

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

**Demand Response Compensation in Organized
Wholesale Energy Markets**

Docket No. RM10-17-000

**OPENING REMARKS OF THE NEW YORK STATE
CONSUMER PROTECTION BOARD
AT THE SEPTEMBER 13, 2010 TECHNICAL CONFERENCE
(by Saul A. Rigberg)**

Good morning everyone. I would like to thank the Commissioners for their active interest in this important issue and FERC Staff (especially Caroline Daly) for organizing this conference and for inviting the New York State Consumer Protection Board to participate.

Let me state at the outset that the New York CPB supports paying DR resources full LMP, but **only** for those hours when net benefits to customers are positive (i.e., reduced energy prices exceed costs of DR).

To set my remarks in context, I would like to say a few words about the CPB. The NYSCPB is an agency in the Executive Branch of New York State government statutorily charged with "... representing the interests of consumers of the state before federal, state and local administrative and regulatory agencies."¹ Further, pursuant to Executive Order No. 45, the NYSCPB is authorized to:

Act as an advocate before other state and federal entities by:

- (a) representing the interests of consumers in proceedings of federal, state and local administrative and

¹ New York Executive Law § 553(2)(d).

regulatory agencies where the State Director deems the proceeding to affect the interest of consumers.

The NYSCPБ has also been designated by the New York State Independent System Operator, Inc. ("NYISO") as the "Statewide Consumer Advocate," representing the interests of the State's residential, small business and farm electricity users in the NYISO governance process. The New York CPB is a strong supporter of organized markets and has participated in the NYISO's governance process as a voting stakeholder since the inception of the organization in the late 1990's. We have also made numerous filings with the Commission.

Recently, the CPB spearheaded a successful effort to convince the NYISO Board and CEO to designate a senior level manager as the liaison to the End-Use Sector. As you know, compared to the other sectors, especially the generator sector, the End-Use Sector has insufficient resources to attend the 100s of working group meetings held annually. The consumer liaison will advise members of the End-Use Sector about issues discussed at the working groups that would have a significant impact on end-use consumers. The liaison will also make available NYISO staff, upon request, to explain issues to the End-Use Sector.

I have three reactions to the comments of the previous speakers.

First, the New York CPB largely agrees with the comments of Mr. Keene, but with one major exception. We think it would be a huge mistake for the Commission to allow each organized market to develop its own unique net benefits test. PJM, ISO-New England and the NYISO have been struggling to eliminate seams that cause inefficient operations and higher costs for almost a decade. The last thing we need is another seam.

Second, Dr. Ethier spoke about the importance of economic efficiency. Yes, the New York CPB agrees that economic efficiency is a critical aspiration. But, sometimes sound public policy requires a less than optimally efficient economic approach. One example of this are retail subsidies for low-income utility customers. Many members of the NYISO's End-Use and Transmission Owners Sectors have urged the NYISO staff to recognize that the most economic efficient choice may not be the one that provides the most benefits to consumers and society at large. Sometimes the different views are caused by a narrow emphasis on short-term profits versus a long-term appreciation of necessary societal changes. We have recommended to the NYISO Board that the mission statement should be amended to explicitly acknowledge the importance of consumer interests.

Third, Mr. Newton suggested that if full LMP were paid to DR providers, they would be encouraged to game the system by turning on dirty behind-the-meter generators. I don't see how this is a flaw inherent in one particular payment method. DR providers can do this no matter how they are compensated.

As I stated at the outset of my remarks, the New York CPB believes that payment of full LMP to DR resources should apply to all hours *when the net benefit to customers is positive*. The net benefit test should be simple. That is, DR provides net benefits to customers as long as they reduce energy costs (through lower energy prices) by an amount that exceeds the costs of DR.

Question 2 in the Supplemental NOPR asked whether the benefits associated with DR should only include lower market-clearing prices or should they also include consideration of operational benefits such as lower reserve requirements or societal benefits. Reducing peak load and flattening the load shape decreases the amount of greenhouse gases that are produced and emitted into the atmosphere. This is a positive benefit as is the improved health

that sometimes results among people living downwind of peaking units. From another perspective, we can look at the myth of cheap coal. The coal industry receives huge subsidies in the form of inadequate mine safety regulations and lax government enforcement. Miners and surrounding communities pay for these subsidies. The devastating impact on people and communities of mountain top removal is another example of shifting the true costs of coal away from the prices paid by purchasers. Granting operating permits to coal-fired generators is yet another subsidy shifting costs to the environment for eventual payment by all.

So, while I recognize the existence of a significant amount of “externalities,” I think considering operational benefits would overly complicate development and use of the net benefits test. Similarly, looking at question 5, I would not include costs incurred by DR providers and load serving entities. Simple is better. And, in a way, the simple net benefits test we prefer is a compromise position between recognizing all operational benefits and costs incurred, on the one hand, and paying DR providers LMP minus the retail rate, on the other hand.

Once again, thank you for this opportunity to share the thoughts of the New York CPB on this important topic.