

As reflected in the forms of resolutions below, in addition to acting on a resolution to endorse the JNC-proposed slate, the Participants Committee will also be asked to take a number of actions to effect the

Waiver Agreement. One resolution, if passed by at least 66.7% Vote, would approve the form of Waiver Agreement to accomplish the temporary waivers required to seat the four-person slate, with approval of that Agreement subject to the same approval process required to amend the Participants Agreement. A second resolution, also requiring at least a 66.7% Vote, directs the distribution of written ballots for Participants Committee approval of the Waiver Agreement. Such Waiver Agreement approval would require sufficient ballots be returned within five business days and tally to at least a 70% Vote as reflected in those returned ballots. A third resolution, if passed by at least a 66.7% Vote, would authorize the Participants Committee Chair to execute the Waiver if it is approved in balloting and would direct NEPOOL counsel to take such actions as deemed reasonably necessary to implement the Waiver Agreement if approved.

If the Participants Committee fails either to endorse the slate or to approve the Waiver Agreement, the JNC may need to reconvene to identify a second slate. In such a circumstance, the Participants Agreement contemplates that Participants will provide feedback to the JNC for its consideration in recommending a second slate.

The following forms of resolutions can be used for Participants Committee actions on this matter as described above:

RESOLVED, that the Participants Committee endorses the slate of four candidates for the ISO Board that has been recommended by the JNC as circulated confidentially and presented to the Participants Committee in executive session at this meeting, provided receipt from the Participants Committee and the ISO of all approvals needed for that slate to be seated.
[NOTE: Vote to be by secret ballot]

RESOLVED, that the Participants Committee approves the temporary waivers of relevant parts of the Participants Agreement, as set forth in the Waiver Agreement circulated to this Committee with the July 14 Supplemental Notice and posted with the materials for this meeting, in order to allow the four-person slate of candidates recommended by the JNC as circulated confidentially and presented to the Participants Committee in executive session at this meeting to be seated as board members if endorsed by the Participants Committee and elected by the ISO Board, subject to confirmation of such approval through the balloting process set forth in Section 17.2.3 of the Participant Agreement for amendments to the Agreement.

RESOLVED, that the Balloting Agent (as defined in the Second Restated NEPOOL Agreement) is authorized and directed to circulate ballots for written approval of the Waiver Agreement, to each Participant for execution by its voting member or alternate on this Committee or such Participant's duly authorized officer.

RESOLVED, that the Participants Committee Chair is authorized to execute the Waiver Agreement on behalf of NEPOOL and NEPOOL Counsel is directed and authorized to make any filing(s) as it deems reasonably necessary to implement the Waiver Agreement if approved.



To: Joint Nominating Committee

From: Maria Gulluni and Dave Doot, ISO and NEPOOL Counsel

Date: June 25, 2021

Subject: Process for Electing a Four-Person Slate of Directors

This memo summarizes our joint legal assessment of the actions the ISO and the NEPOOL Participants Committee must take to act on the four-person slate to the Board that was unanimously approved by the Joint Nominating Committee (JNC). Because the selection and approval of a slate of that size will result in a temporary increase in the ISO Board from 10 to 11 members, we advise that both the ISO and the NEPOOL Participants Committee (NPC) temporarily waive two provisions in the Participants Agreement to accommodate this slate.

The JNC has proposed a slate of four candidates for election later this year, three of whom would be placed in the class of Board members whose terms would end in 2024, and one of whom would be placed in the class of Board members whose terms would end in 2025. Two of the four candidates were selected because of their markets experience, and the JNC proposes that the younger of the two nominees be placed in the 2025 class (which includes a longer term); placing the other nominee in that class would limit him to one term (absent a waiver) because of the age limit provisions in the Participants Agreement.¹

In addition to the vote the NPC takes each year by secret ballot on a motion to endorse the JNC proposed slate, there are two provisions in the Participants Agreement that would need to be waived this year temporarily to accommodate that slate:

- Section 9.2.2 provides that “The ISO Board shall be composed of ten members, nine of whom shall be voting members selected in accordance with Section 13, and the ISO Chief Executive Officer who, by virtue of his office, shall serve as a non-voting member of the ISO Board.”
- Section 9.2.3(a) provides that “Voting directors will serve staggered, three-year terms ...”

If the ISO and the NEPOOL Participants Committee both temporarily waive the ten-person limit in Section 9.2.2 to allow for an 11-person board, there would be one incumbent board member standing for re-election and three vacancies that the JNC slate would need to fill this year pursuant to its

¹ Section 9.2.3(a)(i) prohibits a director who is more than 70-years old from being elected or-re-elected unless the JNC waives that age limit. This candidate would be eligible without need for waiver of the age limit for re-election to a second term in 2024 but not in 2025.

authority under Section 13.1.5 of the Participants Agreement.² Also, in order to restore the staggering of the board members' terms following this temporary waiver so that three board members' terms expire each year after the conclusion of the temporary waiver, the ISO and the NPC would need temporarily to waive the requirement of Section 9.2.3(a) so that one new Board member's term be four years rather than three years. By accomplishing these outcomes through ISO- and NPC-approved waivers of the Participants Agreement, both parties are assured that, following the limited waivers, all current terms of the Participants Agreement remain in effect for the Board selection process next year.³

While Section 17.9 of the Participants Agreement contemplates the possibility of waivers under the Participants Agreement, it does not provide any detail on the process. We both agree that the preferred stakeholder process for ISO and NPC approval of a waiver in these circumstances be the same process that each organization would follow to amend the Participants Agreement. For the NPC, that process applied to a waiver would include the following:⁴

- the proposed temporary waiver be in writing;
- the NPC directs, by at least a two-third's vote, that the NEPOOL Secretary electronically circulate ballots for approval of the written waiver;
- the ballots be completed by Participants and returned to the NEPOOL Secretary for tabulation; and
- the NEPOOL Secretary confirms that ballots it receives within five business days after balloting commences satisfy the Minimum Response Requirement and be approved by a Participant Vote of 70% or greater.

Although the Participants Agreement is not a rate schedule, it has been filed with the FERC. Accordingly, if the temporary waiver is successfully approved by the ISO and the NPC, we would plan to make a joint filing advising the FERC of the waiver.

We understand that the JNC may wish to include this memo with its communication to the NPC, and will, of course, be available to respond to questions if they arise when the proposal is discussed by the NPC.

² Stated mathematically, under Section 13.1.5 of the Participants Agreement, the size of the slate proposed by the JNC is the sum of the number of incumbents standing for re-election and the number of vacancies to be filled to ensure a full board. By way of relevant reference, in 2007 a five-person slate was proposed, endorsed and elected because, in addition to three incumbents standing for re-election that year, two additional vacancies had to be filled -- one because a board member resigned before completing the contemplated three three-year terms and the second to fill a vacancy created by the retirement of a director, whose term had ended the year before but had continued to serve pending appointment of a successor.

³ As reflected in note 2 above, unless one or more board members resign between now and the 2022 election, under Section 13.1.5 of the Participants Agreement the JNC would propose a two-person slate next year in accordance with Section 9.2.2, which requires a ten-member board. Cheryl LaFleur is eligible for re-election to one of those two spots.

⁴ Both parties must act on the slate; those actions will be dependent on both approving the waivers. The ISO, separately, must ensure that it follows all requirements to implement the JNC proposal and, like the NPC, to waive the provisions of the Participants Agreement.

WAIVER AGREEMENT

This Waiver Agreement (“Waiver”) is made effective as of the 21st day of July, 2021 (“Effective Date”) by and among ISO New England Inc., a Delaware corporation (“ISO”), the entities that are signatories to the New England Power Pool Agreement (the “NEPOOL Agreement”) and the Individual Participant under the Participants Agreement that became effective on February 1, 2005 (the “Participants Agreement”). Collectively, the signatories to the NEPOOL Agreement and the Individual Participant are referred to herein as “NEPOOL”, and act through the New England Power Pool Participants Committee pursuant to the Participants Agreement. The ISO and NEPOOL may be referred herein as the “Parties” and each may be referred to as a “Party.” Capitalized terms used in this Waiver and not otherwise defined have the meanings assigned to such terms in the Participants Agreement.

WHEREAS, Section 9.2.2 of the Participants Agreement limits the size of the ISO Board to ten members (the “Board Size Limit”); and

WHEREAS, Section 9.2.3(a) of the Participants Agreement specifies that ISO Board members serve three-year terms (the “Member Term Length”); and

WHEREAS, the Nominating Committee (the “JNC”) unanimously recommended at its June 16, 2021 meeting approval of a four-person slate to be elected to the ISO Board, which, if approved, would result temporarily in that Board having one member more than the Board Size Limit; and

WHEREAS, in order to ensure smooth and gradual transition of new members to the ISO Board, the JNC identified in its recommendation that one of the nominees on the slate have a first term of four years, which if approved would temporarily and on a one-time basis result in one term for one director that would be one year longer than the Member Term Length; and

WHEREAS, the Parties wish to take those actions necessary to permit the JNC recommendation of a four-person slate be seated if endorsed by NEPOOL pursuant to Section 13.2.1 of the Participants Agreement and elected by the ISO Board;

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. The Parties waive for no more than one year the Board Size Limit contained in Section 9.2.2 of the Participants Agreement solely to the extent required to permit all four nominees on the slate recommended by the JNC for the 2021 ISO Board election to be seated on the Board if that slate is endorsed by NEPOOL and elected by the Board.
2. The Parties waive for one time only the Member Term Length contained in Section 9.2.3(a) of the Participants Agreement, solely to the extent required to permit the nominee identified by the JNC to have a first term of four years, to expire in 2025, if the slate is endorsed by NEPOOL and elected by the Board.

3. This Waiver shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware.
4. This Waiver may be executed by the Parties in counterparts, each of which shall be deemed an original and which, taken together, shall be deemed to constitute one and the same instrument.
5. Delivery of an executed counterpart of this Waiver by electronic mail in .pdf form shall be as effective as delivery of a manually executed counterpart hereof.
6. This Waiver shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.
7. Except as specifically waived or modified hereby, all terms and provisions contained in the Participants Agreement shall remain unchanged and in full force and effect, and the Parties each and collectively ratify and confirm all such terms and provisions of the Participants Agreement.
8. The waivers of rights under this Waiver are limited solely to the matters and times set forth herein. This Waiver sets forth the entire understandings of the Parties, and supersedes any prior negotiations or agreements, whether written or oral, with respect thereto. As provided in Section 17.9 of the Participants Agreement, no waiver of rights under this Waiver shall be deemed to be a waiver with respect to any other matter arising under the Participants Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Waiver as of the date first above written.

NEPOOL, Acting Through the NEPOOL Participants Committee

By _____
Name: David A. Cavanaugh
Title: Chair of the NEPOOL Participants Committee

ISO NEW ENGLAND INC.

By _____
Name:
Title:

July 21, 2021

**FORM BALLOT ON
ISO BOARD OF DIRECTORS NOMINEES**

Instructions

Each Participant is entitled to cast a confidential ballot either “in favor” or “not in favor” of the resolution to endorse the slate of candidates recommended by the Joint Nominating Committee, as identified in the confidential supplemental materials for the July 21, 2021, NEPOOL Participants Committee Meeting circulated to Committee voting members and alternates.

Ballots may be returned by e-mail to pmgerity@daypitney.com no later than 10:15 a.m., Wednesday, July 21, 2021.

Ballot

The undersigned Participant through its duly authorized representative hereby votes as shown below for the election of the slate of candidates for the ISO Board of Directors as provided in the resolution as follows:

RESOLVED, that the Participants Committee endorses the slate of four candidates for the ISO Board that has been recommended by the JNC as circulated confidentially and presented to the Participants Committee in executive session at this meeting, provided receipt from the Participants Committee and the ISO of all approvals needed for that slate to be seated.

In favor Not in favor

Participant Information

Participant
Name:

Sector:

By (Name):

Its*

* Voting Member / Alternate / Proxy / Duly Authorized Officer

Please indicate one (by using drop down field if completing electronically or by circling if completing a paper copy)



Member Ballot

Waiver Agreement for Temporary Waivers: Election of Four-Person Slate of Directors

July 21, 2021

The undersigned Participant hereby votes as shown below on approval of the proposed Waiver Agreement reflecting temporary waivers of Section 9.2.2 of the Participants Agreement (“PA”) (limiting the ISO Board to ten members) and Section 9.2.3(a) of the PA (limiting voting directors to staggered, three-year terms). The Balloting Agent has circulated this ballot to the Participants pursuant to direction by the NEPOOL Participants Committee at its July 21, 2021 meeting.

**Waiver Agreement For
Temporary Waiver of PA Sections** FOR AGAINST ABSTAIN

Participant Information

Participant Name:

By (Name):

Its:

Voting Member / Alternate / Duly Authorized Officer*

* Please choose or circle one