

Stakeholder Processes: A Good Idea, But...



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Disclaimer

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- These are my own opinions do not represent those of any clients.

Basic Concept is Great—What's Not To Like?

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- Basic objective for extensive stakeholder processes was associated with creation of ISO's/RTO's and need for broad support/ "buy-in"
- Stated general goals sounded good: (e.g. PJM)
 - Educate stakeholders on a wide range of issues related to PJM markets, operations, public policies and industry matters;
 - Explore different solutions, building consensus which helps policy makers approve key laws and regulations;
 - Improve communication among Members and between Members [RTO/Board];
 - Implement the powers and responsibilities of the Members Committee and other committees defined in the OA...
 - Create technically sound solutions.
 - E.g. Improve/evolve markets and increase efficiency

Educate stakeholders on a wide range of issues

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- ...related to markets, operations, public policies and industry matters
- Valuable activity for market participants and regulators
 - Some market elements are complicated, rules have grown enormously,
 - Only a small minority of stakeholders may understand or capture the full market design
- Continuing education improves efficiency in participation, compliance with regulatory objectives, and efficiency in understanding needed change

Explore different solutions, ...

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- Identify problems, discuss solutions;
- Explore different solutions;
- Improve communications;
- All reasonable activities that you would expect would improve operation of market and participants understanding and decision making

But...

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- Chose your aphorism, unfortunately most apply:
- “Murphy’s Law” of Unintended Consequences
- “Easy is the descent into Hell, for it is paved with good intentions.” Milton-[*Paradise Lost, published 1667.*](#)
- “No good deed goes unpunished” (Oscar Wilde or Clare Boothe Luce or ...)
- “Justice delayed is justice denied”, Gladstone or William Penn and indirectly Martin Luther King
- “Be careful what you wish for.”

But...

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- Much of the problem lies with the explicit objective of consensus building and consensus decision making
- This is not a realistic goal in context of electricity markets and is the major flaw in all stakeholder processes.
- Most (not all) decisions addressed by stakeholders and RTOs relate to Pareto “like” efficiency or optima—**No party can benefit without a shift of costs to others—**
- Win/win issues are infrequent, and **often seen as win/lose regardless**

But...

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- Negotiation and development of transfer payments, or related allocation of costs with complex/simultaneous causality is simply not amenable to consensus processes where the underlying real concern of participants is “**who pays?**”
- Similarly, consensus building is not very relevant to issues where there is a “clean question” and a “right” analytic answer.

But...

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- Mixed governance structures make this even worse.
 - Super majority rules create a form of market power
 - Self-interest is all that is required for participation and delay
- The Commission amplifies the problem by conveniently blessing or condemning decisions based on stakeholder process. Worse, also appear to use as delaying tactic where choices are hard.
- RTO's and participants play the same game: “consensus is good when you agree with me”,
- Otherwise stalling is acceptable, maybe the issue will just go away, or parties just develop their litigation positions

But...

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- The net result is that another layer of bureaucracy, delay and expense has been added to an existing slow decision process (and possibly a circular layer)
 - The cost is staggering. At least 1 meeting per day that may engage 100 professionals (plus support staff), plus overheads, plus preparation, etc. at just one RTO.
- Achieving no result maybe perceived as the preferred alternative to creating any uncertainty about exposure to change in cost allocations/responsibility.

We Knew This Would Happen-But...

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- There are over 100 years of state and about 80 years of federal precedent on how “well” consensus works in contested proceedings.
 - Never seemed to be a shortage of state or federal litigation
- There were no real reasons other than the politics of perception for creating these powers in stakeholder processes
- The fundamental issues of who pays and who gets paid have remained unchanged in everyone’s mind and still ultimately go to the Commission and courts

Widespread Frustration

- “Fundamentally, I bear some of the blame for not articulating the story well enough, **but FERC bears most of the blame, and FERC is not doing its job in setting priorities in setting these principles and enforcing these processes to create efficient markets. It is deferring too much to stakeholder processes and bottom-up and consensus agreement. It is a big mistake and it is hurting us more and more and is causing more and more problems. We need leadership at FERC to solve this problem.**” (William Hogan, Jan 7, 2015 FERC Technical Session, emphasis added)

Anything Constructive From Experience?

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- YES—Sort of.
- Once you recognize the non-constructive impact of consensus seeking in these situations and the need for regulatory process regardless, simply move to a stakeholder process with:
 - Well defined timeline-beginning with problem statements
 - RTO as lead designer
 - Education
 - Participant Input with RTO for Solution
 - One or two “cycles” of comment and revision
 - Well defined End: Tariff Submission with all necessary authority held by the RTO
- Looks a lot like PJM Enhanced Liaison Process
- **Set deadlines, allow/but limit debate, move forward**