

143 FERC ¶ 61,134  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

New York Independent System Operator, Inc.

Docket No. ER11-4338-000

ORDER ON COMPLIANCE FILING

(Issued May 16, 2013)

1. On August 19, 2011, the New York Independent System Operator, Inc. (NYISO) submitted proposed revisions to its Open Access Transmission Tariff (OATT) and its Market Administration and Control Area Services Tariff (Market Services Tariff) in compliance with the Commission's Order No. 745.<sup>1</sup> In this order, the Commission accepts, in part, and rejects, in part, the proposed revisions and directs NYISO to submit a compliance filing within 30 days of the date of this order.

**I. Background**

2. On March 15, 2011, the Commission issued Order No. 745, a Final Rule amending the Commission's regulations under the Federal Power Act (FPA), regarding compensation for demand response resources participating in wholesale energy markets, i.e., the day-ahead and real-time markets, administered by Regional Transmission Organizations (RTO) and Independent System Operators (ISO). Specifically, Order No. 745 requires each RTO and ISO to pay a demand response resource the market price for energy, i.e., the locational marginal price (LMP), when two conditions are met. First, the demand response resource must have the capability to balance supply and demand as an alternative to a generation resource. Second, dispatching the demand response resource must be cost-effective as determined by a net benefits test in accordance with Order No. 745. The net benefits test, as described more fully below, is necessary to

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<sup>1</sup> *Demand Response Compensation in Organized Wholesale Energy Markets*, Order No. 745, 76 FR 16658 (Mar. 24, 2011), FERC Stats. & Regs. ¶ 31,322 (2011), *order on reh'g*, Order No. 745-A, 137 FERC ¶ 61,215 (2011).

ensure that the overall benefit of the reduced LMP that results from dispatching demand response resources exceeds the costs of dispatching and paying LMP to those resources.

3. In order to implement the net benefits test, the Commission directed each RTO and ISO to develop a mechanism to approximate the price level at which dispatching demand response resources will be cost-effective. The Commission required each RTO and ISO to make a compliance filing by July 22, 2011, proposing tariff revisions necessary to implement the compensation approach adopted in Order No. 745, including the net benefits test, a cost allocation mechanism, and an assessment of its demand response measurement and verification protocols and any modifications to those protocols that may be necessary to ensure adequate baseline measurement and verification of demand response performance. This order addresses NYISO's compliance filing.

4. In NYISO, demand side resources are full participants in the NYISO day-ahead market for energy through the Day-Ahead Demand Reduction Program (DADRP).<sup>2</sup> NYISO states that demand reduction providers may bid their load curtailment capability into the day-ahead market as energy resources. As currently structured, the program establishes a bid offer floor for these resources of \$75/MWh. NYISO contends that when prices rise to that level, or above, the NYISO's Security Constrained Unit Commitment software evaluates the bids and dispatches the least cost mix of demand side and generation resources. NYISO states that a demand reduction provider is compensated at the locational based marginal price<sup>3</sup> for that hour and at that location, and is subject to penalties for any failure to curtail its load in accordance with its schedule.<sup>4</sup>

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<sup>2</sup> NYISO August 19, 2011 Filing at 2, note 4 (NYISO notes that participation in DADRP is not the only way a demand side resource can participate in the day-ahead market. It states that such a resource could bid its load into the day-ahead market and settle its deviations at the applicable real-time price, if it is retail access load).

<sup>3</sup> While NYISO uses the term Locational Based Marginal Price (LBMP), in this order, consistent with Order No. 745, we use the term Locational Marginal Price (LMP).

<sup>4</sup> NYISO August 19, 2011 Filing at 2-3. NYISO states that the Commission approved the structure of the DADRP in *New York Indep. Sys. Operator, Inc.*, 95 FERC ¶ 61,223 (2001). *Id.* at note 6. It states that the concept of an offer floor at \$50 was introduced in 2003 and accepted by the Commission in *New York Indep. Sys. Operator, Inc.*, 102 FERC ¶ 61,313 (2003) and notes that the offer floor was raised to \$75 the following year. *Id.* See *New York Indep. Sys. Operator, Inc.*, 109 FERC ¶ 61,101 (2004).

5. NYISO states that it does not administer a demand response program in the real-time market, therefore NYISO's compliance filing does not address the compensation of demand reduction used to balance supply and demand in real-time. In response to the Commission's directives in Order No. 719, NYISO proposed a plan for assessing the communications and software issues associated with establishing a mechanism for the real-time dispatch of demand side resources.<sup>5</sup> NYISO notified the Commission that it would suspend the proposed plan until the Commission issued its ruling in the present docket.<sup>6</sup> NYISO contends that it will incorporate the directives of Order No. 745 as it develops its preliminary market design.

## **II. Notice of Filing and Responsive Pleadings**

6. Notice of NYISO's August 19, 2011 filing was published in the *Federal Register*, 76 Fed. Reg. 53,674 (2011), with comments, protests, and interventions due on or before September 9, 2011.

7. Motions to intervene were filed by New York Association of Public Power; EnerNOC, Inc.; Constellation Energy Commodities Group, Inc.; Viridity Energy, Inc.; EnergyConnect, Inc.; Demand Response Partners, Inc.; Electric Power Supply Association; Wal-Mart Stores, Inc.; Converge, Inc.; Exelon Corporation; Energy Spectrum; and North America Power Partners, LLC. New York City filed an out-of-time motion to intervene.

8. New York Transmission Owners (NYTOs),<sup>7</sup> New York Association of Public Power (NYAPP), Demand Response Supporters,<sup>8</sup> and Occidental Chemical Corporation (OxyChem) filed motions to intervene and protests.

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<sup>5</sup> NYISO August 19, 2011 Filing at 2-3 (citing Compliance Filing in Docket No. ER09-1142-006, New York Independent System Operator, Inc. (February 25, 2010)). NYISO submitted progress reports on June 1, 2010, January 18, 2011, and June 3, 2011 in Docket No. ER01-3001.

<sup>6</sup> Supplement and Errata to Annual Report in Docket No. ER01-3001, New York Independent System Operator, Inc. (January 25, 2011) at 39.

<sup>7</sup> For purposes of this proceeding, New York Transmission Owners consists of Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Power Authority, New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

9. Electric Power Supply Association (EPSA) filed comments in support of NYISO's filing.

10. The Alliance for Clean Energy submitted a letter in support of Demand Response Supporters' filing. Energy Spectrum, Joint Commenters,<sup>9</sup> and Marathon Engine Systems each filed comments supporting the participation in demand response programs of behind-the-meter resources.

11. On September 23, 2011, EPSA filed an answer responding to comments and protests in all of the ISO/RTO Order No. 745 compliance filings.

12. On September 26, 2011, NYISO filed an answer in response to various protests. OxyChem, NYTOs, and Demand Response Supporters filed answers to NYISO's answer.

### **III. Discussion**

#### **A. Procedural Issues**

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice Procedure, 18 C.F.R. § 385.214(d) (2012), the Commission will grant New York City's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012) prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept EPSA's

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<sup>8</sup> For purposes of this proceeding, Demand Response Supporters consists of Comverge, Inc.; Demand Response Partners; EnergyConnect by Johnson Controls, Inc.; Energy Curtailment Specialists, Inc.; Energy Spectrum, Inc.; EnerNOC, Inc.; Wal-Mart Stores, Inc.; and Viridity Energy, Inc.

<sup>9</sup> Joint Commenters is composed of the American Council for an Energy Efficient Economy, American Forest & Paper Association, Industrial Energy Consumers of America, and U.S. Clean Heat & Power Association.

September 23, 2011 answer and will therefore, reject it.<sup>10</sup> We will accept NYISO's September 26, 2011 answer filed in this proceeding and the answers filed in response to it because they have provided information that assisted us in our decision-making process.

**B. Net Benefits Test**

**1. Order No. 745**

15. In Order No. 745, the Commission recognized that, depending on the change in the LMP relative to the size of the energy market, dispatching demand response resources may result in an increased cost per unit (\$/MWh) to the remaining wholesale load, due to the inherent, overall decreased amount of load paying the bill. This is referred to as the "billing unit effect."<sup>11</sup> In order to address this effect, the Commission required each RTO and ISO to implement a net benefits test to determine whether a demand response resource is a cost-effective alternative to generation for balancing supply and demand in any given hour.<sup>12</sup>

16. Specifically, Order No. 745 directed each RTO and ISO to undertake an analysis on a monthly basis, based on historical data and the prior year's supply curve, to identify a price threshold to estimate where customer net benefits would occur. The Commission further explained that the RTO or ISO should determine the threshold price corresponding to the point along the supply stack for each month at or beyond which the

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<sup>10</sup> EPISA's September 23, 2011 answer is a general response to broad concerns raised in comments and protests to filings submitted in compliance with Order No. 745. It does not address the particulars of NYISO's filing.

<sup>11</sup> Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 3.

<sup>12</sup> Although the Commission noted that integrating the billing unit effect into the RTO/ISO dispatch processes has the potential to more precisely identify when demand response resources are cost effective, the Commission acknowledged the position of several RTOs and ISOs that it may be difficult to modify their dispatch algorithms in the near term. Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 7. Therefore, the Commission required RTOs and ISOs to perform a net benefits test on a monthly basis to determine under which conditions it is cost-effective to pay full LMP to demand response resources. *Id.* P 78. Additionally, the Commission directed RTOs and ISOs to study the feasibility of developing a dynamic net benefits approach to dispatching demand response resources that takes into account the billing unit effect in the economic dispatch in both the day-ahead and real-time energy markets and file the results of their study with the Commission by September 21, 2012. *Id.* P 84.

benefit to load from the reduced LMP resulting from dispatching demand response resources exceeds the increased cost to load associated with the billing unit effect, and update the calculation monthly as new information becomes available.<sup>13</sup>

17. The Commission further explained that the threshold point along the supply stack for each month will fall in the area where the supply curve becomes inelastic, rather than the extreme steep portion at the peak or in the flat portion of the supply curve. In other words, LMP will be paid to demand response resources during periods when the nature of the supply curve is such that small decreases in generation being called to serve load will result in price decreases sufficient to offset the billing unit effect.<sup>14</sup>

## 2. NYISO's Proposal

18. NYISO contends that it has developed an approach to the net benefits test that complies with the Commission's directives. NYISO proposes a nine-step methodology for conducting the net benefits test: (1) retrieve supply offers from the reference month; (2) adjust the supply offers for entry and exit; (3) combine the offers to create hourly supply curves; (4) adjust offers for changes in fuel prices; (5) average the hourly curves; (6) smooth the supply curve; (7) find the point on the supply curve at which the benefit exceeds the costs; (8) convert the heat rate to an LMP threshold; and (9) post the result and adjust for significant changes.<sup>15</sup>

19. The first step in calculating the net benefit threshold will be to retrieve the bids and offers from the day-ahead market that will be used to construct the supply curve for the reference month.<sup>16</sup> NYISO proposes to analyze only the high load period hours (HB13 through HB19) for all days of the reference month. NYISO states that in developing the supply curves, NYISO sought to ensure that the results were as closely representative of New York's supply as possible. NYISO contends that limiting the hours analyzed to a consistent set of high load hours avoids the distortions in the estimation of the smoothed supply curve that could arise from averaging supply curves

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<sup>13</sup> Order No. 745, FERC Stats. & Regs ¶ 31,322 at P 79.

<sup>14</sup> *Id.* P 80.

<sup>15</sup> NYISO August 19, 2011 Filing at 3-9.

<sup>16</sup> *Id.* at 4 (NYISO states that, as proposed for the tariff, the "reference month" is the month that is twelve months prior to the month in which the net benefits threshold price is to be applied. The month to which the threshold applies is referred to as the "study month.").

over hours with large shifts in the New York aggregate supply curve associated with differences between on-peak and off-peak hydro, Qualified Facilities, and pump storage schedules.<sup>17</sup>

20. NYISO believes it is appropriate to exclude off-peak hours because portions of the non-peak supply curve are not representative, since they are driven by bidding behavior specific to non-peak hours. Furthermore, NYISO asserts that because the Commission's methodology results in one threshold price for all hours, NYISO believes that including off-peak hours in constructing the supply curve would tend to diminish the cost-effectiveness of the demand response, contrary to the Commission's intent.

21. NYISO asserts that having compiled the supply offers described in step 1 for each relevant hour in the reference month, and after deleting the offers of resources that are no longer in service, NYISO will create the supply curve representing existing capacity for each hour. NYISO states that it will accomplish this by summing the amount of supply available at each price, net of exports, from all suppliers in each hour of the reference month. NYISO will then sort the resulting set of hourly offer price and offer quantity pairs in ascending order by price to create the hourly supply curve. NYISO states that, consistent with the methodology described in Order No. 745, the supply curve calculation does not take account of transmission congestion or the impact of a demand reduction on the unit commitment in the day-ahead market.<sup>18</sup>

22. NYISO states that, as required by Order No. 745, NYISO will adjust the supply offers comprising the hourly supply curves for day-to-day differences in gas prices. NYISO proposes to use the daily spot Transco Z-6-NY natural gas prices for the reference month for this adjustment. NYISO states that this step also produces an implied heat rate for each price quantity point on the hourly supply curve.<sup>19</sup> NYISO notes that, although not all New York resources use gas as a fuel, the New York market tends to clear with gas on the margin. Accordingly, NYISO does not propose to attempt resource-specific fuel cost adjustments.<sup>20</sup>

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 5.

<sup>19</sup> *Id.* at 6. (Heat Rate = Offer Price/Gas Price).

<sup>20</sup> *Id.* NYISO notes that it has observed that some kinds of non-gas fired resources tend to offer in as price takers, so that the adjustment using the gas price is irrelevant, and that energy limited resources in the New York portfolio, such as pondage hydro and

23. Next, NYISO proposes to develop the representative average supply curve by horizontally averaging across the fuel-price-adjusted hourly supply curves for the reference month adjusted for existing capacity from step 4 above and for retired capacity from step 2 above. NYISO states that this step will entail calculating the amount of supply offered on each supply curve summed over the quantities offered at this heat rate over all of the supply curves for the month, and then dividing that supply by the number of hourly supply curves included in the calculation. NYISO then proposes to “smooth” the representative supply curve for the study month, as required by Order No. 745.<sup>21</sup> NYISO states it will then calculate the supply elasticity for each price and quantity along the representative average supply curve. NYISO will then determine the heat rate at which the elasticity falls and remains below one for higher heat rates, and this heat rate will be used to determine the net benefits threshold. Finally NYISO proposes to convert the heat rate threshold to the corresponding LMP value of the net benefits threshold.<sup>22</sup>

24. NYISO proposes tariff revisions to section 4.2.1.9, which obligate NYISO to perform the test monthly and post the monthly net benefit threshold price on its website by the 15<sup>th</sup> of the month preceding the study month, as specified by Order No. 745. The result will be a price threshold, expressed in \$/MWh, below which demand response bids will not be accepted in the NYISO’s unit dispatch processes. NYISO proposes to monitor forward natural gas prices after the posting date, and post an adjusted threshold price if there is a significant change (increase or decrease) in those prices between the posting date and the first day of the study month. NYISO also proposes to use the results of the net benefits test to establish the offer floor.<sup>23</sup> NYISO proposes to substitute the term “net benefit offer floor” in place of the “\$75/MWh” threshold provided in sections 4.2.1.3.2, 4.2.1.9, and 4.4.1.2.1. Finally NYISO proposes to add several new defined terms to the Market Services Tariff.

25. As discussed in more detail below, in its compliance filing to Order No. 745, NYISO states that it has reviewed its existing procedures for measuring and verifying demand response providers’ performance, it has determined that certain adjustments and enhancements are necessary, and it has proposed these in its compliance filing.

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pumped storage, have gas-priced based opportunity costs. In addition, NYISO asserts that the amount of coal-fired generation in New York is relatively small.

<sup>21</sup> *Id.* at 5 (citing Order No. 745, FERC Stats. & Regs. ¶ 31,322 at n.161).

<sup>22</sup> *Id.* at 8.

<sup>23</sup> *Id.* at 9.

### 3. Protests and Comments

26. NYTOs contend that they do not object to the methodology proposed by NYISO, but rather only object to NYISO's proposal to establish a single net benefits threshold price for the entire New York Control Area (NYCA), which is comprised of eleven separate pricing zones.<sup>24</sup> According to NYTOs, NYISO offers a single net benefits methodology for its entire footprint based simply on its assertion that such an approach is "[c]onsistent with the methodology described in Order No. 745,"<sup>25</sup> without demonstrating how this approach satisfies the Commission's determination that demand response compensation should be paid only when cost-effective. NYTOs argue that by proposing a single net benefits threshold, NYISO ensures that demand response compensation throughout its footprint will fail to ensure that demand response is cost-effective even when offers that are submitted are consistent with the assumptions made by NYISO when calculating the net benefits threshold price.<sup>26</sup>

27. NYTOs assert that using a single threshold price based on the NYCA-wide supply curve is only appropriate when the NYCA is operating without transmission constraints. NYTOs state that to meet the Commission's threshold requirement of cost-effectiveness for demand response compensation, the net benefits test for NYISO must account for transmission congestion that may result in pricing differences across its individual load zones. NYTOs argue that when there is transmission congestion, the activation of demand response in a given area may have little or no impact on LMPs in other portions of the NYCA. NYTOs assert that, instead of establishing one threshold, NYISO should establish different thresholds that recognize that when there is transmission congestion, the price above which demand response activation provides positive net benefits may differ significantly across the NYCA.

28. NYTOs request that the Commission approve the tariff filing for a limited period of time (i.e., 3 months), require NYISO to solicit input from its stakeholders regarding the NYTOs' proposal that NYISO establish a net benefits test that accounts for congestion between its zones, and instruct NYISO to submit a revised tariff filing to take effect at the end of the three month period. Alternatively, they argue that, the Commission should reject the filing, order the above-described revised filing at the end

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<sup>24</sup> NYTOs September 9, 2011 Protest at 3 (citing NYISO August 19, 2011 Filing at 3-9).

<sup>25</sup> *Id.* at 4 (citing NYISO August 19, 2011 Filing at 5).

<sup>26</sup> *Id.* at 4-5 (asserting that NYISO offered no demonstration of its inability to implement multi-zone net benefits test).

of a three month period, and order NYISO to leave the existing \$75/MWh offer floor mechanism in place until the effective date of the revised filing.

29. Demand Response Supporters contend that the net benefits methodology prescribed by Order No. 745 results in "one price for all hours" of the month.<sup>27</sup> Demand Response Supporters take issue with NYISO's stance that, when determining the proper threshold for compensating demand response, only the hours with the highest LMP should be used, and the hours with the lower LMPs should be ignored. Demand Response Supporters argue that this means that the lower-priced hours will not factor into the equation and, therefore, the threshold price will be higher than it would be if all hours were considered. Demand Response Supporters argue that this outcome is arbitrary and capricious and inconsistent with Order No. 745, and should be rejected. Moreover, Demand Response Supporters state that neither PJM, MISO, nor ISO-New England has proposed excluding hours from their respective net benefits calculations, and Demand Response Supporters contend that the Commission should strive for consistency in the application of the net benefits test across all RTOs.

30. Demand Response Supporters contend that claims that certain prices during certain hours should only be used because demand response is likely to occur during those hours completely miss the point. Demand Response Supporters contend that the Commission recognized in Order No. 745 that setting one price point for an entire month can lead to instances of compensation or denial of compensation for demand response that differ from what would occur if a more granular or dynamic net benefits threshold had been applied.<sup>28</sup> Demand Response Supporters argue that selectively picking and choosing certain data in order to produce hoped-for results will frustrate the objectives of Order No. 745 and should not be approved.

31. Demand Response Supporters argue that the Commission should require NYISO to adhere to the advance-posting requirement specified in Order No. 745, and not permit NYISO to make adjustments to the threshold price two days prior to the beginning of the relevant study month. Demand Response Supporters state that given the importance of the price threshold, and the specific requirements of Order No. 745 that the thresholds be posted at least 15 days prior to the operating month, the Commission should reject NYISO's proposal to modify the threshold at a point closer in time to the operating month.<sup>29</sup>

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<sup>27</sup> Demand Response Supporters September 9, 2011 Protest at 17.

<sup>28</sup> *Id.* at 18-19.

<sup>29</sup> *Id.* at 19.

32. EPISA supports the NYISO methodology and proposed tariff changes arguing that they are based on the Commission directives, because these changes provide transparency and maintain reliability of the NYISO system in attempting to balance the anticipated increased amounts of demand response system resources.<sup>30</sup>

#### 4. Answers

33. NYISO responds to NYTO's contentions about NYISO's proposed single net benefits threshold by asserting that adoption of a single threshold is consistent with the requirements of Order No. 745, wherein the Commission recognized the limitations of the net benefits test.<sup>31</sup>

34. NYISO argues that NYTOs overlook the significant complications and burdens that demand side resources and NYISO would face if Order No. 745 were read to mandate applying multiple thresholds. NYISO states that there are a number of combinations of congestion patterns that can arise in the NYCA, and to consider even the simplest subset of them would require the calculation of 13 distinct net benefits thresholds; accounting for possible combinations of constraints on external interfaces could multiply the number of thresholds threefold or more. Additionally, NYISO states that implementation of multiple thresholds in the day-ahead market would raise additional complex challenges, several of which arise from the fact that congestion patterns may change even as the Security Constrained Unit Commitment develops a solution, in which case the demand response thresholds will also be impacted. Aside from adding computational complexity, NYISO asserts that this would create uncertainty for demand side resources, who would not know ahead of time the threshold that would apply.

35. In response, NYTOs state that the Commission recognized the limitations of the net benefits test in Order No. 745.<sup>32</sup> NYTOs further state that they recognize the Commission did not require the RTOs and ISOs to implement a dynamic net benefits test,

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<sup>30</sup> EPISA September 9, 2011 Comments at 5.

<sup>31</sup> *Id.* (citing Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 80; NYTO Protest at 4).

<sup>32</sup> NYTOs cite paragraph 80 of Order No. 745, which states that the required threshold price approach "may result in instances both when demand response is not paid the LMP but would be cost-effective and when demand response is paid the LMP but is not cost-effective. We accept this result given the...difficulty of adopting a dynamic approach...at this time."

though it may be superior, and they note the second compliance obligation, which directs ISOs and RTOs to investigate whether a dynamic approach can be implemented. Thus, according to NYTOs, the question presently before the Commission is not whether NYISO should implement the dynamic approach now, but rather whether NYISO's proposal to implement a simplistic, static approach that disregards transmission congestion, and uses a single net benefits threshold price complies with Order No. 745's cost-effectiveness requirement. NYTOs state that they believe NYISO should develop a static approach that considers the transmission congestion in the development of the monthly net benefit threshold price.<sup>33</sup>

36. In response to Demand Response Supporters arguments that the Commission should require NYISO to adhere to the advance-posting requirement specified in Order No. 745, NYISO argues that its proposal to adjust a threshold near the end of the month, when warranted by significant changes in fuel prices, is consistent with the Commission's directive that the threshold account for such changes. NYISO states however, should the Commission determine that this feature is not consistent with the Order, NYISO does not object to removing it from the proposed tariff revisions.<sup>34</sup>

## **5. Commission Determination**

37. We generally find that NYISO's net benefits test proposal and proposed tariff changes are consistent with the compliance requirements of Order No. 745. We will conditionally accept the proposed revisions, subject to further compliance.

38. We find that NYISO's proposal to calculate a single net benefits threshold price complies with Order No. 745. Order No. 745 did not require an RTO or ISO to calculate multiple net benefits thresholds based on location or other factors. NYISO notes that a number of different congestion patterns can arise, and implementing the net benefits test in that manner would require calculating a number of different supply curves reflecting different congestion patterns, and then calculating a net benefits test for each of these patterns. Due to the computational difficulty of implementing multiple net benefits price thresholds, we will accept NYISO's proposal to calculate a single NYCA-wide net benefits price threshold.

39. In the NYISO proposal, the first step in calculating the net benefits threshold is to retrieve the supply offers that will be used to construct the supply curve for the reference month. NYISO proposes to analyze only the high load period hours for all days of the

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<sup>33</sup> NYTOs October 11, 2011 Answer at 4-5.

<sup>34</sup> NYISO September 26, 2011 Answer at 7.

reference month. Demand Response Supporters protest the exclusion of off-peak hours, claiming that if the lower priced hours are not factored in, the threshold price will be higher than it would be if all hours were considered. We find that NYISO's filing is deficient in that it has not provided sufficient evidence that the supply curve to be used in its proposed net benefits test complies with Order No. 745. To the extent NYISO wants to exclude off-peak hours, it must demonstrate how excluding off-peak hours changes the threshold results and must fully support with evidence why such an outcome is reasonable.

40. Similarly, NYISO has not provided support for selection of the highest point on its representative supply curve at which it becomes inelastic as the threshold point for the net benefits test, as opposed to selecting the lowest point at which the supply curve becomes inelastic or an intermediate point as the threshold. NYISO has not provided sufficient evidence that this complies with Order No. 745 and must fully support why this outcome is reasonable.

41. NYISO proposes to revise section 4.2.1.9, which, consistent with Order No. 745, obligates NYISO to perform the net benefits test monthly and post the monthly net benefit threshold price on its website by the 15<sup>th</sup> of the month preceding the study month. NYISO proposes to monitor forward natural gas prices after the posting date, and post an adjusted threshold price if there is a significant change (increase or decrease) in those prices between the posting date and the first day of the study month. We reject NYISO's proposal to post an adjusted threshold price if there is a significant change in those prices between the posting date and the first day of the study month. Order No. 745 requires RTOs to determine monthly threshold prices based on historical data that is updated monthly. Order No. 745 states that,

For example, the RTO should conduct an analysis of supply curves for January through December 2010 to be used as a starting point to establish threshold prices for 2011. Those numbers would be updated monthly during 2011 for significant changes in resource availability and fuel prices, with the process repeated monthly to reflect that month's data from the previous year. The supply curve analysis should be updated by the 15<sup>th</sup> of the preceding month in advance of the effective date.<sup>35</sup>

The language in the order clearly states that significant changes in fuel price should be reflected in the supply curve analysis posted by the 15<sup>th</sup> of the preceding month in advance of the effective date, to allow demand response providers as well as other market

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<sup>35</sup> Order No. 745, FERC Stats. & Regs ¶ 31,322 at P 79.

participants to plan, while still reflecting current supply conditions. NYISO states that should the Commission determine that this proposed revision is not consistent with Order No. 745, NYISO does not object to removing it from the proposed tariff revisions.

42. We will require NYISO to submit, in a compliance filing, tariff revisions to remove from section 4.2.1.9 of the Market Services Tariff the language that permits NYISO to post an adjusted net benefits price threshold after the 15th of the preceding month. In addition, for the reasons explained below, we will require NYISO in its further compliance filing either to provide further justification for its proposal to modify its existing DADRP offer floor to reflect the results of the net benefits test or to submit revised tariff sheets to eliminate any DADRP offer floor.

43. The Commission first approved a \$50 offer floor applicable to DADRP suppliers in the NYISO day-ahead market in a March 21, 2003 order.<sup>36</sup> NYISO stated that an offer floor was needed to prevent a DADRP resource from submitting low bids for periods of time when the resource's load would already be off-line for maintenance or regularly scheduled shutdowns. The Commission subsequently approved raising the DADRP offer floor to \$75.<sup>37</sup>

44. In Order No. 745, the Commission required each RTO and ISO to implement a net benefits test to determine whether a demand response resource is a cost-effective alternative to generation for balancing supply and demand in any given hour.<sup>38</sup> Specifically, Order No. 745 directs each RTO and ISO to undertake an analysis on a monthly basis, based on historical data and the prior year's supply curve, to identify a price threshold to estimate where customer net benefits would occur. Order No. 745-A further clarifies that each RTO and ISO must revise its tariff to provide that when the LMP is greater than or equal to the threshold price, all demand resources that qualify for compensation will receive the LMP payment.<sup>39</sup> In addition, to ensure the integrity of the

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<sup>36</sup> *New York Indep. Sys. Operator, Inc.*, 102 FERC ¶ 61,313 (2003) (March 21, 2003 Order).

<sup>37</sup> *New York Indep. Sys. Operator, Inc.*, 109 FERC ¶ 61,101, at P 5 (2004).

<sup>38</sup> The Commission required RTOs and ISOs to perform a net benefits test on a monthly basis to determine under which conditions it is cost-effective to pay full LMP to demand response resources. Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 78.

<sup>39</sup> Order No. 745-A, 137 FERC ¶ 61,215 at P 131. The Commission also stated, "For example, a qualification may include a requirement that the demand response resource submit a successful supply offer, whether that successful bid is below, at or above the threshold price." *Id.* n.192.

demand response programs, the Commission in Order No. 745 directed each RTO and ISO to propose, if necessary, any changes needed to ensure that measurement and verification of demand response will adequately capture the performance (or non-performance) of each participating demand response market participant to be consistent with the requirements of Order No. 745.<sup>40</sup>

45. As discussed above, NYISO now proposes to modify its DADRP offer floor by replacing the \$75 level with net benefits threshold price. We agree with NYISO that its existing \$75 offer floor is inconsistent with Order No. 745. That offer floor would preclude cost-effective demand response participation in those circumstances where the threshold price resulting from the net benefits test is lower than the offer floor.

46. We also find that NYISO has not provided sufficient justification for its proposal to use the net benefits threshold price to establish a replacement offer floor, below which demand response bids will not be accepted in NYISO's unit dispatch process.<sup>41</sup> Order No. 745 does not require the net benefits test to be used in such a manner. Moreover, as noted above, NYISO's original justification for a offer floor involved preventing a DADRP resource from submitting low bids for periods of time when the resource's load would already be off-line for maintenance or regularly scheduled shutdowns. NYISO has not adequately explained why its proposed replacement offer floor is necessary to serve that purpose, in light of NYISO's statements with respect to its compliance with the measurement and verification requirements of Order No. 745. Further, NYISO states that its proposed net benefits test identifies the point on the supply curve at which the benefit of demand reduction exceeds the cost (see *supra* P 18), as consistent with the requirement of Order No. 745. Therefore, we will require NYISO in its further compliance filing either to provide further justification for its proposal to modify its existing DADRP offer floor to reflect the results of the net benefits test or to submit revised tariff sheets to eliminate any DADRP offer floor.

### **C. Measurement and Verification**

#### **1. Order No. 745**

47. In Order No. 745, the Commission noted concerns that compensating demand response resources at LMP during all hours could make it difficult to determine baselines

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<sup>40</sup> Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 94. The Order No. 745 requirements with respect to measurement and verification are discussed in greater detail in section III.C below.

<sup>41</sup> NYISO August 19, 2011 Filing at 9.

for demand response providers. However, because Order No. 745 required payment of LMP for demand response subject to a net benefits test – and not during all hours – the Commission found that implementation of Order No. 745 would not appear to prevent the determination of appropriate baselines.<sup>42</sup> Nonetheless, noting that measurement and verification protocols are critical to the integrity and success of demand response programs, the Commission directed each RTO and ISO to include in its compliance filing an explanation of how its current measurement and verification procedures will continue to ensure that appropriate baselines are set, and that demand response will continue to be adequately measured and verified, as necessary, to ensure the performance of each demand response resource. The Commission directed each RTO and ISO to propose, if necessary, any changes needed to ensure that measurement and verification of demand response will adequately capture the performance (or non-performance) of each participating demand response market participant to be consistent with the requirements of Order No. 745.<sup>43</sup>

## 2. NYISO's Proposal

48. NYISO contends that because it does not have direct access to real-time load data for demand response resources, it measures actual reductions in demand by reference to an estimated baseline. NYISO is proposing to revise its OATT to include a new process for the calculation of this baseline, which NYISO refers to as the “Economic Customer Baseline Load” (ECBL). The current process, which is not included in NYISO’s OATT but rather, is described in NYISO’s DADRP Manual, determines a Customer Service Baseline Load (CBL).

49. As described in the DADRP Manual, to calculate a baseline load, the meter data service provider, the entity that installs and services the meter, must have the net metered load for each demand side resource and the demand side resource’s scheduled hours. The meter data service provider will receive hourly interval net metered load directly from the facilities. Using this information, the existing procedure for calculating a CBL involves a series of steps that begins by determining an average day CBL and average day CBL for weekends.<sup>44</sup> For an average day CBL, the first step is establishing a CBL window using the past 30 days to determine a participant’s peak hourly load. Using this initial seed

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<sup>42</sup> Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 94.

<sup>43</sup> *Id.*

<sup>44</sup> NYISO, Day-Ahead Demand Reduction Program Manual, revised July 25, 2003, at 21-23.

value for the average event period usage level, several types of days including holidays, days when demand response was called for various programs, and low usage days, are eliminated or accounted for to come up with a final ten-weekday period. Next, a CBL basis is determined by identifying and eliminating the five days that have the lowest usage from the 10-day CBL window; the remaining five days constitute the CBL basis. Then, average day CBL values for the event are determined for each hour according to the usage in the hours of the CBL basis. The average day CBL for weekends is similar, but composed of the most recent three like weekend days, excluding holidays and demand response event days.

50. After that, an elective weather-sensitive formula is applied. First, the average day CBL values for each hour of the event are calculated, as previously described. Next, the event final adjustment factor, the adjustment basis average usage divided by the adjustment basis average CBL, is determined and applied to each of the individual hourly values of the average day CBL. Using the five days selected in the average CBL basis, the adjustment basis average CBL is calculated. The adjustment basis average usage is the average of the participant's usage over the two-hour adjustment period on the event day. Once determined, the adjustment factor is made final by taking the gross factor constraining it to within plus or minus 20 percent of the number 1. The final adjusted CBL values for each hour of the event are the product of the final adjustment factor and the average CBL value for that hour.

51. NYISO proposes to calculate an ECBL with distinct procedures for weekdays and weekends that include limiting the window of time used in the baseline calculation to the last ten weekdays or last three weekend days of the same day type (i.e., last three Saturdays). For hours in the last ten days without a day-ahead demand reduction schedule, the metered load value is used, but where a day-ahead demand reduction was scheduled, a baseline proxy of that hour is substituted for the metered load. NYISO proposes to adjust the values by an in-day adjustment calculation to account for any changes in load between the scheduled day and the calculated weekday or weekend ECBL hourly values, and then compare the metered load for the scheduled hour of demand reduction against the applicable ECBL to determine the actual amount of demand reduction.<sup>45</sup> To implement the alternative method, NYISO proposes to create a subsection 24.2 to its OATT Attachment R specifying the terminology, steps, and calculations to be used in the revised CBL methodology.

52. NYISO's proposed ECBL is described in the new section 24.2.1. This new section defines the ECBL in-day adjustment factor, the means for calculating it, and the

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<sup>45</sup> NYISO August 19, 2011 Filing at 11.

limit that will constrain the factor to between a minimum of 0.8 and a maximum of 1.2.<sup>46</sup> Provisions prescribe that the period used to determine the in-day adjustment shall be the two hours that occur four hours prior to a scheduled demand reduction period. Other defined terms include the ECBL weekday and weekend windows, respectively, and proxies for weekdays and weekends. Using these defined terms, a process is outlined in sections 24.2.1.2 and 24.2.1.3 of Attachment R which provides a methodology for calculating the ECBL. The methodology, which is similar for both weekdays and weekends, involves selecting the hours that comprise the window for the target hours, using metered load data where no demand reduction occurred, incorporating proxies where demand reduction did occur, and ranking the load and proxies used. Next, an average is calculated which is the ECBL for the target hour. The ECBL in-day adjustment factor is then applied to the ECBL to determine the adjusted ECBL for the target hour.

53. NYISO also proposes additions to Attachment R that will enable NYISO to carry out effective verification processes and audits. NYISO proposes to add new section 24.3 to provide NYISO with explicit authority to verify demand reductions and requires demand reduction providers to report both their metered load data and the data used in making ECBL calculations to NYISO in accordance with NYISO data reporting procedures that are to be developed.<sup>47</sup> Finally, to clarify the role of measurement and verification processes in determining a supplier's compensation, NYISO proposes to amend section 4.5.3.4 of the Market Services Tariff to ensure that only "verified" demand reductions are eligible for payment.

### **3. Protests and Comments**

54. Demand Response Supporters contend that rules establishing measurement and verification guidelines, which could lead to penalties or ineligibility of certain resources, are serious matters; thus NYISO should be required to include all measurement and verification protocols in NYISO's tariff.<sup>48</sup> According to Demand Response Supporters, NYISO states that verification processes and procedures will be performed "in accordance with ISO Procedures that are to be developed."<sup>49</sup> Demand Response

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<sup>46</sup> Demand Response Supporters refer to this range as a 20 percent cap, i.e. the ECBL can only be adjusted  $\pm 20$  percent.

<sup>47</sup> Demand Response Supporters Comments at 5.

<sup>48</sup> *Id.* (citing NYISO August 19, 2011 Filing at 11-12).

<sup>49</sup> *Id.* (citing NYISO August 19, 2011 Filing at 11).

Supporters state that the casual reference to ISO Procedures "to be developed" gives market participants no guidelines as to how the programs will be administered or the rules that will govern their administration. Demand Response Supporters argue that the Commission should require any references to "ISO Procedures" with respect to measurement and verification to be stricken from the tariff, and that any further details that NYISO would have included in ISO Procedures should, instead, be filed with the Commission as proposed changes to the NYISO Tariff.<sup>50</sup>

55. According to Demand Response Supporters, NYISO has proposed to require an "in-day adjustment" to an ECBL to reflect differences between the circumstances (for example, atypically severe or atypically mild weather) that exist on the day when a customer curtails load and the days used to set the unadjusted ECBL. Demand Response Supporters state that, in general, the concept of an in-day adjustment factor is sound and will help ensure that demand reductions are beneficial and that a fair baseline is used. Demand Response Supporters contend that the NYISO filing, however, takes the concept of an adjustment factor to an unjust and unreasonable level by limiting the adjustment factor to 20 percent of the ECBL. Demand Response Supporters argue that since the NYISO filing provides absolutely no justification for the proposed 20 percent cap on the in-day adjustment factor, the cap is not required by Order No. 745, and the cap has not otherwise been demonstrated to be just and reasonable, it should be rejected.<sup>51</sup>

56. Demand Response Supporters state that NYISO does not currently preclude market participants from proposing alternative methods to establish a customer's baseline load, and other regions such as PJM provide similar flexibility. Demand Response Supporters contend that establishing one or more default approaches for setting the ECBL does not rule out the option of adopting an alternative ECBL if it proves to be more accurate for a particular customer. Demand Response Supporters state that NYISO's transmittal letter does not suggest any intent to eliminate NYISO's ability to accept a more accurate alternative ECBL. Demand Response Supporters request that the Commission clarify that NYISO retains the ability to accept alternative methods that provide a more accurate ECBL for a particular customer.<sup>52</sup>

57. Demand Response Supporters assert that NYISO's current rules for demand response are unnecessarily burdensome. NYISO's current rules charge resources that fail to curtail the higher of the day-ahead or real-time LMP at the time of the failure.

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<sup>50</sup> *Id.* at 6.

<sup>51</sup> *Id.* at 7-8.

<sup>52</sup> *Id.* at 9-10.

Demand Response Supporters claim that the current rules over-penalize when a resource fails to curtail, potentially charging such a resource more than the economic impact of that failure, which would be the market clearing price at that time.<sup>53</sup> NYISO's approach, according to Demand Response Supporters, goes too far in penalizing resources for non-performance and could chill participation by demand response in the future. They state that a better approach, more comparable to supply resource treatment, would be to require the demand response provider that fails to meet its scheduled curtailment to simply purchase, at real-time market prices, the difference between the amount that the provider scheduled to curtail and the amount actually curtailed.

58. EPSA supports the proposed measurement and verification changes by NYISO and states that they 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 demand response that NYISO anticipates will be dispatched on its system under the increased compensation regime of Order No. 745.

59. EPSA contends that the ECBL proposal provides the reasoning that supports the changes to the CBL methodology and requirements that adjust for the increased frequency of scheduling demand response resources.<sup>54</sup> For economic efficiency in dispatch, EPSA asserts that NYISO must have a reliable and accurate understanding of the actual reduction level that can be expected. EPSA maintains that NYISO's proposal will enable the ISO to effectively verify processes associated with implementation and to audit those processes.

#### 4. Answers

60. NYISO states that Demand Response Supporters assert that NYISO has left the development of measurement and verification protocols to ISO Procedures and should instead incorporate them into the tariff. NYISO contends that this suggestion does not correctly describe the scope of the tariff amendments proposed in the filing or NYISO's approach to measurement and verification, and appears to arise from a misunderstanding or mischaracterization of the compliance filing. NYISO contends that it already documents its procedures for measuring and verifying demand response resources' demand reductions in its DADRP Manual, which includes, among other things, a

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<sup>53</sup> *Id.* at 15 (citing DADRP Manual, Manual 5, New York Independent System Operator, Inc., § 2.12).

<sup>54</sup> EPSA September 9, 2011 Comments at 7.

description of the method for calculating a customer's baseline load.<sup>55</sup> NYISO proposes to modify the methodology and to add it directly to the Services Tariff as new section 24.2, thus, this component of NYISO's measurement and verification protocols will no longer be part of the ISO Procedures. NYISO states it also proposes to add other measurement and verification requirements that are currently in the DADRP Manual to the Services Tariff at section 24.3, and the only aspects of the measurement and verification program that are left to be developed as ISO Procedures are the details relating to the data to be provided, and the time and format in which it is to be reported.<sup>56</sup>

61. NYISO responds to Demand Response Supporters' claim that NYISO's filing is deficient because it includes a cap on in-day adjustments to the customer baseline calculation and penalties for under-performance, and should have also included a mechanism to compensate demand side resources for their over-performance.<sup>57</sup> NYISO states that both the cap on in-day adjustments and the penalty have been part of NYISO's administration of the demand response program for several years. NYISO contends that the DADRP formula for calculating a demand response customer's baseline already includes an in-day adjustment factor corresponding to NYISO's proposal, and NYISO's filing simply carries forward this existing element of the program.<sup>58</sup> NYISO states that it also carried forward the existing penalty provisions in its tariff, and nothing in Order No. 745 requires NYISO to review or modify these rules. NYISO argues that the program does not, and has not, included compensation for over-performance, an issue that lies well outside the scope of the Commission's aim of establishing a cost effectiveness threshold for demand response participation.

62. NYISO maintains that Demand Response Supporters assertion that NYISO should be able to consider alternative baseline measurement methodologies goes beyond the scope of Order No. 745.<sup>59</sup> NYISO contends that it reviewed its measurement and

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<sup>55</sup> *Id.* at 6 (citing NYISO DADRP Manual at § 5).

<sup>56</sup> *Id.* (citing NYISO Compliance Filing, Attachment I, Section 24.3). NYISO asserts that these details, which do not affect the rates charged for demand response, and which may change as the NYISO's and Market Participants' experience with the revised DADRP evolve, are appropriate for a procedure document).

<sup>57</sup> NYISO September 26, 2011 Answer at 3-4 (citing Demand Response Supporters September 9, 2011 Protest at 8 & 15-16).

<sup>58</sup> *Id.* at 4 (citing NYISO DADRP Manual at § 6 (2003), available at [www.nyiso.com](http://www.nyiso.com)).

<sup>59</sup> *Id.* (citing Demand Response Supporters September 9, 2011 Protest at 10).

verification protocols and determined that some adjustments were necessary in light of the probable impacts of the implementation of the net benefits test, but nothing in the Order requires NYISO to revisit every aspect of its approach to measuring suppliers' baselines, or to offer more than one methodology.<sup>60</sup>

63. Demand Response Supporters assert the Commission should require NYISO to place all measurement and verification procedures and protocols, including the details about data requirements, into the NYISO Tariff. Demand Response Supporters maintain that the rule of reason does require that provisions significantly affecting rates, terms, and conditions of service must be filed for Commission approval. For demand response resources and their ECBLs, according to Demand Response Supporters, there is little that is more important to determining measurement and verification and, by extension, the resource's level of compensation and compliance than the "data to be provided." Demand Response Supporters contend that absent the data, there is no measurement and can be no verification.

64. Demand Response Supporters maintain that limiting the potential benefit of in-day adjustments by capping such adjustments cannot be supported simply by NYISO's explanation that the cap has "been part of NYISO's administration of the demand response program for several years." According to Demand Response Supporters, the proposed cap level is arbitrary and unnecessary; NYISO provides no evidence to support it; and NYISO should be required to eliminate it. They add that the concept of an in-day adjustment factor is sound and will help ensure that demand reductions are beneficial and that a fair baseline is used.

65. In their answer, Demand Response Supporters assert that the consideration of alternative customer base line methodologies is well within the scope of this proceeding because "measurement and verification are critical to the integrity and success of demand response programs."<sup>61</sup> Demand Response Supporters contend that Order No. 745 requires that prior practices be reconsidered to ensure consistency with the Order's

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<sup>60</sup> *Id.*

<sup>61</sup> Demand Response Supporters' October 11, 2011 Answer at 6 (citing to Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 93). They state that, furthermore, the Order "direct[s] ISOs and RTOs to review their current requirements in light of the changes in this Final Rule and develop appropriate revisions and modifications, if necessary, to ensure that their baselines remain accurate and that they can verify that demand response resources have performed." *Id.* (citing Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 94).

objectives and NYISO should have proposed tariff modifications to accommodate the changes necessary to conform the tariff to Order No. 745, or at least explained how its current provisions already comply. Demand Response Supporters assert that, to the contrary, NYISO's position is that there is a method in place and it is good enough, regardless of changes in the field that make those methods increasingly obsolete. Demand Response Supporters argue that if a different ECBL approach better implements the terms of Order No. 745, NYISO should be obligated at a minimum to consider it.

66. Demand Response Supporters assert that neither they, nor the North American Energy Standards Board (NAESB), nor any of the ISOs/RTOs have developed "the best" measurement and verification approach for economic demand response. However, Demand Response Supporters contend that the very fact that none have made this claim is proof that precluding alternatives unnecessarily restricts flexibility and innovation. Demand Response Supporters maintain either the Commission should require that jurisdictional market operators remain open to reasonable alternatives, or it should ascertain and prescribe a single methodology that all ISOs and RTOs would be required to use.<sup>62</sup>

## **5. Commission Determination**

67. NYISO proposes to calculate a new ECBL as a means to address issues arising from the more frequent scheduling of demand response. Specifically, NYISO proposes to measure actual reductions in demand by comparison of metered load to an estimated baseline. We accept NYISO's proposal for an ECBL and find the proposed methodology adequately meets the Commission's requirement to determine an appropriate baseline that is accurate and can be verified. We find that NYISO has reasonably explained how its enhanced measurement and verification protocols will ensure that the appropriate baseline is set.

68. Specifically, we find NYISO's ECBL should result in an accurate measure because it uses an average actual load from comparable weekdays or weekends, where a day-ahead demand load reduction was not used, as a starting point for the baseline. NYISO then adjusts this figure to reflect differences between the circumstances that exist on the day when a customer curtails load in order to participate in the energy market and the circumstances that existed on prior days that were used to set the unadjusted ECBL. The Commission finds this to be a reasonable method of establishing a baseline. With respect to objections concerning the in-day adjustment cap, we find that this cap, previously used by NYISO and proposed as an aspect of the ECBL, has not been

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<sup>62</sup> Demand Response Supporters October 11, 2011 Answer at 7.

adequately supported in this context. Lacking adequate support for this aspect of the proposal, we direct NYISO to provide further justification for the necessity of such a cap on in-day adjustments.

69. With respect to the request to require the consideration of alternatives to the ECBL, although Order No. 745 does not require the consideration of alternative baseline methodologies, neither does it preclude the practice, particularly if it already exists as it does in NYISO. Therefore, as a component of the existing program, we direct NYISO to justify why the use of alternative baseline methodologies to the ECBL are not acceptable on compliance. As previously stated, we find NYISO's proposed baseline methodology to be just and reasonable, although here we are considering only the proposal which NYISO has put forth. Commenters also suggest NYISO should address compensation for over-performance during curtailment; we find this issue to be beyond the scope of this proceeding.

70. With respect to the use of the term "ISO procedures" in the context of data reporting requirements in section 24.3, we direct NYISO to include these requirements in this section of the Market Services Tariff. We concur with Demand Response Supporters that having data requirements in the NYISO tariff ensures that practices that affect rates, terms and conditions are included in the NYISO tariff.

71. With respect to the penalty provisions of the tariff sections filed, we note that section 24.3 merely requires demand response providers to file data in a timely manner and in the format required by the ISO. As discussed above, we are requiring these data requirements to be specified in the tariff. With respect to objections from Demand Response Suppliers to non-performance penalty provisions currently in place, we find that this issue is beyond the scope of this proceeding because Order No. 745 does not address the question of penalties.

#### **D. Cost Allocation**

##### **1. Order No. 745**

72. The Commission explained in Order No. 745 that, while dispatching demand response resources results in lower LMPs, transmission constraints may affect which customers benefit from the lower LMPs. In hours without transmission constraints, RTOs establish a single LMP for their entire system, in which case demand response would result in a benefit to all customers on the system. In hours when transmission constraints exist, LMPs may vary by zone or other geographic area and dispatching a

demand response resource in a particular geographic region may not reduce LMPs system-wide and, consequently, not all system customers would benefit.<sup>63</sup>

73. For these reasons, the Commission determined that it is just and reasonable to allocate the costs associated with demand response compensation proportionally to all entities that purchase from the relevant energy market in the area(s) where the demand response reduces the market prices for energy at the time the demand response resource is committed or dispatched.<sup>64</sup> Thus, the Commission required each RTO and ISO to make a compliance filing that either demonstrates that its current demand response cost allocation methodology appropriately allocates costs to those that benefit from the demand reduction or proposes revised tariff provisions that conform to this requirement.<sup>65</sup>

## 2. NYISO's Proposal

74. NYISO concluded that its current approach appropriately allocates costs to those that benefit from the demand reduction, and references the allocation rules contained in Attachment R, section 24 of its Services Tariff. Section 24.1 of Attachment R states in relevant part:

The "Schedule 1 Program Cost" for scheduled and verified Demand Reductions shall be allocated to Transmission Customers, pursuant to the methodology set forth below, on the basis of their Load Ratio Shares and in proportion to the probability, given historical transmission congestion patterns, that a particular Demand Reduction will benefit them by reducing Energy costs in their Load Zones or "Composite Load Zones" (see below).<sup>66</sup>

75. NYISO asserts that it is responsible for identifying a list of frequently constrained NYCA interfaces, and then calculating a set of coefficients to represent the expected fraction of time when these interfaces are constrained. NYISO contends that when none of the interfaces are constrained, transmission customers in all Load Zones benefit from demand reduction. When one or more of the interfaces are constrained, the distribution

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<sup>63</sup> *Id.* P 100.

<sup>64</sup> *Id.* P 102.

<sup>65</sup> *Id.*

<sup>66</sup> NYISO August 19, 2011 Filing at 10.

of benefits depends on the location of the transmission customers as well as the location of the demand reduction (i.e., upstream or downstream of the constraint). NYISO proposes to amend Attachment R, section 24 of the OATT to refine its method by adding four additional coefficients to this section to enable NYISO to allocate costs to the beneficiaries of the demand response when more than one interface is constrained.<sup>67</sup>

### 3. Protests and Comments

76. OxyChem argues that Order No. 745 requires NYISO to demonstrate, not merely assume, that its current cost allocation method allocates the cost of demand response in proportion to the benefit that the pertinent load receives from the demand response. OxyChem further maintains that this requires a showing that the load to which the costs will be allocated is both in the “relevant energy market” and in areas where the demand response reduces the market price for energy at the time the demand response is committed or dispatched.<sup>68</sup> According to OxyChem, NYISO did not even attempt to do this and instead relies on the status quo, its current cost allocation methodology, as the support for its allocation methodology. Therefore, OxyChem maintains that NYISO’s response falls far short of Order No. 745’s mandate, and the filing should be found deficient or rejected on that basis alone.

77. OxyChem explains that NYISO’s demand response cost allocation method assumes that every customer that pays charges under NYISO’s Schedule 1<sup>69</sup> pursuant to which it recovers demand response charges, actually pays LMP. OxyChem asserts that this is a critical assumption because, if an entity does not pay an LMP-based price for energy, then it obviously cannot benefit from reduced LMP.<sup>70</sup> OxyChem explains that it receives Replacement and Expansion Power, pursuant to a bilateral contract with NYPA, to cover virtually all of its power needs.<sup>71</sup> NYPA Replacement Power and Expansion

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<sup>67</sup> *Id.*

<sup>68</sup> OxyChem September 9, 2011 Protest at 6.

<sup>69</sup> NYISO’s Schedule 1 lays out the NYISO annual budget charge and other non-budget charges and payments. NYISO allocates the cost for demand response through this schedule to Transmission Customers based on their Load Ratio Shares.

<sup>70</sup> *Id.*

<sup>71</sup> OxyChem states that, to the extent that it buys power in NYISO that reflects LMP, it would be subject to demand response charges for such power according to the just and reasonable cost allocation methodology ultimately approved.

Power<sup>72</sup> is a unique statutory form of power that for over 50 years has been priced on a basis that is not based on market rates. OxyChem maintains that the price of NYPA Replacement and Expansion Power is based on multiple public purposes including preservation and expansion of industry in Western New York and retention and growth of jobs. Furthermore, OxyChem states that the rates are not designed to equal competitive prices in the NYISO LMP market. Therefore, purchasers of Replacement and Expansion Power do not purchase energy in the relevant (i.e., LMP) energy market, nor will they benefit from changes in LMP in any way that is proportionate to the costs of demand response at the time it is committed or dispatched.

78. OxyChem explains that the rates for NYPA Replacement and Expansion Power, as established in Service Tariff No. 46, are the sum of a base rate and an annual adjustment factor (AAF), which is based on a series of price indices and a deflator for gross domestic product, fuel factors, and other statistics, that are applied to the base rate of the previous year. It asserts that, of these indices, only one, which tracks industrial power prices for the United States nationally, has the potential to be impacted by LMP changes in NYISO, and then only minimally.

79. OxyChem asserts that this alleged minimal potential effect of LMP changes on NYPA Replacement and Expansion Power rates can be demonstrated by an example showing that NYPA rates are impacted by less than 0.1 percent by a hypothetical change in New York LMP resulting from demand response.<sup>73</sup> Accordingly, OxyChem argues that demand response in NYISO will have no discernable impact on rates for NYPA Replacement and Expansion Power, either now or for the foreseeable future, and forcing customers who pay such rates to subsidize those NYISO market participants that might

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<sup>72</sup> OxyChem explains that NYPA Replacement Power and Expansion Power was created as a result of the Niagara Redevelopment Act (1957 Niagara Act) which was passed by the U.S. Congress after a June 1956 rock slide destroyed Niagara Mohawk's Schoellkopf Station on the Niagara River and its 365,000 kW of generating capability. OxyChem explains that a principal purpose of the 1957 Niagara Act was to support existing industry in the Niagara region, promote economic expansion in the region, and that certain industrial customers in the region, including OxyChem, have for many decades been allocated a share of the hydroelectric power produced by NYPA's Niagara Power Project as a result of the 1957 Niagara Act and the Public Authorities Law of the State of New York. OxyChem states that, under New York's Public Authorities Law, NYPA has the authority to develop, maintain, manage and operate the Niagara Power Project. OxyChem September 9, 2011 Protest at 7-9.

<sup>73</sup> OxyChem September 9, 2011 Protest at 14-15.

benefit from demand response-induced cost savings would be inconsistent with the requirements of Order No. 745.<sup>74</sup>

80. Similarly, NYAPP protests NYISO's proposal to allocate the costs of NYISO's payments to demand response resources to all transmission customers, including those with fixed price bilateral power contracts, because these customers are not entities that purchase in the relevant energy markets<sup>75</sup> and do not benefit from the lower prices produced by dispatching demand response. NYAPP maintains that NYISO's assumption that all transmission customers "shall be deemed to have benefited" fails to comply with Order No. 745 because it conflicts with long-standing judicially endorsed cost allocation principles; NYISO offers no analysis and fails to recognize the degree of benefit, if any, to its customers with fixed price bilateral power contracts compared to the entities that purchase in the day-ahead market.<sup>76</sup> NYAPP asserts NYISO offers no explanation why all transmission customers in affected zones should be allocated a pro rata share of the costs.

81. OxyChem also objects to the allocation of demand response costs based upon daily load ratio shares. OxyChem explains that in the proposed Attachment R to NYISO's OATT, NYISO allocates demand response costs based upon load ratio shares on a daily basis. But, according to OxyChem, this daily load ratio share will not be representative of the benefits provided by demand response resources to customers at the time the demand response is committed or dispatched as required by Order No. 745. OxyChem states that the probability of demand response being dispatched is much higher during peak periods of energy use than during non-peak periods. However, as a result of its manufacturing patterns, OxyChem generally uses a consistent amount of energy during the day, resulting in its accounting for a smaller percentage of total NYISO load during peak periods of energy usage (when there is greater total load in NYISO) than it does during non-peaks hours (when there is less total load in NYISO).

82. Therefore, OxyChem contends by only calculating the load ratio share on a daily (as opposed to hourly) basis, NYISO is not recognizing this peak and non-peak distinction and is over-allocating costs of demand response to high-load factor off-peak customers like itself. Moreover, NYISO proposes to clear its demand response resources on an hourly basis and thus, according to OxyChem, the appropriate cost allocation

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<sup>74</sup> OxyChem September 9, 2011 Protest at 15.

<sup>75</sup> NYAPP September 9, 2011 Comments at 3-4.

<sup>76</sup> *Id.* at 5-7.

methodology should be based upon the corresponding hourly load ratio share. This would assure that the allocation represents the costs of demand response at the time the demand response is committed or dispatched, which would comply with the requirements of Order No. 745.<sup>77</sup>

83. In addition, in the same proposed Attachment R, OxyChem maintains that NYISO has calculated the congestion coefficients in a manner that does not represent the actual market that will prevail when demand response is committed or dispatched. Therefore, OxyChem asserts that NYISO's proposal fails to satisfy the requirement that demand response costs be allocated to beneficiaries in the relevant energy market(s) when the demand response is committed or dispatched.<sup>78</sup> By using average congestion coefficients, OxyChem contends that NYISO is improperly spreading the costs of demand response across all hours of the day – instead of only allocating costs to load in the hours where demand response reduces LMP. Because demand response timing is crucial as congestion and load all can be expected to vary from hour to hour, OxyChem states that the use of average congestion coefficients (based on all hours) and average load will produce a mismatch between those who benefit from the demand response in each hour and those who are allocated the cost of the demand response. OxyChem contends the burden is on NYISO to show that using an average congestion number for an entire day as part of its static probability calculation is consistent with Order No. 745, and NYISO failed to meet this burden. Instead, OxyChem asserts that NYISO, when deploying demand response, should determine, in real time, where there is congestion and not allocate any costs for demand response to customers downstream of the congestion.

84. EPSA states that input from stakeholders noted that the current approach did not address how costs should be allocated when multiple interfaces are constrained. NYISO reviewed the current approach and amended Attachment R by adding four additional coefficients. EPSA states that the proposed tariff change improves NYISO's ability to allocate costs to the beneficiaries of the demand response when more than one interface is constrained, more accurately reflecting impacts of congestion on the NYISO system

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<sup>77</sup> *Id.* at 17 (citing Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 102 (The Commission required the RTOs and ISOs to allocate the costs associated with Demand Response compensation “proportionately to all entities that purchase from the relevant energy market in the area(s) where the demand response reduces the market price for energy at the time when the demand response resource is committed or dispatched.”)).

<sup>78</sup> *Id.* (citing Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 102).

congestion.<sup>79</sup> EPSA supports the addition of four additional coefficients since it will improve the existing allocation of costs of demand response scheduled in the day-ahead market.

#### 4. Answers

85. In response to NYAPP's argument that NYISO's cost allocation methodology does not comply with Order No. 745 because it allocates costs to customers who have bilateral contracts for energy, NYISO states that these parties' bilateral contracts are a part of the larger New York market, and even if the contract price is not directly derived from NYISO market clearing prices, these customers benefit from the trends in the New York electricity markets over time. Further, according to NYISO, the burden of monitoring and scrutinizing the terms of such contracts to determine whether a particular party was or was not purchasing from the New York markets would be substantial and intrusive.

86. NYISO asserts that its cost allocation method reasonably apportions the costs of demand response, and the methodology proposed in the tariff filing is an enhanced version of the method that NYISO has been using since the inception of the DADRP. NYISO states that to identify beneficiaries, the method takes account of historical congestion in such a way that costs are not arbitrarily allocated to all NYCA load, as OxyChem may suggest.<sup>80</sup> Thus, load that is upstream of a constraint does not pay the costs associated with demand response activated downstream of the constraint. NYISO argues that it is reasonable to assume that there is a benefit to the load in a zone where demand response is dispatched under the Commission's cost-effectiveness test, and therefore it is reasonable to allocate the costs of that demand response to all load in that zone.<sup>81</sup>

87. In response to NYISO's answer, OxyChem argues that NYISO's statements about the cost impact of the NYISO market on the NYPA electric service of Replacement and Expansion Power are unsupported assertions that neither constitute evidence, much less substantial evidence, nor provide a reasoned basis for the Commission to conclude that NYISO's cost allocation proposal meets the requirements of Order No. 745.<sup>82</sup>

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<sup>79</sup> EPSA September 9, 2011 Comments at 6.

<sup>80</sup> NYISO September 26, 2011 Answer at 10-11.

<sup>81</sup> *Id.* at 11.

<sup>82</sup> OxyChem October 6, 2011 Answer at 2.

88. OxyChem asserts that Order No. 745 requires that NYISO only allocate costs when several distinct conditions are met.<sup>83</sup> OxyChem contends that while NYPA Replacement and Expansion Power is purchased and consumed in New York, it is not part of the relevant New York market for purposes of demand response cost allocation. OxyChem reiterates that the relevant New York markets for purposes of demand response cost allocation are only those that are based on NYISO LMP and that NYPA Replacement and Expansion Power has, at best, only a de minimis relationship to NYISO market clearing prices in any meaningful sense.<sup>84</sup> OxyChem argues that NYISO does not dispute the evidence or conclusion explained in OxyChem's protest. Thus, OxyChem concludes that, as a NYPA Replacement and Expansion Power customer, it does not purchase energy from the "relevant energy market" as required by Order No. 745 and should therefore not be allocated any demand response costs.

89. In response to NYISO's assertion that customers benefit from the trends in the New York electricity markets over time, OxyChem asserts that its protest demonstrated that NYPA Replacement and Expansion Power customers will not benefit from lower LMP in NYISO due to demand response because the rates for NYPA Replacement and Expansion Power are unrelated to NYISO market prices. OxyChem asserts that the rates for NYPA Replacement and Expansion Power are not, and have never been, based on market rates in NYISO, and NYISO offers no reason to believe that the rates for this unique form of power will ever be tied to the prevailing market price. OxyChem contends that allocating present costs for demand response based on speculation about potential future benefits at some unknown time goes against the requirement that costs be allocated to "entities that purchase from the relevant energy market...at the time when the demand response resource is committed or dispatched."<sup>85</sup> OxyChem contends this also violates the ratemaking principle that costs cannot be allocated to entities that do not receive a benefit "at present or in a likely future scenario."<sup>86</sup>

90. OxyChem asserts that while NYISO has stated that the burden of determining which entities are not purchasing in the relevant New York market would be too

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<sup>83</sup> *Id.* at 2-3 (citing Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 102).

<sup>84</sup> *Id.* at 3 (citing OxyChem September 9, 2011 Protest at 9-16).

<sup>85</sup> *Id.* at 3-4 (citing Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 102).

<sup>86</sup> OxyChem October 6, 2011 Answer at 4 (citing *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323, at P 637 (2011)).

substantial and intrusive, NYISO cannot justify allocating demand response costs to entities that do not meet the Order No. 745 cost allocation criteria even if the alternative means more work for NYISO. OxyChem contends that such a result is not permitted by Order No. 745. Further, OxyChem states that the identities of the industrial customers in Western New York who receive Replacement and/or Expansion Power from NYPA, and their allocation of power, is known and publicly available, easing the burden on NYISO.<sup>87</sup> Furthermore, OxyChem maintains NYISO's lack of specificity about the nature of the burdens and the related costs that would be incurred to determine which entities purchase in the relevant market is in sharp contrast to the detailed description it provided regarding the burdens of implementing NYTOs' request for multiple net benefits thresholds.

91. With respect to the use of daily rather than hourly load ratio share and static probability used to determine transmission constraints, OxyChem asserts that NYISO's only response was that its methodology "reasonably apportions the costs of demand response" and that "the method takes account of ex post congestion patterns using historical congestion, so [the] costs are not arbitrarily allocated to all NYCA load."<sup>88</sup> OxyChem asserts that these conclusory statements do not address the arguments about how the proposed methodology, by not using hourly values, systematically shifts demand response costs from on-peak users to off-peak users. OxyChem argues that NYISO continues to fail to demonstrate how its proposed cost allocation methodology only allocates demand response costs to those purchasing energy in the relevant market as required by Order No. 745.

## 5. Commission Determination

92. NYISO asserts that its current approach to allocate demand response costs as Schedule 1 uplift costs that are then allocated to transmission customers on the basis of their load ratio shares, appropriately allocates costs to those entities in NYISO that benefit from the demand response.<sup>89</sup> We disagree. Order No. 745 required that "each RTO and ISO allocate the costs associated with demand response compensation proportionally to all entities that purchase from the relevant energy market in the area(s) where the demand response reduces the market price for energy at the time the demand

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<sup>87</sup> *Id.*

<sup>88</sup> *Id.* at 5.

<sup>89</sup> NYISO August 19, 2011 Filing at 10.

response resource is committed or dispatched.”<sup>90</sup> Thus, the Commission required each RTO and ISO “to make a compliance filing that either demonstrates that its current demand response cost allocation methodology appropriately allocates costs to those that benefit from the demand reduction or propose revised tariff provisions that conform to this requirement.”<sup>91</sup> Protesters argue, and we agree, that purchasers of NYPA Replacement Power and Expansion Power do not purchase energy in the relevant NYISO energy market. We find that NYISO has failed to demonstrate how its proposal to allocate demand response costs as an Schedule 1 uplift cost that is then allocated to transmission customers on the basis of their load ratio shares appropriately allocates costs to entities purchasing in NYISO’s energy market that benefit from the lower prices produced by dispatching demand response. NYISO is directed to revise its methodology to allocate the costs associated with demand response compensation to only those entities that purchase from the relevant NYISO energy market in the area(s) where the demand response reduces the LBMP at the time when the demand resource is committed or dispatched.

## **E. Behind-the-Meter Generation**

### **1. Protests and Comments**

93. Demand Response Supporters argue that NYISO’s Market Services Tariff precludes compensation for demand response that is facilitated by the use of behind-the-meter generation, even if it occurs when prices were above the net benefits threshold and even if the demand response was otherwise compliant with the measurement and verification rules and other demand response rules in the tariff. Demand Response Supporters argue that this result is wholly unjust and unreasonable, and facially non-compliant with Order No. 745 and other Commission orders.<sup>92</sup>

94. Demand Response Supporters assert that Order No. 745 does not permit or require ISOs and RTOs to peak behind a retail customer's meter to determine what prompted the demand response – the only relevant evaluation is the drop in the customer's metered consumption relative to anticipated consumption. They argue that the fact that a portion of the resource's reduction in metered usage is facilitated by generation located behind the retail meter is wholly irrelevant under Order No. 745 and cannot serve as a basis for denying that customer LMP compensation for its demand response.

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<sup>90</sup> Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 102.

<sup>91</sup> *Id.*

<sup>92</sup> Demand Response Supporters September 9, 2011 Protest at 11.

95. Joint Commenters state that Order No. 745 clearly indicates any load reduction that helps to balance demand and supply, and meet the net benefits test, should be able to participate fully in demand response programs, and be compensated fully. Joint Commenters argue that while the NYISO compliance filing is silent on the issue of behind-the-meter generation participation and compensation, since the inception of the demand response program, loads served by behind-the-meter generation have been barred from participating in economic demand response.<sup>93</sup>

96. Joint Commenters believe that it is critical for the Commission to establish a consistent national policy on behind-the-meter generation to ensure that all willing consumers can fully participate and are fairly compensated in order to maximize the consumer benefits intended by Order No. 745 across all RTOs/ISOs. Joint Commenters argue that because NYISO's proposal would restrict load served by behind-the-meter generation from fully participating in demand response programs, the Commission should reject it.

97. Marathon and Energy Spectrum contend that NYISO behind-the-meter resources should most assuredly be provided the opportunity to participate in demand response energy markets. Joint Commenters, Marathon, and Energy Spectrum all urge the Commission to reject NYISO's filing.<sup>94</sup>

## 2. Answers

98. NYISO argues that protestors ignore the fact that its DADRP has excluded all local generation, with the Commission's approval, since June 2003, and that nothing in Order No. 745 requires NYISO to change the rules defining the types of resources that are eligible to participate.<sup>95</sup>

99. Demand Response Supporters acknowledge and do not dispute the findings of the Commission's June 30, 2003 order.<sup>96</sup> Demand Response Supporters contend, however,

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<sup>93</sup> Joint Commenters September 9, 2011 Protest at 2.

<sup>94</sup> Marathon September 9, 2011 Protest at 1, Energy Spectrum September 9, 2011 Protest at 1.

<sup>95</sup> NYISO November 26, 2011 Answer at 3 (citing *New York Indep. Sys. Operator, Inc.*, 103 FERC ¶ 61,374 (2003)).

<sup>96</sup> Demand Response Supporters October 11, 2011 Answer at 4-5 (citing *New York Indep. Sys. Operator, Inc.*, Order Accepting Tariff as Modified, Docket No. ER03-810-000 (June 30, 2003)).

that Order No. 745 has changed the landscape to require RTOs to make the necessary modifications to incorporate the Commission's directives, including compensating all demand response resources at full LMP. Demand Response Supporters assert that the regulations promulgated pursuant to Order No. 745 place no limitations on the types of demand response resources that are eligible for full LMP compensation.<sup>97</sup>

100. As a final point, Demand Response Supporters contend it is worth noting that other RTOs making compliance filings in Order No. 745 proceedings have accepted behind-the-meter generation as a demand response resource. Demand Response Supporters cite PJM and ISO-New England as examples that allow behind-the-meter generation to be used to facilitate demand response that will be eligible for full LMP compensation. Demand Response Supporters assert that NYISO makes no attempt at a distinction between its neighboring RTOs' inclusion of behind-the-meter generation and its proposed exclusion of behind-the-meter generation from the demand resources eligible for compensation because, they argue, no meaningful distinction exists.

### **3. Commission Determination**

Demand Response Supporters and Joint Commenters argue that behind-the-meter generation should be allowed to participate as a demand side resource. In Order No. 745, the Commission 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 demand response resources. Order No. 745 also did not prohibit such differentiation. 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>98</sup>

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<sup>97</sup> *Id.* at 5 (citing 18 CFR § 35.28(v) (2011) for the proposition that the only requirement specified in the regulations is that the resource must “reduce consumption of electric energy from their expected levels.”)).

<sup>98</sup> ISO-New England's Order No. 745 compliance filing acknowledges behind-the-meter generation as a resource because it is part of its current demand response programs.

## F. Demand Response Participation in the Real-Time Energy Market

### 1. Protests and Comments

102. Demand Response Supporters argue that since November 2009, NYISO has been obligated to permit demand response participation in its real-time market.<sup>99</sup> Demand Response Supporters contend that NYISO offers no firm commitment on the ultimate implementation date and has shown no eagerness to do so. Demand Response Supporters urge the Commission to remind NYISO of its obligation in this regard and to provide NYISO with a date certain to develop and implement its plan to ensure full demand response participation in NYISO energy markets.<sup>100</sup>

### 2. Answers

103. NYISO contends that Demand Response Supporters request to fix a “date certain” for the implementation of participation in NYISO’s real-time energy market for demand response resources<sup>101</sup> is outside the scope of this proceeding. NYISO states that it is aware of its obligation to develop a program for real-time demand response in its energy market, and has reported regularly to the Commission and to market participants on its progress.<sup>102</sup>

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<sup>99</sup> Demand Response Supporters September 9, 2011 Protest at 2 (citing November 20, 2009 Order on Compliance Filing at P 34, in Docket No. ER09-1142. *See New York Indep. Sys. Operator, Inc.* 129 FERC ¶ 61,164, at P 34 (2009)).

<sup>100</sup> *Id.* at 3.

<sup>101</sup> NYISO September 26, 2011 Answer at 5 (citing Demand Response Supporters September 9, 2011 Protest at 3).

<sup>102</sup> NYISO September 26, 2011 Answer at 5, note 17 (citing NYISO Semi Annual Report on Demand Side Management Programs, submitted in Docket No. ER01-3001 (June 3, 2011)). NYISO states that it has discussed the status of the real-time project with Market Participants in the course of developing its Order No. 745 compliance filing, and has also raised it in the budgeting process, where the NYISO has stated: “The focus of this project in 2012 is development of the market rules and identification of software changes required to permit demand response entities to participate in the NYISO’s real-time energy market. The scope of this effort will be determined in the 4<sup>th</sup> quarter of 2011.” *Id.* (citing NYISO Budget Priorities Working Group presentations dated 6/23/11, 7/29/11, 8/24/11, 9/13/11 and 9/23/11, *available at* [www.nyiso.com](http://www.nyiso.com)).

104. In response to NYISO's answer, Demand Response Supporters state that despite the Commission's November 20, 2009 directive to implement a real-time economic program,<sup>103</sup> for nearly two years, NYISO has delayed doing so, while offering a variety of reasons. Demand Response Supporters argue that the Commission should reject NYISO's latest attempt to put the real-time program on the backburner and require NYISO to propose a detailed timeline and concrete plan for implementing demand response in its real-time energy market.

### **3. Commission Determination**

105. On November 20, 2009, in Docket No. ER09-1142,<sup>104</sup> the Commission directed NYISO to provide a plan of action identifying the necessary changes and anticipated completion dates to allow technically capable demand response resources to participate in the real-time energy market.<sup>105</sup> Demand Response Supporters urge the Commission to provide NYISO with a date certain to develop and implement demand response participation in its real-time energy market. We find that we need not address this request here. NYISO acknowledges its obligation to permit demand response participation in its real-time market and has included the development of necessary market rules in its 2012 Budget priorities.

#### The Commission orders:

(A) NYISO's compliance filing is hereby accepted in part and rejected in part, as discussed in the body of this order.

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<sup>103</sup> Demand Response Supporters October 11, 2011 Answer at 10 (citing *New York Indep. Sys. Operator, Inc.*, 129 FERC ¶ 61,164, at P 34 (2009)).

<sup>104</sup> *New York Indep. Sys. Operator, Inc.*, 129 FERC ¶ 61,164 at P 34.

<sup>105</sup> We note that in its February 25, 2010 compliance filing in Docket No. ER09-1142-006, at 11, NYISO proposed a timeline for implementation of demand response participation in the real-time energy market that would have commenced work on software implementation and testing in the first quarter of 2012. However, in its January 2011 update in Docket No. ER01-3001, NYISO informed the Commission that it had suspended its timetable until the Commission ruled on compensation of demand response resources, which the Commission did in Order No. 745. In its June 2011 update in Docket No. ER01-3001, NYISO states that it has a project to provide an architectural design to market participants by the end of 2011 and will work with stakeholders to identify a 2012 project to complete the market design.

(B) NYISO is hereby directed to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission. Commissioners Moeller and Clark are dissenting in part with separate statements attached.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc.      Docket No.      ER11-4338-000

(Issued May 16, 2013)

MOELLER, Commissioner, *dissenting in part*:

Demand response plays a very important role in markets by providing significant economic, reliability, and other market-related benefits when properly deployed.

For the reasons set forth in my dissents on Orders No. 745 and 745-A, I respectfully dissent.<sup>1</sup> While consumers may pay lower rates if some consumers voluntarily agree to use less electricity, the Federal Power Act requires this Commission to establish just and reasonable rates that are not discriminatory.<sup>2</sup> If the Commission requires the RTOs and ISOs to overcompensate for providing demand response, the resulting rates are both discriminatory and not just and reasonable.

In addition, as stated in my dissent in Order No. 745-A, rather than impose a nationwide approach to demand response compensation, the Commission's objective of promoting demand response would have been better served if the regions were free to propose compensation methods that recognize the very real differences in the structures of the regional markets.

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Philip D. Moeller  
Commissioner

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<sup>1</sup> *Demand Response Compensation in Organized Wholesale Energy Markets*, 134 FERC ¶ 61,187 (2011) (*Moeller Dissenting*) (“Order No. 745”) and *Demand Response Compensation in Organized Wholesale Energy Markets*, 137 FERC ¶ 61,215 (2011) (*Moeller Dissenting*) (“Order No. 745-A”), respectively.

<sup>2</sup> 16 U.S.C. § 824d (2006).

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc.

Docket No. ER11-4338-000

(Issued May 16, 2013)

CLARK, Commissioner, *dissenting in part*:

While I agree with the decisions in today's order, particularly the determination that entities not purchasing energy in the relevant NYISO energy market should not be allocated any demand response costs,<sup>1</sup> I write separately to highlight my disagreement with the underlying decision in Order No. 745 to overcompensate demand response resources by paying them full LMP in the energy markets.<sup>2</sup>

Order No. 745 was created to alleviate barriers to demand response in wholesale energy markets by ensuring greater comparability between the compensation of demand response resources and supply-side resources. However, the compensation settled on by the Commission goes beyond the level needed to promote competition, and overcompensates demand response resources.

I support comparable treatment and compensation between resources as necessary precursors to a diverse resource pool and robust wholesale energy markets. These fundamental principles prevent me from supporting full LMP compensation for demand response. As a resource, demand response is capable of delivering benefits to the markets by curtailing load when our grid is most in need. However, when a demand response resource provides a service to the market, it avoids a payment that it would otherwise incur. These savings should be accounted for when determining a just, reasonable, and not unduly discriminatory rate. This is where Order No. 745 falls short. By providing full LMP compensation, the wholesale energy markets are now overcompensating demand response resources for their services and forcing consumers to pay more than needed to ensure comparability and overcome barriers faced by demand response.

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<sup>1</sup> 143 FERC 61,134, at P 92.

<sup>2</sup> For further analysis, see the dissent of Commissioner Moeller in *Demand Response Compensation in Organized Wholesale Energy Markets*, Order No. 745, FERC Stats. & Regs. ¶ 31,322 (Order No. 745) (Moeller, Comm'r, dissenting), *order on reh'g*, Order No. 745-A, 137 FERC ¶ 61,215 (2011) (Order No. 745-A), *reh'g denied*, 138 FERC ¶ 61,148 (2012) (Order No. 745-B).

The decision to compensate demand response at full LMP also leads to differential treatment between resources participating in the energy market. Order No. 745 provides demand response with a payment equal to LMP plus the savings associated with avoided energy usage. This extra incentive places other resources at a disadvantage and at risk of being displaced. I cannot support this preferential treatment, especially at a time when resources are relying on accurate market signals to weather a storm of changing economic and regulatory conditions.

For these reasons, I respectfully partially dissent from this order.

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Tony Clark  
Commissioner