

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

<b>New York Independent System Operator Corporation</b>	) ) ) )	<b>Docket No. ER11-4338-000</b>
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**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”)<sup>1</sup> respectfully submits these comments in the above-captioned proceeding. On August 19, 2011, the New York System Operator Corporation (“NYISO”) filed proposed tariff amendments in compliance with the Commission’s order on demand response compensation, Order No. 745.<sup>2</sup> NYISO’s Compliance Filing has several elements EPSA supports given the ISO’s measured implementation approach which recognizes the Order No. 745 issues that need to be resolved.

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<sup>1</sup> EPSA submitted a doc-less motion to intervene in this proceeding on September 7, 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.

<sup>2</sup> *New York Independent System Operator Corporation’s Order No. 745 Compliance Filing*, Docket No. ER11-4338-000 (August 19, 2011). (“NYISO Compliance Filing”); *Order No. 745: Demand Response in Organized Wholesale Energy Markets*, 134 FERC ¶ 61,187, Docket No. RM10-17-000 (March 15, 2011).

## 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 underlying rulemaking proceeding should have modified 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 documented 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.<sup>3</sup>

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<sup>3</sup> 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.

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. Commission action will prevent further resources being expended on complying with a rule that may well change fundamentally upon full consideration of the multiple motions 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 today 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.<sup>4</sup>

## **A. The NYISO Compliance Filing**

### **a. Necessary Changes Addressing Net Benefits Test**

The Final Rule in Order No. 745 directed RTOs and ISOs to develop a method for determining a threshold price at which Commission-defined net benefits would occur. The NYISO approach to the net benefits test seeks to meet the Commission Order by: (1) developing a representative supply curve for each month based on the previous year's supply curve; (2) finding the "net benefits threshold price" for each month, based on the historical data; (3) updating the data for significant changes in resource availability and fuel prices; and, (4) posting the result and applying the updated threshold in the NYISO's bidding and scheduling processes for the next calendar month. The NYISO proposed methodology contains nine steps for establishing a monthly threshold price that sets a floor for DR bids to be accepted in the day-ahead market for the NYISO's unit dispatch process. The NYISO methodology details how adjustments were needed so that the threshold price would be meaningful and could be recalculated to account for significant market and price changes.

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<sup>4</sup> CAISO, PJM and SPP filed on July 19, 2011. The 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).

EPSA supports the NYISO methodology and proposed tariff changes based on the Commission directives as they should provide overall transparency and reliability maintenance to the NYISO system in attempting to balance the anticipated increased amounts of DR system resources. 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 NYISO 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 NYISO has attempted to achieve 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.

#### **b. Cost Allocation**

The NYISO does not propose extensive changes to its existing tariff to allocate the costs for the Day-Ahead Demand Reduction Program (“DADRP”), concluding that the current approach appropriately allocates costs to those that benefit from demand reduction, in accordance with Order No. 745.<sup>5</sup> However, the NYISO by listening to market participants as part of its stakeholder process identified appropriate changes which could be made to improve the cost allocation methodology.

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<sup>5</sup> Order No. 745 at P 102.

Input from stakeholders noted that the current approach did not address how costs should be allocated when multiple interfaces are constrained. As a result, the NYISO reviewed the current approach and amended Attachment R by adding four additional coefficients. The proposed tariff change improves the NYISO's ability to allocate costs to the beneficiaries of the DR when more than one interface is constrained, more accurately reflecting impacts of congestion on the NYISO system congestion. EPSA supports this change since it will improve the existing allocation of costs of DR scheduled in the day-ahead market.

### **c. Enhanced Measurement And Verification**

As directed by Order No. 745, NYISO 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.<sup>6</sup> Because the NYISO does not have direct access to real-time load data for DR resources, the NYISO measures actual reductions in demand by referencing an estimated baseline. While the NYISO was developing its proposal and reviewing the method for calculating a demand response resource's baseline load ("CBL"), it determined the CBL needs to be adjusted. This review revealed a need for enhancements to the NYISO measurement and verification capabilities.

EPSA supports the proposed M&V changes by NYISO, which are a critical underpinning to the integrity and efficient operation of the ISO's energy market, particularly in light of the increase in the level of DR that the NYISO anticipates

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<sup>6</sup> Order No. 745 at P 94.

will be dispatched on its system under the increased compensation regime of Order No. 745. As highlighted by Commissioner LaFleur in Order No. 745:

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.<sup>7</sup>

The NYISO proposal provides the reasoning that supports the changes to the CBL methodology and requirements that adjust for the increased frequency of scheduling DR resources. For effective and economic efficiency in dispatch, the NYISO must have a reliable and reasonably accurate understanding of the actual reduction level that can be expected from that dispatch. The NYISO recognized that increased DR scheduling could lead to degradation of the CBL over time and caused the ISO to explore alternative approaches. The NYISO proposes to amend its tariff and now use Economic Customer Baseline Load (“ECBL”) with distinct procedures to appropriately account for weekend and weekdays. In addition, the NYISO proposes changes that will enable the ISO to effectively verify processes associated with implementation and audit those processes. The verification and audits will ensure accuracy of the provision of DR by the ISO by obtaining DR providers’ metered load data and data used in making their ECBL calculations. Importantly, the NYISO proposes to change its tariff to ensure that “only verified Demand Reductions are eligible for payment.” EPSC supports that market participants should only be compensated for

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<sup>7</sup> Statement of Commissioner LaFleur on market-based demand response compensation rule, Docket No. RM10-17-000 (Order No. 745), (March 17, 2011).

measurable and verified power system benefits and DR providers should not be exceptions.

**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 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.

Respectfully submitted,



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September 9, 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., September 9, 2011.

A handwritten signature in black ink, appearing to read "N. Bagot", written in a cursive style.

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Nancy Bagot, VP Regulatory Affairs