

also, the strengthened measurement and verification requirements. These proposed changes, among others, will enhance PJM's reliable operation of the grid and economic efficiency, due to the increased information and communications provided, and EPSA therefore is supportive of the individual filing.

I. COMMENTS

EPSA is fully supportive of competitive markets that efficiently and reliably utilize all resources to serve consumers. In that context, EPSA has maintained throughout the development of Order No. 745 that the proposed rule did not adequately explain or support the sweeping change to demand response ("DR") compensation for any one RTO, much less the implementation of a standard pricing element across all ISOs and RTOs. The Commission in this proceeding should have tailored demand response compensation in order to address specific, outlined market barriers where they exist. Instead, Order No. 745 establishes a pricing regime that subsidizes one set of market participants in order to incent those participants, resulting in substantial inequalities that will harm the market and consumers, and will produce rates that are demonstrably unjust and unreasonable. EPSA has explained and supported the insufficiencies of the final rule in numerous pleadings filed in this proceeding, outlining extensive legal, economic, technical and practical market implementation flaws in the proposed rule and the final order.

Most notably, EPSA filed two detailed rehearing requests in response to Order No. 745 that are still pending. The first rehearing request challenges the

Commission's jurisdictional authority to exert authority over retail rates and was jointly filed with other industry sector trade associations, including the National Rural Electric Cooperative Association ("NRECA") and the American Public Power Association ("APPA"). The second rehearing request, filed jointly with several other competitive power associations, outlines a host of additional legal flaws in the Final Rule, including the argument that Order No. 745's finding that a uniform, national rule for DR compensation is necessary to ensure that ISO/RTO rates are just and reasonable is arbitrary, capricious and unsupported by substantial evidence. Additionally, twelve other requests for rehearing and/or clarification were filed in this proceeding, representing eighteen entities and virtually every type of industry stakeholder or market participant. Most rehearing requests question the foundation of the Final Rule itself.

EPSA will not reiterate the arguments here that are included throughout the record in the underlying rulemaking docket. However, as discussed herein, it is of the utmost importance that the Commission act on rehearing before implementation is fully required of the ISOs/RTOs. Beyond the overarching legal and technical flaws in the rule, there are several requests for clarification or rehearing that speak to the RTO's ability to comply with the rule. EPSA supports requests that the Commission act quickly on rehearing, and in fact before further resources are expended on complying with a rule that may well change fundamentally upon full consideration of the multiple requests for rehearing submitted to the Commission. Further, EPSA retains the right to submit additional comments on the PJM or other ISO/RTO compliance filings after all of

the ISO/RTOs have submitted their implementation proposals as it is likely that certain submissions may highlight concerns or approaches that should be addressed in other regions as well.³

A. The PJM Compliance Filing

a. Necessary Changes Addressing Self-Scheduled Demand Reductions

The Final Rule in Order No. 745 specified that DR resources are eligible for LMP-based compensation only when two conditions are met:⁴ (1) the demand resource has the capability to balance supply and demand as an alternative to a generation resource; and, (2) dispatch of that resource is cost-effective as determined by the net benefits test. To conform with these requirements, PJM proposes a number of changes to its Market Rules applicable to participation in the real-time Energy Market by Economic Load Response, which mostly participates in PJM's real-time market today on a "self-scheduled" basis. As explained by PJM, its current rules provide that self-scheduled demand reductions are not dispatched by PJM, and expressly states that the RTO does not consider such resources in determining LMP, and PJM "must schedule and dispatch around those [real-time] reductions."⁵ Therefore, for

³ Three of the six ISO/RTOs requested extensions to submit Order 745 compliance filings, each of which were granted by the Commission. Therefore, ISO New England, MISO and New York ISO are all submitting their filings on August 19, 2011. See Motion for Extension of Time to Submit Compliance Filing of ISO New England Inc., Docket No. RM10-17-000 (filed June 27, 2011); Motion for Extension of Time to Submit Compliance Filing of Midwest Independent Transmission System Operator, Inc., Docket No. RM10-17-000, (filed June 30, 2011); and, Motion for Extension of Time to Submit Compliance Filing of the New York Independent System Operator, Inc., Docket No. RM10-17-000 (filed July 19, 2011).

⁴ Order No. 745 at P 48.

⁵ PJM Compliance Filing at 7.

purposes of Order No. 745, self-scheduled demand reductions under the current PJM market rules are essentially “invisible” to the RTO and not controllable by PJM because they do not submit an offer price, such reductions are not evaluated on economic merit and are not subject to PJM’s dispatch.

Therefore, PJM has proposed revisions in the real-time market to preserve flexibility for DR resources, but still allow sufficient advance notice to PJM to ensure that the eligibility criteria can be satisfied. Under Order No. 745 these load reductions would not otherwise be eligible for full LMP compensation, and PJM also states that the proposed changes will improve PJM’s capability to rely on Economic Demand Response as an operational resource, a “capability unavailable to PJM under a pure self-scheduling regime.” Among other things, the revised rules address bidding requirements for Economic Load Response participants and require bids in by 6:00 p.m. the day before each Operating day, but allow changes in quantity (but not price) up to three hours prior to delivery in real-time. This flexibility approaches the level currently afforded to self-scheduled load reductions, but provides PJM with more operational and dispatch information (within the Security Constrained Economic Dispatch system two-hour “look-ahead” window). In sum, given the changes necessary to comply, PJM will no longer offer LMP-based compensation to Economic Load Response resources that do not submit price offers, do not subject themselves to PJM’s economic dispatch, and that provide only last-minute notice of their reductions.

EPSA strongly supports these rule changes, which should provide overall transparency and reliability benefits to the PJM system in attempting to balance

the increased amounts of DR resources that are anticipated on the system. EPSA asserts the rule changes are reasonable from a compliance standpoint, as they strive to maintain much of the current flexibility for these resources. It is essential that PJM have knowledge and information regarding market participants – just as it does for other resources on the system – and in light of the enhanced compensation available if a resource meets the eligibility criteria. While the requirements are not fully comparable with supply resources, EPSA believes PJM has achieved a reasonable balance between the major tenants of the Order No. 745 requirements and placing tangible parameters around participation in light of potential impacts to the overall system. Finally, there is no other ISO/RTO that compensates self-scheduled DR; therefore, EPSA submits that the PJM changes meet the consistency requirements of Order No. 745.⁶

b. Enhanced Measurement And Verification

As directed by Order No. 745, PJM reviewed and subsequently determined that its current measurement and verification (“M&V”) rules require modification to ensure that customer baselines remain accurate and that the RTO can verify that DR resources have performed.⁷ EPSA supports the proposed M&V changes by PJM, which are a critical underpinning to the integrity and efficient operation of the RTO’s Energy market, particularly in light of the substantial increase in the level of DR that PJM anticipates will be dispatched on

⁶ See PJM Proposal for Compliance Filing in Response to FERC Final Rule on Demand Response Compensation (Docket No. RM10-17-000) at Slide 6, Market Implementation Committee Stakeholder Meeting, May 10, 2011. Available at: <http://www.pjm.com/~media/committees-groups/committees/mic/20110510/20110510-item-08a-mic-pjm-order-745-compliance.ashx>.

⁷ Order No. 745 at P 94.

its system under the increased compensation regime of Order No. 745.⁸ As highlighted by Commissioner LaFleur:

The Final Rule also emphasizes the critical importance of measurement and verification. Demand response resources are not directly measured by a meter in the same way that generation resources are, but it is equally important that they be measured accurately. We must set clear expectations for how demand resources will be measured, how their baselines will be set, and how their performance will be verified, and I believe the Final Rule does that.⁹

PJM outlines the significant reasons that such changes to its Customer Baseline Load (“CBL”) methodology and requirements are needed to ensure accuracy, including that it will not require installation of real-time telemetering capability as a condition of participation in the Energy markets. For effective and economic efficiency in dispatch, PJM therefore must have a “reliable and reasonably accurate understanding of the actual reduction level that can be expected from that dispatch.”¹⁰ Given that Economic Load Response that qualifies under the Order No. 745 criteria will now set the price in both the day-ahead and real-time Energy markets, PJM says the CBL calculation is the primary means for accurately calculating LMP in the event that telemetered data is not available. Further, due to changes wrought by the Final Rule, PJM now

⁸ Of note, see: *Motion to Lodge of the California Independent System Operator Corporation*, “Opinion on Economic Issues Raised by FERC Order 745, Demand Response Compensation in Organized Wholesale Energy Markets,” at 9-11 (Section 4. Phantom Demand Response - ...In this section, we describe why we believe that the FERC order creates the potential for a substantial amount of “phantom” demand response – payments for fictitious reductions in demand that did not exist in the first place.”), Docket No. RM10-17-000 (filed June 17, 2011).

⁹ Statement of Commissioner LaFleur on market-based demand response compensation rule, Docket No. RM10-17-000 (Order No. 745), (March 17, 2011).

¹⁰ PJM Compliance Filing at 24.

expects an influx of larger, more sophisticated end-users whose compensation was previously indexed to PJM's LMP and are now eligible for full LMP; according to PJM, reliable measurement is important for these energy users due to their larger and less predictable loads. Finally, PJM notes that because paying full LMP could more than double the compensation paid to Economic Load Response, the incentive to seek advantages through the CBL rules would be correspondingly doubled.¹¹

The M&V modifications that PJM proposes to meet the Order No. 745 requirements are based on a comprehensive study by KEMA, Inc. with respect to development of accurate baselines.¹² In particular, the most significant problem identified by the report is the inaccuracy of PJM's current methodology as it relates to variable-load customers. Accordingly, this must be remedied in light of the anticipated increase in participation of larger end-users with less predictable loads, and PJM proposes to revise its CBL rules to distinguish between variable and non-variable loads.

EPSA also supports the applicability of the balancing Operating Reserve charges to Economic Load Response (within the 20% bandwidth) for failure to meet PJM's schedule.¹³ While application of these charges for not following dispatch is correct, EPSA suggests that PJM did not go far enough in addressing the potential issues and process surrounding application of this charge, given the

¹¹ Id. at 25.

¹² Id. at 25 and fn 80.

¹³ Id. at 9-10 and 27-28.

potential lack of telemetry for certain DR resources and the 60-day lag time in settlement for DR resources. EPSA requests that the Commission require PJM to consider options for more timely and more accurate application of Operating Reserve charges (and credits) as they apply to DR resource performance. EPSA recommends this be accomplished via the stakeholder process and a subsequent compliance filing due 120 days following acceptance of the PJM Compliance Filing.

c. Net Benefits Test

EPSA has reiterated above its overall objections to the Final Rule, including imposition of a Net Benefits Test, which is a matter pending on rehearing in the underlying rulemaking docket.¹⁴ With specific respect to the PJM Compliance Filing, EPSA notes that PJM's proposal implements a Net Benefits Test price threshold that is calculated on a region-wide basis (rather than a locational basis) in response to the Commission directive to adopt a straightforward, standardized test.¹⁵ Further, PJM and its stakeholders appear to have developed a test with a transparent design in response to requirements of the rule. The PJM Compliance Filing states that the method of calculating the Net Benefits Test threshold price was among the points of agreement that stakeholders uniformly agreed on when considering the PJM Proposal, as well as

¹⁴ See Request for Rehearing of the Competitive Power Supplier Associations at 60-66, Docket No. RM10-17-000 (filed April 14, 2011). (For purposes of the rehearing request, the Competitive Power Supplier Associations includes EPSA, the Electric Power Generation Association ("EPGA"), the Independent Power Producers of New York, Inc. ("IPPNY"), and the New England Power Generators Association, Inc. ("NEPGA").)

¹⁵ Order No. 745 at P 84 (deferring for future consideration a more complicated dynamic determination of the threshold price).

two other comprehensive alternative proposals put forth by two groups of stakeholders in developing a final compliance proposal.¹⁶

While EPSA does not oppose the PJM proposal, EPSA nevertheless notes that the test, as developed in response to the Order No. 745 criteria, has produced a monthly Net Benefits threshold price for each month of the 12-Month Analysis Period that is surprisingly low, relative to the types of resources in the supply stack for dispatch. Essentially, the prices equate to those that would be expected with baseload generation resources.¹⁷ EPSA does not question the implementation but rather points to this very troubling result as it serves to underscore general concerns regarding the price distorting and other potential (including operational and reliability) impacts of adopting such a test.

B. The Commission Should Act On Rehearing Before Requiring Implementation

There are numerous outlying requests for rehearing that should be resolved as quickly as possible as many raise fundamental questions with the Final Rule. Therefore, EPSA respectfully requests that the Commission issue an order on rehearing on all issues as soon as possible to resolve the outlying fundamental and implementation questions concerning Order No. 745.

As noted previously, there were fourteen rehearing and/or clarification requests filed and every aspect of Order No. 745 was brought into question. Those aspects include, but are not limited to: the Commission's lack of jurisdictional authority to set rates for DR compensation; the Final Rule's unduly

¹⁶ PJM Compliance Filing at 3.

¹⁷ Id. at 19-20 and Attachment A.

preferential treatment of DR resources and undue discrimination against generation resources; the determination that the Final Rule is necessary to make ISO/RTO rates just and reasonable; the lack of a determination that any existing ISO/RTO mitigation measures are unjust and unreasonable; the perceived need for a cost-effectiveness condition (i.e., the net benefits test) highlighting that the Final Rule is not the product of reasoned decision-making; adoption of the final rule in the absence of measurement and verification standards capable of preventing manipulation; the departure without adequate explanation from long-standing policy permitting regional variations in market rules and adoption of a uniform, national rule for DR compensation as unjust and unreasonable; and, rejection of the LMP-G alternative that was not supported by substantial evidence. The Commission should not expect market participants to move forward with implementation until these issues are resolved. As both broad, fundamental issues and more narrow definitional issues have been raised, it would not be a wise use of market participants' time and resources to design implementation schemes until these issues – large and small – are resolved. If the Commission does not promptly issue an order on rehearing, the uncertainty will stymie efforts to implement demand response programs compensated in any manner, even those that were already underway long before this proceeding began.

C. EPSA Retains the Right to Further Comment After August 19 Compliance Filings are Submitted, Including Comments on “Behind the Meter” Generation

CAISO, PJM and SPP submitted Order No. 745 compliance filings on July 22, 2011. However ISO-NE, MISO and NYISO received an extension and will not be filing until August 19, 2011.¹⁸ As Order No. 745, at its foundation, seeks to standardize a compensation scheme across all markets, these compliance filings may inform one another. As this standardized pricing element and related requirements are issues of first impression, there may be several proposals, concepts or mechanisms on which EPSA or other market participants wish to draw parallels or highlight for other regions.

An example of such an issue is treatment of “behind the meter” generation as a demand response resource. Based on feedback from EPSA members that have participated in stakeholder discussions across the country on Order No. 745 compliance, there have been varying levels of discussion at each ISO/RTO on this important aspect of DR compensation. In fact, this issue was discussed, without necessary changes adopted, in the PJM stakeholder process to develop the Order No. 745 compliance proposal. Specifically, the PJM Compliance Filing does not address the issue as the RTO is retaining the current rules to compensate load reductions supported by “behind the meter” generation. It should be noted, however, that the Diversified Companies Proposal, one of the

¹⁸ See Notice of Extension of Time [for ISO New England Inc.], Docket No. RM10-17-000 (issued July 8, 2011); Notice of Extension of Time [for Midwest Independent Transmission System Operator, Inc.] Docket No. RM10-17-000, (issued July 11, 2011); and, Notice of Extension of Time [for New York Independent System Operator, Inc.], Docket No. RM10-17-000 (issued July 22, 2011).

comprehensive stakeholder alternatives, included provisions that were considered, but not adopted, proposing that DR supported by “behind the meter generation” would not receive DR credit.¹⁹ This issue raises serious concerns and multiple questions that should be addressed by all regions attempting to implement demand response rules. However, at this time we have only half of the expected compliance submissions. Therefore, EPSC reserves the right to comment on or highlight issues, including but not limited to “behind the meter” generation, that are presented in the basket of August 19, 2011 compliance filings as they relate to or should be addressed in the basket of July 22, 2011 compliance filings. Additionally, EPSC respectfully reserves the right to comment on all of the compliance filings collectively, in a manner that is timely based on the comment date set for the second round of compliance filings.

¹⁹ See PJM Compliance Filing at 3, fn 9. (Referencing the Order No. 745 compliance options matrix, which outlines the PJM Proposal and two alternate stakeholder-sponsored proposals’ design criteria or components, including Design Criteria Issue 14: Treatment of Behind the Meter Generation used to support load reductions. The two comprehensive alternatives to the PJM Proposal were offered by two different stakeholder coalitions, the Diversified Companies Proposal and the Curtailment Service Providers Proposal.)

II. CONCLUSION

Wherefore, EPSA respectfully requests that the Commission consider the comments herein in rendering its decision; and, grant such other relief as may be necessary to protect EPSA's interests.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the comments by via email or postal mail upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., August 12, 2011.



Nancy Bagot, VP Regulatory Affairs