

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

ISO New England, Inc.))))))	Docket Nos. ER11-4336-000 ER11-4336-001 ER11-4336-002
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COMMENTS OF THE ELECTRIC POWER SUPPLY ASSOCIATION

Pursuant to Rules 212 and 214 of the Federal Energy Regulatory Commission's ("FERC" or the "Commission") Rules of Practice and Procedure, 18 C.F.R. § § 385.212 and 385.214 (2011), the Electric Power Supply Association ("EPSA")¹ respectfully submits these comments in the above-captioned proceeding. On August 19, the ISO New England, Inc. ("ISO-NE") filed proposed tariff amendments in compliance with the Commission's Final Rule on demand response compensation, Order No. 745.² ISO-NE proposes a two-stage implementation process that would put in place an initial set of demand response ("DR") compensation rules on June 1, 2012 (the "Transition Period Rules") to be replaced by a second set of rules that would fully integrate DR resources into the energy market effective June 1, 2015 (the "Fully Integrated

¹ 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 view of any particular member with respect to any specific issue. EPSA intervened in this proceeding on September 2, 2011.

² *ISO New England, Inc.'s Order No. 745 Compliance Filing*, Docket No. ER11-41-000 (July 22, 2011). ("ISO-NE Compliance Filing"); *Order No. 745: Demand Response in Organized Wholesale Energy Markets*, 134 FERC ¶ 61,187, Docket No. RM10-17-000 (March 15, 2011).

Rules”). While EPSA’s overall concerns remain unchanged regarding the outcome of the Final Rule as noted below, ISO-NE addresses important issues within the context of its filing with respect to the overall manner in which DR resources will participate in the ISO-NE energy market. EPSA appreciates the efforts of the ISO-NE to implement the directives of the Final Rule, and supports elements of the ISO-NE Compliance Filing, such as the prohibition on self-scheduling of demand reductions and improvements to measurement and verification requirements. EPSA also supports the stakeholder effort that is underway that will address further requirements and obligations of demand response resources in both the energy and capacity markets. However, EPSA has concerns with specific respect to ISO-NE’s treatment of behind the meter generation and an element of the net benefits test as discussed herein.

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 proposed demand response (“DR”) compensation for any one RTO, much less the implementation of a standard pricing element across all independent system operators (“ISOs”) and regional transmission operators (“RTOs”). The Commission in this underlying rulemaking 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.³ 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

³ See Comments of the Electric Power Supply Association (May 12, 2010); Reply Comments of the Electric Power Supply Association (June 30, 2010); Post-Conference Comments of the Electric Power Supply Association (October 13, 2010); Joint Request for Rehearing of the Electric Power Supply Association, the American Public Power Association, the Electric Power Generation Association and the National Rural Electric Cooperative Association (collectively, the "Joint Petitioners") (April 14, 2011); and, Request for Rehearing of the Competitive Power Supplier Associations (which includes the Electric Power Supply Association, the Electric Power Generation Association, the Independent Power Producers of New York, Inc. and the New England Power Generators Association, Inc.) (April 14, 2011), Docket Nos. RM10-17-000 and RM10-17-001.

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 ISO'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. EPSA is also filing one comprehensive set of comments on all the Order No. 745 ISO/RTO compliance filings, now that all of the ISO/RTOs have submitted their implementation proposals to ensure that all relevant concerns raised in this process are highlighted and addressed sufficiently by all regions.⁴

⁴ CAISO, PJM and SPP submitted their respective Order No. 745 compliance filings on July 19, 2011. The ISO New England, MISO and New York ISO submitted 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).

A. The ISO-NE Compliance Filing

a. Treatment of Behind-the-Meter Generation

As noted above, EPSA is filing a comprehensive set of comments on all the Order No. 745 ISO/RTO compliance filings. Because Order No. 745, at its foundation, seeks to standardize a compensation scheme across all the ISO/RTO energy markets, this pricing element and related requirements are issues of first impression. As such, there are several proposals, concepts or mechanisms on which EPSA wishes to draw parallels or highlight for other regions. An example of such an issue is treatment of behind the meter (“BTM”) generation as a DR resource in the energy market. 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.

ISO-NE’s stakeholder process included robust consideration of this issue, and the ISO-NE Compliance Filing includes provisions that would permit behind the meter generation to qualify as Order No. 745 demand response, which would inappropriately pay full LMP to metered load reductions that do not reflect reduced consumption and instead merely reflect customer self-provision of their own continued consumption.⁵ In addition to the basic belief that the ISO-NE treatment of behind the meter generation is simply inconsistent with the ordering language, EPSA has serious concerns regarding the BTM generation issues and

⁵ ISO-NE Compliance Filing, Attachment 4 (Clean, Final Tariff Revision), Section III.8 at 91. Also, see Sections III.E.1 and III.E.2 at 95-98 (Requiring only minimal formal requirements including only basic registration, auditing, and telemetry).

believes there are multiple questions that should be addressed by ISO-NE in attempting to implement these rules. Paying full LMP to BTM generation inappropriately provides payment to behind the meter generator energy market participation for energy which is not sold as these entities are simply self-providing their own consumption. This outcome results in a double payment since the metered load reduction is paid the LMP without any adjustment (increase) in the load obligation (metered demand) to reflect that sale. Under the proposed compliance, a customer can self-supply its own energy through on site generation, *not* decrease consumption, and get paid the LMP for megawatts of *generation* that only the customer receiving the payment gets to consume.⁶

This is seemingly inconsistent with the Order No. 745 ordering language defining demand response as a *reduction* in consumption (and authorizing full LMP payment only for *reduced consumption*).⁷ Additionally, EPSA notes the conclusion of the ISO-NE Internal Market Monitor that BTM generators “do not face barriers to participate in organized wholesale energy markets and...should not be treated as demand response.”⁸ Treating self-supplied consumption as

⁶ Every dispatchable wholesale generator provides a comparable situation with vastly different wholesale tariff compensation. Specifically, wholesale generators consume electricity to run pumps, motors, control systems, monitoring equipment and other miscellaneous equipment (“station service load”). This consumption occurs while the facility is offline awaiting dispatch. When dispatched by the RTO, the metered station service load previously withdrawn from the grid is now self-supplied by a portion of the onsite generation. Unlike the ISO-NE proposed treatment of behind the meter generation, however, the grid connected generator is only paid for the generation net of station service load, its net metered injections into the grid. The generation offsetting the station service load is not compensated as energy by other customers since it is consumed by the generator itself.

⁷ Order No. 745 at P 2 and also see fn 2: “Demand response means a **reduction in the consumption** of electric energy by customers **from their expected consumption** in response to an increase in the price of electric energy or to incentive payments **designed to induce lower consumption of electric energy.**” (emphasis added)

DR is inconsistent with the ordering language, creates inefficiency and inequitable rates and therefore must be addressed directly in these DR compensation proceedings. EPSA will raise such issues in general comments that cover all the RTO proceedings as well as the underlying rulemaking proceeding.

b. Prohibition On Self-Scheduling Of Demand Reductions

The Final Rule in Order No. 745 specified that demand resources are eligible for LMP-based compensation only when two conditions are met: (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.⁹ As Henry Yoshimura, Director of Demand Resource Strategy for ISO-NE, states in his testimony “[s]elf-scheduling does not comply with Order No. 745 and, if allowed, would create potential gaming concerns.”¹⁰ Accordingly, the ISO-NE’s proposed Market Rules do not permit the self-scheduling of demand reductions in the day-ahead or real-time energy markets.

Mr. Yoshimura’s testimony further outlines the three reasons that self-scheduling does not comply with Order No. 745, including that self-scheduling

⁸ Memo of the ISO-NE Internal Market Monitor to the NEPOOL Markets Committee, “Opinion on behind-the-meter generation in the proposed Order 745 Transition Rules,” dated May 26, 2011. Available at: http://www.iso-ne.com/committees/comm_wkgrps/mrktts_comm/mrktts/mtrls/2011/jun22011/a3_imm_memo_05_26_11.doc

⁹ Order No. 745 at P 48.

¹⁰ Testimony of Henry Y. Yoshimura, Attachment 5 to ISO-NE Compliance Filing at 41, Lines 5-6 (“Yoshimura Testimony”).

would not comply with the consumer net benefits test because the resource “essentially is offered at a \$0/MWh price in the Real-Time Energy Market,” and since the Demand Reduction Threshold Price will always be greater than \$0/MWh, a \$0/MWh offer price would violate the net benefits test. Second, self-scheduling would not facilitate the balancing of supply and demand. Mr. Yoshimura explains that:

The balancing of supply and demand is achieved when each energy resource follows Dispatch Instructions based on bids/offers submitted to the ISO and on a least-cost, security-constrained dispatch and commitment algorithm administered by the ISO. Self scheduling, by definition, occurs outside of ISO resource commitment and dispatch, and therefore does not contribute to the balancing of supply and demand. Rather, self-scheduling requires the ISO to readjust the dispatch of other resources to rebalance the system.¹¹

Third, self-scheduling would allow a Market Participant “to more easily game its Demand Response Baseline. Whenever the demand resource’s real-time demand happened to be lower than its calculated baseline, the Market Participant could ‘self-schedule’ a demand reduction and be paid for essentially normally lower consumption that is not in response to higher Real-Time LMPs.”¹²

Further, Mr. Yoshimura states the following:

[T]here is no compelling reason to permit self-scheduling of demand reductions given the flexibility afforded Market Participants under the market rules proposed by the ISO. Specifically, the market design provides opportunities for demand response providers to update their Real-Time Energy Market offers after the close of the Day-Ahead Energy Market, and to re-declare the available quantities of demand response for each hour during the Operating Day.¹³

¹¹ Id. at 41-42, Lines 29-31 and 1-5.

¹² Id. at 42, Lines 7-12.

¹³ Id. at 41, Lines 18-23.

Given these reasons, ISO-NE proposed tariff rules necessarily preclude self-scheduled demand resources from the Order No. 745 compensation because they do not meet the specified conditions under the Final Rule. Therefore, EPSA strongly supports the prohibition of self-scheduling of demand resources seeking Order 745 compensation under ISO-NE tariff provisions. EPSA asserts that this aspect of the tariff provisions are reasonable from a compliance standpoint, as they strive to provide flexibility for these DR resources, while ensuring that ISO-NE has essential knowledge and information regarding DR participants – just as it does for other resources on the system – and in light of the enhanced compensation available if a DR resource meets the eligibility criteria. ISO-NE’s decision to not permit self-scheduling should be accepted by the Commission because it conforms to the requirements of Order No. 745.

c. Net Benefits Test

EPSA appreciates ISO-NE’s efforts to create a reasonable methodology for establishing its net benefits test and threshold price level (“Demand Reduction Threshold Price”). However, EPSA is concerned the ISO’s inclusion of the minimum interruption duration bid parameter requiring bids greater than an hour is inconsistent with the requirements of Order No. 745 and should not be approved, or if it were approved, each hour of energy market compensation within the minimum interruption bid parameter must be evaluated separately and require that the hour’s LMP exceeds the Demand Reduction Threshold Price.¹⁴

¹⁴ ISO-NE Compliance Filing at pg. 202, see Section III.E.3.2. (for the Transition Period Rules).

Specifically, Order No. 745 only authorizes full LMP payments where the demand resource is providing balancing service and where the net benefits test (threshold price test) is satisfied and the related costs of the DR payments are allocated to the energy market purchasers. ISO-NE has developed its threshold prices based on independent hourly load reductions and these threshold prices do not consider multiple hour contiguous load reduction payments (potentially spanning hours with different marginal generation). Since the threshold price level is computed based on independent hourly load reductions, either: (1) the scheduling of DR must assure the LMP in all hours of the minimum interruption duration exceed the threshold price, (2) the full LMP payment must be limited to the hours in which the LMP exceeds the threshold price (regardless of reduced consumption hours), or (3) the minimum interruption bid parameter should not be included as compliance. By virtue of the minimum interruption duration bid parameter, the ISO would pay full LMP in all hours in which the DR resource was scheduled, including hours where the net benefits threshold price was not met. In addition to not satisfying the net benefits test condition under Order 745, the ISO-NE proposed tariff language would allocate the costs of DR payments in each hour to the Real Time Load Obligations in each hour. If one of the above changes is not required of ISO-NE, the ISO-NE tariff could allocate DR payment costs to load in an hour in which not only is there inadequate, or no, LMP savings to justify the payment, but there is simply no evaluation of whether savings would be expected under the Commission ordered net benefits test.¹⁵ Such an

¹⁵ While Order 745 acknowledges that its crude form of threshold price determination can end up paying load reductions the full LMP where the cost of the full LMP payments exceeds the

outcome is inefficient, inequitable, uneconomic and contrary to the conditions specified by Order No. 745.

d. Enhanced Measurement And Verification

As mandated by Order No. 745, ISO-NE evaluated and subsequently determined that its existing measurement and verification (“M&V”) rules require certain limited modifications to ensure that customer baselines remain accurate and that the ISO can verify that DR resources have performed.¹⁶ EPSA supports the proposed M&V changes by ISO-NE, which are a critical underpinning to the integrity and efficient operation of the ISO’s Energy market, particularly in light of the potential increase in the level of DR that ISO-NE may dispatch on its system under the increased compensation regime of Order No. 745.¹⁷ 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.¹⁸

LMP savings to load, this error is based on application of an imprecise net benefits test, not the absence of application of the net benefits test to each hour.

¹⁶ Order No. 745 at P 94.

¹⁷ 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).

¹⁸ Statement of Commissioner LaFleur on market-based demand response compensation rule, Docket No. RM10-17-000 (Order No. 745), (March 17, 2011).

Specifically, to assist in its evaluation, ISO-NE retained KEMA Inc. (“KEMA”) to review the existing measurement and verification requirements and recommend a baseline methodology to ensure baselines (and associated demand reduction calculations) remain accurate. Overall, the ISO review and KEMA analysis determined that the ISO-NE’s current baseline methodology, combined with a symmetrical baseline adjustment compares favorably to alternative methodologies in terms of accuracy, bias and variability.¹⁹ Given that, ISO-NE proposes to use the existing methodology with certain limited changes. Importantly, in order for a demand resource to be eligible to provide a demand reduction, at least three of the last 10 days of the resource’s meter data must reflect days under normal operating conditions during which the resource did not provide demand reductions (“3 of Last 10 Days” methodology). Combined with this, ISO-NE proposes: (1) utilizing a symmetric baseline adjustment instead of the current asymmetric baseline adjustment; (2) implementing a method to reduce baseline bias by requiring that the calculated baselines be periodically refreshed with contemporary meter data; and, (3) increasing the number of days meter data are needed to establish an initial Demand Response Baseline for a new DR resource (i.e., 10 continuous days).

ISO-NE notes that there was preference expressed for the “3 of Last 10 Days” methodology in the stakeholder process, including by DR providers, because it is more transparent and allows for easier management of demand

¹⁹ See Yoshimura Testimony at 50.

resources than alternatives that use a bidding threshold price.²⁰ Further, EPSC supports the ISO requirement that the calculated baselines be periodically refreshed for accuracy. The KEMA analysis reflects that this is critical; as the net benefit test will result in Threshold Prices in the \$30 to \$60/MWh range, “if a Market Participant submits Demand Reduction Offers persistently at the Demand Reduction Threshold Price, these offers would clear virtually every day of the year.” Accordingly, these changes are appropriate to meet the requirements of Order No. 745 and are critical to ensure economic efficiency in dispatch.

e. ISO Plans to Apply Comparable Obligations to DR in the Capacity Market

Finally, the ISO-NE Compliance Filing states that the ISO-NE and stakeholders have identified a number of additional demand response related market design changes precipitated by the full integration of demand response into the energy market. Given that these changes would occur in parts of the tariff beyond the energy market, they are not required for this compliance filing and are expected to be reviewed and addressed in the near future. These issues involve changes to the Forward Capacity Market (“FCM”) rules, including changes to energy market obligations applicable to DR with Capacity Supply Obligations.²¹ Among other things, the stakeholder discussions will consider a range of issues to apply more comparable obligations and make the FCM rules consistent with the proposed energy market rules, including but not limited to, DR qualification, meter requirements, baseline and performance calculations and

²⁰ ISO-NE Compliance Filing at 10.

²¹ ISO-NE Compliance Filing at 11-12.

other dispatch requirements. ISO-NE indicates that a tariff change filing is targeted for January 2012, with a proposed effective date of April 1, 2012, in time for application in the Forward Capacity Auction for the 2015/2016 Capacity Commitment Period. EPSA supports the efforts of the ISO to integrate DR on a comparable basis into all of its markets and looks forward to the opportunity to comment on a future filing on these related capacity market changes in early 2012.

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 undue 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.

II. CONCLUSION

Wherefore, EPSA respectfully requests that the Commission consider the comments herein in rendering its decision in this proceeding.

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., September 12, 2011.



Nancy Bagot, VP Regulatory Affairs