

146 FERC ¶ 61,139  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;  
Philip D. Moeller, John R. Norris,  
and Tony Clark.

Demand Response Supporters

Docket No. EL13-74-000

v.

New York Independent System Operator, Inc.

ORDER DENYING MOTION FOR AN EXTENSION OF TIME

(Issued February 28, 2014)

1. On November 22, 2013, the Commission issued an order<sup>1</sup> granting, in part, and denying, in part, the complaint (Complaint) of Demand Response Supporters<sup>2</sup> against the New York Independent System Operator, Inc. (NYISO), which alleged that NYISO's tariffs discriminate against demand response facilitated by behind-the-meter generation,<sup>3</sup> in violation of the Federal Power Act, Order No. 745,<sup>4</sup> and other Commission orders and regulations. In the November 22, 2013 Order, the Commission directed NYISO to file within 180 days, proposed tariff provisions that will allow resources providing demand response facilitated by behind-the-meter generation to participate in NYISO's Day Ahead

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<sup>1</sup> *Demand Response Supporters v. New York Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,162 (2013) (November 22, 2013 Order).

<sup>2</sup> Demand Response Supporters consist of EnerNOC, Inc.; Viridity, Inc.; Walmart Stores, Inc.; Comverge, Inc.; and EnergyConnect, a Johnson Controls Company (Complainants).

<sup>3</sup> "Behind-the-meter" generation refers to a generator located behind the retail delivery point that can directly serve the host customer's electrical demand in lieu of or in addition to electricity the customer takes through the NYISO grid.

<sup>4</sup> *Demand Response Compensation in Organized Wholesale Energy Markets*, Order No. 745, FERC Stats. & Regs. ¶ 31,322, *order on reh'g and clarification*, Order No. 745-A, 137 FERC ¶ 61,215 (2011), *reh'g denied*, Order No. 745-B, 138 FERC ¶ 61,148 (2012).

Demand Response Program (DADRP) on a comparable basis with all other demand response resources. On December 13, 2013, NYISO filed a motion for extension of time to comply with the November 22, 2013 Order to 150 days after the Commission issues an order on NYISO's August 14, 2013 Order No. 745 compliance filing in Docket No. ER11-4338-002. In this order, the Commission denies NYISO's motion for an extension of time.

### **Background**

2. In its initial August 19, 2011 Order No. 745 compliance filing in Docket No. ER11-4338-000, NYISO proposed revisions to its DADRP tariff provisions. These proposed provisions did not modify the NYISO tariff to permit demand response facilitated by behind-the-meter generation to participate in DADRP; rather, they maintained NYISO's prohibition of demand response facilitated by behind-the-meter generation from qualifying for DADRP. In a May 16, 2013 order in that docket, the Commission responded to arguments that behind-the-meter generation should be allowed to participate in the DADRP by saying that Order No. 745 did not require an RTO or ISO to differentiate between demand response resources for which demand response is facilitated by behind-the-meter generation and other resources. Order No. 745 also did not prohibit such differentiation. Thus, the Commission did not direct NYISO to modify its tariff to permit such participation.<sup>5</sup> However, the Commission added: "If NYISO or its stakeholders determine that changes are warranted with respect to NYISO's existing practices in this area, such changes should be presented to the Commission in a separate proceeding."<sup>6</sup>

3. On June 22, 2013, Complainants filed the Complaint at the same time they filed for rehearing of the May 16, 2013 Order on this issue. Separately, on August 14, 2013, NYISO filed in Docket No. ER11-4338-002 to comply with the May 16, 2013 Order. This pending compliance filing in the Order No. 745 proceeding raises issues related to DADRP, including NYISO's net benefits test methodology, cost allocation, and measurement and verification.

4. The November 22, 2013 Order held that NYISO's tariffs are unduly discriminatory because they exclude demand response facilitated by behind-the-meter generation from participation in the DADRP, while permitting participation by similarly situated demand response accomplished without the use of behind-the-meter generation. In directing appropriate relief, the Commission found that the tariff revisions needed to

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<sup>5</sup> *New York Indep. Sys. Operator, Inc.*, 143 FERC ¶ 61,134, at P 101 (2013) (May 16, 2013 Order). *See also* November 22, 2003 Order, 145 FERC ¶ 61,162 at PP 4-5.

<sup>6</sup> *Id.*

permit the inclusion of such resources in the DADRP will need to be more extensive and complex than simply changing tariff definitions. The Commission directed NYISO to file, within 180 days, proposed tariff provisions that will allow resources providing demand response facilitated by behind-the-meter generation to participate in the DADRP on a comparable basis as all other demand response resources. The Commission clarified that these tariff provisions should address appropriate eligibility, measurement, verification, and control requirements to ensure that demand response facilitated by behind-the-meter generation is provided in a manner that maintains system reliability and ensures that the resources are compensated only for the demand response service that they actually provide.

### **NYISO's Motion**

5. On December 23, 2013, NYISO filed a motion for an extension of time to comply with the November 22, 2013 Order to 150 days after the Commission issues an order on NYISO's August 14, 2013 Order No. 745 compliance filing in Docket No. ER11-4338-002. No party responded to NYISO's motion.

6. NYISO asserts that good cause exists for the Commission to grant the requested extension of time. NYISO states that the different requirements for the DADRP, including the bidding, measurement, verification, performance, eligibility, enrollment, and cost allocation requirements, are interrelated and that it has proposed significant revisions to certain of these interconnected components in Docket No. ER11-4338-002. NYISO adds that the Commission accepted a number of these revisions in the May 16, 2013 Order, but has not yet issued an order responding to NYISO's further compliance filing. Thus, according to NYISO certain fundamental components of the DADRP could still be subject to change with possible impacts on the other program components.

7. NYISO states that, as acknowledged by the Commission in the November 22, 2013 Order, NYISO must develop with its stakeholders extensive and complex revisions to the DADRP requirements to incorporate behind-the-meter generation in the program.<sup>7</sup> NYISO asserts that this incorporation will require NYISO and its stakeholders to examine all aspects of the resource's participation in the DADRP to ensure that the insertion of these new resources does not create any gaps or inconsistencies with the underlying DADRP rules and that rule changes do not have an adverse impact on the participation of other resource types, i.e., load curtailment resources, in the program.

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<sup>7</sup> NYISO December 23, 2013 at 5 (citing November 22, 2013 Order, 145 FERC ¶ 61,162 at P 37).

8. NYISO states that it must develop the requirements for behind-the-meter generation anew, building upon the foundation of the DADRP requirements accepted by the Commission in response to Order No. 745, which will be the applicable DADRP rules going forward. NYISO adds that, because certain of these requirements are still subject to Commission review and potentially further revision in Docket No. ER11-4338-002, it is limited in the progress that it can make in developing new generation-specific requirements. NYISO also states that, if, in response to the August 14, 2013 compliance filing, the Commission were to direct NYISO to make further revisions to the DADRP requirements, such revisions could impact other interrelated components of the DADRP including the bidding, measurement, and verification requirements and that any resulting revisions would have to be accounted for in developing the requirements to incorporate behind-the-meter generation. NYISO states that, absent an extension, it would have to develop tariff revisions based on the DADRP requirements that could potentially change within the 180-day compliance period.

### **Discussion**

9. For the reasons discussed below, we deny NYISO's motion for an extension of time. In the November 22, 2013 Order, the Commission held that NYISO's current tariff provisions that exclude demand response facilitated by behind-the-meter generation are unduly discriminatory. The Commission also noted that other RTO/ISOs have developed rules to allow such participation and that NYISO itself has developed rules to allow such resources to participate in other programs and thus, found it reasonable and necessary to require NYISO to develop such rules for the DADRP. The Commission took the complexity of the task into consideration when it granted NYISO 180 days to comply. Granting NYISO's requested extension of time would indefinitely delay the remedy. Complainants have been granted. We do not believe that remedy should be delayed based upon potential future changes to DADRP rules.

10. In addition, we do not believe that a determination in NYISO's Order No. 745 compliance filing proceeding is necessary to the development of market rules to allow demand response facilitated by behind-the-meter generation to participate in the DADRP. The Commission, in these proceedings, has clearly indicated that the treatment of behind-the-meter generation is separate and distinct from the requirements of Order No. 745. Accordingly, we deny NYISO's motion.

The Commission orders:

NYISO's motion is hereby denied.

By the Commission. Commissioner Moeller is dissenting with a separate statement attached.

( S E A L )

Kimberly D. Bose,  
Secretary.

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MOELLER, Commissioner, *dissenting*:

As I stated in my prior dissent in this proceeding, the majority has failed to recognize that integrating behind-the-meter generation into the DADRP is inappropriate, and by requiring integration, the NYISO faces a particularly difficult task. I also warned that the directive requiring the NYISO to convene and complete a stakeholder conference and return to the Commission with a proposal to integrate such generation into the DADRP, within 180 days, was unrealistic at best and unworkable at worst.

Before us now, we have the NYISO's motion stating that good cause exists to permit it additional time to comply with the November 22 Order. The NYISO explains that it needs more time to develop extensive revisions, including complex requirements for bidding, verification, performance, eligibility, enrollment, and cost allocation before it can propose new rules that allow for behind-the-meter generators to participate in the DADRP. The NYISO also reminds us that the Commission has yet to rule in a related docket that has the potential to require further revision of its DADRP proposal.

By dismissing these concerns and rejecting the NYISO's reasonable request, the Commission is acting with haste in a market when that haste is more likely to be harmful than good.

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Philip D. Moeller  
Commissioner