

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**California Independent System
Operator Corporation**

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Docket No. ER11-4100-000

COMMENTS OF THE ELECTRIC POWER SUPPLY ASSOCIATION

Pursuant to Rules 212 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. §§ 385.212 & 385.214 (2011), the Electric Power Supply Association (“EPSA”)¹ respectfully submits these comments in the above-captioned proceeding. On July 22, 2011, the California Independent System Operator Corporation (“CAISO”) filed proposed tariff amendments in compliance with the Commission’s order on demand response compensation, Order No. 745.² CAISO’s Compliance Filing raises important issues and EPSA agrees that those issues must be resolved before the ISO is expected to comply with Order No. 745.

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

¹ EPSA submitted a doc-less motion to intervene in this proceeding on July 25, 2011. EPSA is the national trade association representing competitive power suppliers, including generators and marketers. Competitive suppliers, which collectively account for 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities. EPSA seeks to bring the benefits of competition to all power customers. The comments contained in this filing represent the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.

² *California Independent System Operator Corporation’s Order No. 745 Compliance Filing*, Docket No. ER11-4100-000 (July 22, 2011). (“CAISO Compliance Filing”); *Order No. 745: Demand Response in Organized Wholesale Energy Markets*, 134 FERC ¶ 61,187, Docket No. RM10-17-000 (March 15, 2011).

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 this 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 ISO's ability to comply with the rule. CAISO's Compliance filing, specifically, asks the Commission to act on rehearing in order to clarify that "Order No. 745 does not require the elimination of the default load adjustment and thereby mandate double payments for demand response reductions."³ EPSA supports both the default load adjustment in California and the request 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 motions for rehearing submitted to the Commission. Further, EPSA retains the right to submit additional comments on CAISO 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.⁴

³ CAISO Compliance Filing, p. 4.

⁴ 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,

A. The CAISO Default Load Adjustment Is a Critical Element of That Market's Demand Response Compensation Mechanism

CAISO's main concern in its compliance filing is the retention of its current default load adjustment mechanism. In the July 2010 order that ultimately accepted this tariff provision, the default load adjustment mechanism is described:

In order to prevent the uninstructed imbalance energy payment and eliminate the double payment discrepancy, the CAISO proposes to add the Proxy Demand Resource Energy Measurement to the meter quantity of the load serving entity in the CAISO's uninstructed imbalance energy pre-calculation, resulting in an "adjusted" meter demand value.⁵

CAISO states concern that although the Commission accepted the default load adjustment in 2010, Order No. 745 nullifies the 2010 order. As explained by CAISO, the default load adjustment is a critical element of the extensive stakeholder process and settlement which led to the implementation of the ISO's proxy demand resource and reliability resource products, the two DR products to which Order 745 applies. The CAISO notes,

Retention of the default load adjustment as part of the ISO's demand response compensation rules is consistent with or superior to the requirements of Order No. 745 due to this critical importance to the provision of demand response in California. Requiring elimination of the default load adjustment would substantially impede the development of additional proxy demand resources and the implementation of reliability demand response resources pursuant to the settlement approved by the CPUC....If the ISO needs to...eliminate the default load adjustment and allow for wholesale double payments, the investor-owned utilities may be unable to implement their own demand response programs within the time frames contemplated due to regulatory uncertainty and the

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).

⁵ 132 FERC ¶ 61,045 at P 25.

time it would take for the ISO to modify its existing systems. Specifically, the terms of the settlement may be violated and the settlement may terminate unless the parties are able to renegotiate a new settlement....If the settlement were to terminate, that could substantially delay or even prevent emergency demand response resources from participating directly in the ISO market.⁶

As noted by CAISO, its proxy and reliability demand response resources were submitted to the Commission to comply with Order 719, which should not be at odds with the requirements or goals of Order 745 nor should it cause an ISO/RTO to fall out of compliance with Order 719.

EPSA agrees that the Commission should confirm CAISO's ability to retain its default load adjustment. Indeed, CAISO is correct that the payment of full LMP to demand responders without an alteration for the generation and transmission components of the retail rate would result in "double payments" and "have devastating practical consequences."⁷ Further, EPSA agrees that if the Commission will not grant clarification or rehearing on this broad point, it should find that CAISO's "default load adjustment is 'consistent with or superior to the requirements of Order No. 745.'"⁸

B. The Commission Should Act on Rehearing Before Requiring Implementation

⁶ CAISO Compliance Filing, p 13, citations omitted.

⁷ Ibid. Also, EPSA (and other parties) have raised this point at length in the underlying rulemaking proceeding. See, e.g., Comments of the Electric Power Supply Association, pgs. 19-24, Docket No. RM10-17-000 (filed May 12, 2010) ("EPSA Initial Comments"); Reply Comments of the Electric Power Supply Association, pgs. 36-40 and fn. 70 (list of commenters that supported including an offset for avoided retail costs), Docket No. RM10-17-000 (filed June 30, 2010) ("EPSA Reply Comments"); and, Request for Rehearing of the Competitive Power Supplier Associations, pgs. 77-81, Docket No. RM10-17-001 (filed April 14, 2011).

⁸ CAISO Compliance Filing, p. 12, citing Order No. 745 at P 4, fn 7.

CAISO's Compliance Filing states that the ISO filed a request for clarification, or in the alternative rehearing, of Order No. 745.⁹ In fact, there are numerous outlying requests for rehearing that should be resolved as quickly as possible as many raise fundamental questions with the Final Rule. A main issue in the CAISO's request for rehearing was retention of its default load adjustment, which may be the clearest concrete example of why rehearing and clarification requests should be addressed before compliance is required or implemented. EPSA respectfully agrees with CAISO and requests that the Commission issue an order on rehearing on all issues before it as soon as possible to resolve the outlying fundamental and implementation questions concerning Order No. 745.

As noted previously, there were fourteen requests for rehearing and/or clarification 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 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) highlights 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

⁹ CAISO Compliance Filing, p. 4.

uniform, national rule for DR compensation is 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.

As CAISO notes, the answer it receives on its rehearing request will make the difference as to how and when demand response progresses in that market. As both the CAISO rehearing request and the CAISO compliance filing explain, the proxy demand resource (PRD) program was pending before the Commission issued the NOPR that eventually led to Order No. 745. In fact, the NOPR pointed to the CAISO's demand response program as an exemplary compensation scheme because it pays full LMP to demand response resources. Note that the program had not yet started at the time of the NOPR's issuance,¹⁰ and now stands threatened as a result of the issuance of the Final Rule. 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

¹⁰ See Comments of the Electric Power Supply Association, p. 20, Docket No. RM10-17-000 (filed May 12, 2010) (the “EPSA Initial Comments”).

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, 2011.¹¹ 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. 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, EPSA 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, EPSA respectfully reserves the right to comment

¹¹ 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).

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.

II. CONCLUSION

Wherefore, EPSA respectfully requests that the Commission grant its motion for leave to intervene in this proceeding and consider the comments herein.

Respectfully submitted,



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August 12, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the comments via email 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