158 FERC ¶ 61,081
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Norman C. Bay, and Colette D. Honorable.

New York Independent System Operator, Inc. Docket Nos. ER11-4338-001
ER11-4338-002

ORDER ON CLARIFICATION, REHEARING AND COMPLIANCE

(Issued January 30, 2017)

1. In this order, the Commission denies clarification, and grants, in part, and dismisses, in part, rehearing of its May 16, 2013 order in this proceeding.[1] The May 16, 2013 Order accepted, in part, and rejected, in part, the August 19, 2011 filing by the New York Independent System Operator, Inc. (NYISO) to comply with Order No. 745.[2] The Commission also accepts, in part, and rejects, in part, NYISO's proposed revisions to its Open Access Transmission Tariff (OATT) and its Market Administration and Control Area Services Tariff (Services Tariff), which NYISO filed on August 14, 2013, to comply with the May 16, 2013 Order (August 14, 2013 Compliance Filing), and directs NYISO to file revised tariff provisions, to be effective on a date to be designated by NYISO, in a filing with the Commission within 60 days of the date of this order.[3]

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[1] *New York Indep. Sys. Operator, Inc.*, 143 FERC ¶ 61,134 (2013) (May 16, 2013 Order).

[2] *Demand Response Compensation in Organized Wholesale Energy Markets*, Order No. 745, FERC Stats. & Regs. ¶ 31,322, *order on reh'g and clarification,* Order No. 745-A, 137 FERC ¶ 61,215 (2011), *reh'g denied*, Order No. 745-B, 138 FERC ¶ 61,148 (2012), *vacated sub nom. Elec. Power Supply Ass'n v. FERC*, 753 F.3d 216 (D.C. Cir. 2014), *rev'd & remanded sub nom. FERC v. Elec. Power Supply Ass'n*, 136 S.Ct. 760 (2016).

[3] The Commission also dismisses as moot NYISO's request for temporary waiver of its obligation to comply with the cost allocation requirement established by section 35.28(g)(1)(v)(B).

## I. Background

2. In Order No. 745, the Commission amended its regulations under the Federal Power Act (FPA), regarding compensation for demand response resources participating in wholesale energy markets, that is, the day-ahead and real-time markets, administered by Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs). Specifically, Order No. 745 requires each RTO and ISO to pay a demand response resource the market price for energy, that is, the locational marginal price, 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 the net benefits test of Order No. 745. The net benefits test is necessary to ensure that the overall benefit of the reduced locational marginal price that results from dispatching demand response resources exceeds the costs of dispatching and paying locational marginal price to those resources. 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.

3. On August 19, 2011, NYISO submitted proposed revisions to its OATT and its Services Tariff in compliance with Order No. 745. In the May 16, 2013 Order the Commission accepted, in part, and rejected, in part, NYISO's proposed revisions and directed NYISO to submit a compliance filing containing revised tariff provisions within 30 days of the order, a period which was subsequently extended to and including August 14, 2013.

## II. Summary of the May 16, 2013 Order

4. In the May 16, 2013 Order, the Commission generally found that NYISO's net benefits test proposal and proposed tariff changes were consistent with the compliance requirements of Order No. 745. The Commission accepted NYISO's proposal to calculate a single net benefits price threshold for the New York Control Area (NYCA), however, it found NYISO's filing deficient in several aspects. First, the Commission found that NYISO did not provide sufficient evidence that the exclusion of off-peak hours from the supply offers used to construct the supply curve for the reference month complied with Order No. 745. Similarly, the Commission found that NYISO did not provide sufficient support for selection of the highest point on its representative supply curve at which supply becomes inelastic as the threshold point for the net benefits test. The Commission rejected 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. In addition, the Commission found that NYISO did not support its proposal to maintain its existing Day-Ahead Demand Response Program (DADRP) offer floor.

5. With respect to measurement and verification, the Commission in Order No. 745 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 for demand response. In response, NYISO proposed a new process for the calculation of an estimated baseline for demand response, which it referred to as the Economic Customer Baseline Load (ECBL). In the May 16, 2013 Order, the Commission accepted NYISO's proposed baseline methodology but directed NYISO to provide further justification for the necessity of its proposed cap on in-day adjustments.[4] The Commission also required NYISO to justify why the use of alternative baseline methodologies to the ECBL are not acceptable.[5] In addition, the Commission directed NYISO to include its data reporting requirements in section 24.3 of its Services Tariff.[6]

6. The Commission rejected NYISO's proposal to allocate the costs of demand response as Schedule 1 uplift costs that are then allocated to transmission customers on the basis of load ratio shares, because NYISO had failed to demonstrate how its proposal appropriately allocates costs to those that benefit from demand reductions.[7] Citing from Order No. 745, the Commission directed NYISO 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 locational based marginal price at the time when the demand response is committed or dispatched.[8]

7. Protestors argued that NYISO's Services Tariff is non-compliant with Order No. 745 insofar as it precludes compensation for demand response that is facilitated by the use of behind-the-meter generation. In the May 16, 2013 Order, the Commission responded that Order No. 745 neither required, nor prohibited an RTO or ISO from differentiating between demand response resources for which demand response is facilitated by behind-the meter generation and other demand response resources. The Commission added that if NYISO determined that changes were warranted in this area, such changes should be presented to the Commission in a separate proceeding.[9]

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[4] May 16, 2013 Order, 143 FERC ¶ 61,134 at P 68.

[5] *Id*. P 69.

[6] *Id.* P 70.

[7] *Id.* P 92.

[8] *Id.*

[9] *Id.* P 101.

## III. Requests for Rehearing, Clarification, and Waiver of the May 16, 2013 Order

8. On June 17, 2013, NYISO filed a request for rehearing and alternate requests for expedited clarification of the May 16, 2013 Order and for a temporary waiver of the cost allocation requirements of the Commission's regulations.[10] On the same date, Demand Response Supporters[11] filed a request for rehearing of that order. On July 2, 2013, Occidental Chemical Corporation (OxyChem) filed a motion to strike NYISO's June 17, 2013 pleading for submitting new evidence and arguments or, in the alternative, an answer to NYISO's pleading. Also, on July 2, 2013, the New York Association of Public Power (NYAPP) filed an answer to NYISO's request for clarifications and waiver, and NYISO filed an answer to Demand Response Supporters' request for rehearing. On July 17, 2013, NYISO filed an answer to OxyChem's filing and to NYAPP's answer.

9. As discussed more fully below, NYISO requests rehearing with respect to the Commission's rejection of NYISO's proposed cost allocation methodology. In the event the Commission denies rehearing, NYISO requests clarification that NYISO may make any revisions to the net benefits test that are necessary to make its methodology consistent with a revised cost allocation methodology, and clarification regarding which loads served through bilateral contracts the May 16, 2013 Order intended it to exclude from demand response cost allocation.

10. In addition, NYISO states that, if the Commission does not grant its request for rehearing, NYISO requests a temporary waiver of its obligation to comply with the cost allocation requirement established by section 35.28(g)(1)(v)(B) of the Commission's regulations[12] to permit NYISO to continue to use its existing cost allocation methodology while it evaluates the need to revise its net benefits test and, if necessary, designs a new

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[10] NYISO includes two attachments to its pleading (1) the Joint Affidavit of Scott M. Harvey and William W. Hogan (Attachment I), which NYISO states addresses three cost allocation principles that it asserts the Commission should consider in its review of NYISO's pleading, and (2) the Conforming Affidavit of Robert Pike and Christopher Russell (Attachment II), which NYISO asserts verifies the factual accuracy of the statements made by NYISO in its pleading. NYISO June 17, 2013 Request for Rehearing at 3-4.

[11] 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.

[12] 18 C.F.R. § 35.28(g)(1)(v)(B) (2016). NYISO incorrectly refers to the section as section 35.28(g)(B).

one. NYISO states that amending its net benefits test will require considerable time to complete.

11. In their request for rehearing, Demand Response Supporters argue that the Commission erred in determining that Order No. 745 does not require RTOs/ISOs to compensate demand response facilitated by behind-the-meter generation at full locational marginal price and that Order No. 745 does not prohibit such a distinction. They contend that Order No. 745 does not allow RTOs/ISOs to discriminate among demand response resources and further, the exclusion of demand response facilitated by behind-the-meter generation from DADRP departs from Commission regulations and precedent.

## A. Discussion

### 1. Procedural Matters

12. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2016) prohibits an answer to a request for rehearing. Accordingly, we reject the answers to the requests for rehearing filed in this proceeding. We also reject the affidavits attached to NYISO's request for rehearing as it is inappropriate to inject new evidence at this stage of the proceeding on rehearing of a Commission order.[13]

13. We also dismiss as moot NYISO's motion for temporary waiver of section 35.28(g)(1)(v)(B).[14] As set forth below, the Commission grants rehearing and accepts NYISO's original August 19, 2011 proposal to allocate demand response costs to all transmission customers on the basis of load ratio shares. Because we accept NYISO's original proposal in this regard, NYISO's request for temporary waiver of its obligation to comply with the cost allocation requirement established by

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[13] *Entergy Nuclear Operations, Inc. v. Consolidated Edison Co. of New York, Inc*., 112 FERC ¶ 61,117, at P 39 (2005) ("The Commission may reject evidence proffered for the first time on rehearing. . . because. . . parties are not permitted to respond to a request for rehearing [and] such behavior is disruptive to the administrative process because it has the effect of moving the target for parties seeking a final administrative decision.") (footnotes omitted) (citing e.g., *Arkansas Power & Light Company*, 52 FERC ¶ 61,029, at 61,156 & n.14 (1990); *Philadelphia Electric Company*, 58 FERC ¶ 61,060, at 61,133 & n.4 (1992)).

[14] 18 C.F.R. § 35.28(g)(1)(v)(B) (2016) ("Each [independent system operator] . . . that has a tariff provision permitting demand response resources to participate in the energy market . . . must: . . . (B) 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 when the demand response resource is committed or dispatched.").

section 35.28(g)(1)(v)(B) to permit it to temporarily continue its use of its originally proposed cost allocation methodology is moot.

### 2. Substantive Matters

#### a. NYISO's Request for Rehearing and Alternative Requests for Clarification

14. In the May 16, 2013 Order, in response to a protest from OxyChem who objected to being allocated costs of demand response by claiming that it does not pay a LMP-based price for NYPA Replacement Power and Expansion Power under its bilateral contract with NYPA, the Commission rejected NYISO's proposal to allocate the costs of demand response to all customers on the basis of load ratio shares. The Commission stated that 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 response resource is committed or dispatched."[15] Thus, the Commission stated, Order No. 745 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.[16] The Commission further stated:

> 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 a 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.[17]

15. The Commission directed NYISO 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 locational based marginal price at the time when the demand response is committed or dispatched."[18]

[15] May 16, 2013 Order, 143 FERC ¶ 61,134 at P 92 (citing Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 102).

[16] *Id.*

[17] *Id.*

16. On rehearing, based on its interpretation of the May 16, 2013 Order as mandating a broad exemption from cost allocation for all purchasers under bilateral contracts, NYISO argues that: (1) the May 16, 2013 Order applied an overly and unnecessarily narrow interpretation of Order No. 745's cost allocation requirements; (2) requiring NYISO to adopt cost allocation rules that would be fundamentally incompatible with its net benefits test would not constitute reasoned decision-making; (3) it would be unduly discriminatory to ignore the benefits that load with bilateral contracts derive from NYISO's energy market and to exclude such customers from DADRP cost allocation; (4) the May 16, 2013 Order undermines the basic structure of the NYISO cost allocation system; and (5) the Commission is imposing different cost allocation requirements on NYISO than it has applied to other ISOs/RTOs.

17. First, NYISO asserts that the Commission has apparently read section 35.28(g)(1)(v)(B) of its regulations to prohibit the allocation of demand response compensation costs to any load that is being served under a bilateral contract and that, therefore, does not explicitly "purchase energy" from a NYISO-administered market bid-based auction. NYISO asserts that the section need not, and should not, be read so narrowly, given the record in this proceeding, including the harmful implications of creating an inconsistency between the design of NYISO's net benefits test and its demand response cost allocation rules. NYISO reiterates arguments made in its September 26, 2011 answer that load taking service under bilateral contracts benefit from the dispatch of cost-effective demand side resources even if they do not make direct purchases in the NYISO energy market and that they benefit from the trends in the New York electricity markets over time, whether or not those benefits accrue immediately under the terms of those contracts. Moreover, according to NYISO, all loads are assessed charges, including congestion costs and ancillary services charges, that would be impacted by the dispatch of demand side resources in NYISO's day-ahead market. NYISO asserts that the Commission failed to address these arguments, and should take a broader, more flexible view of NYISO's proposed cost allocation. NYISO asserts that the Commission failed to address the arguments in its September 2011 answer and, instead, focused on the protest of a small number of load resources who erroneously claimed not to be impacted by the selection of Demand Side Resources in New York. In addition, NYISO argues that, contrary to Order 745-A, the May 16, 2013 Order does not appear to have provided NYISO with flexibility to fashion a suitable cost allocation proposal for New York.[19]

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[18] *Id*.

[19] NYISO June 17, 2013 Request for Rehearing at 14 (citing Order No. 745 at P 102 ("[the Commission would provide] sufficient flexibility for each individual RTO and ISO to determine, in consultation with their stakeholders, an appropriate cost allocation methodology that complies with the Final Rule.")).

18. NYISO contends that the design of its net benefits test is inextricably linked to its DADRP cost allocation methodology and that requiring modifications to its cost allocation methodology that are fundamentally incompatible with the assumptions underlying the net benefits test will likely result in inefficient and inequitable outcomes and may shift DADRP cost from some or all load with bilateral contracts to all other load.

19. NYISO also contends that it would be unduly discriminatory to ignore the benefits that load with bilateral contracts derive from NYISO's energy markets, while shifting costs to other load in New York. NYISO states that load served under bilateral contracts derive benefits from the reduced price for energy in the day-ahead market that results from the dispatch of demand side resources. NYISO states that such load is responsible for paying a transmission usage charge that is determined based on the settlement of the day-ahead market and can be reduced as a result of the dispatch of demand side resources. In particular, NYISO states that such load is assessed a transmission usage charge that is composed of both the congestion price component and the marginal losses price component of the LBMP.[20] NYISO states that load taking service under bilateral contracts, including NYPA program customers, also pay for ancillary services and benefit when the dispatch of demand side resources in the day-ahead market results in a reduction of ancillary services prices.[21] In addition, NYISO explains that the NYISO day-ahead energy market economically schedules all suppliers to meet all load, at least cost, which includes the loads with bilateral contracts. NYISO states that, regardless of the existence of a bilateral contract between the supplier and load, the supplier may be making purchases in NYISO's energy market or obtaining service from another supplier to satisfy its obligation to serve the load under the bilateral contract when it is economically efficient to do so. NYISO states that NYPA benefits from the economic efficiencies produced by NYPA's ability to choose whether to purchase from the NYISO day-ahead energy market (at prices reduced as a result of demand response), or to obtain service from another supplier. NYISO also asserts that it would be unable to identify which portions of a supplier's schedules were satisfying LBMP load or load served by a bilateral contract.

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[20] NYISO explains that the congestion price component of the transmission usage charge is determined based on the difference in the day-ahead market energy prices between the sink location and the source location of the transaction and, where the dispatch of demand side resources results in lower day-ahead market energy prices in a congested location, the congestion price component is also lowered.

[21] NYISO explains that a lower LBMP as a consequence of scheduling demand response can also result in lower ancillary service prices by reducing the lost opportunity cost component of the regulation service and operating reserve clearing prices.

20. NYISO contends that the load ratio share methodology is the fundamental mechanism for allocating costs among loads in NYISO's markets and it is based on the premise that all loads benefit from inextricably interrelated market, operational, and reliability services, including the results of the various demand reduction programs, and therefore should bear a proportionate burden of the cost of those programs. Exempting bilateral energy purchases from the costs of the demand response programs, NYISO argues, would arbitrarily and unfairly shift these costs to the remaining loads that benefit from them, and would introduce artificial factors that favor one manner of participation over another, distorting market economics.

21. NYISO also contends that the Commission has accepted cost allocation methodologies for other ISOs/RTOs that are similar to the methodology proposed by NYISO. NYISO asserts that, for example, the Commission accepted PJM's proposed cost allocation methodology, and it allocates costs for demand response payments to load serving entities based on their load ratio share regardless of whether the load serving entity procured the energy to meet its load from the PJM energy market or through a bilateral contract.[22] NYISO argues that the Commission's finding with respect to NYISO's cost allocation proposal is, therefore, an unexplained departure from Commission precedent that is unjust, unreasonable, and unduly discriminatory.

22. Alternatively, in the event its request for rehearing is denied, NYISO requests clarification that it may make any revisions to the net benefits test, which the Commission conditionally accepted in its May 16, 2013 Order, that are necessary to make its methodology consistent with a revised cost allocation methodology. NYISO also requests that the Commission clarify that the May 16, 2013 Order only intended to require NYISO to revise its current cost allocation methodology to exclude load taking service under NYPA's Replacement Power and Expansion Power program, which is the one category of load taking service under a bilateral contract that the Commission expressly found not to "purchase energy in the relevant NYISO energy market." Regarding the latter clarification request, NYISO adds that bilateral transactions constitute approximately half of the energy transactions in New York and many of these bilateral transactions are supplied through purchases in NYISO's energy market or are otherwise connected to this market. Moreover, NYISO states, it believes these bilateral contracts are competitively negotiated arrangements that are influenced by the competitive market outcomes of NYISO's market place and that expectation of future changes in the NYISO markets, as well as reflections on past outcomes, will be incorporated into future contractual negotiations for the bilateral contract's financial terms. For these reasons, NYISO asserts that it would be unreasonable to require NYISO to exclude from its cost allocation methodology all load taking service under a bilateral

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[22] NYISO June 17, 2013 Request for Rehearing at 19 (citing *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,216, at P 78 (2011)).

contract, and the Commission should clarify that it did not intend NYISO to take such action.

**Commission Determination**

23. In the May 16, 2013 Order, the Commission rejected NYISO's original August 19, 2011 proposal to allocate demand response costs as Schedule 1 uplift costs that are then allocated to transmission customers on the basis of load ratio shares, because NYISO had failed to demonstrate how its proposal appropriately allocates costs to those that benefit from demand reductions.[23] Protestors argued that they do not purchase energy in the relevant NYISO energy market because they do not pay a LMP-based price for NYPA Replacement Power and Expansion Power under their bilateral contracts. For the reasons set forth below, we grant rehearing of the cost allocation issue and find that NYISO has demonstrated that its original proposal to allocate the costs of demand response as Schedule 1 uplift costs that are then allocated to transmission customers on the basis of load ratio shares appropriately allocates costs to those that benefit from demand reductions.

24. In NYISO's answer concerning its August 19, 2011 compliance filing, NYISO asserted, among other things, that load served under the bilateral contracts for NYPA Replacement Power and Expansion Power are part of a larger New York market, and although their contract prices are not directly derived from the NYISO market clearing prices, they nonetheless benefit from the lower prices produced by dispatching demand response in the New York energy market.[24] OxyChem, in its protest, attempted to minimize the benefit that it receives from the lower prices produced by dispatching demand response in the New York energy market. In particular, OxyChem stated that "industrial power customers in New York are themselves only partially affected by changes in LMP, as they include transmission and distribution costs in addition to the costs of energy."[25] In this regard, we take official notice of the terms of OxyChem's current bilateral contract for NYPA Replacement Power and Expansion Power, which is publicly available on the New York Power Authority's website.[26] OxyChem's current bilateral contract for NYPA Replacement Power and Expansion Power requires it to

[23] May 16, 2013 Order, 143 FERC ¶ 61,134 at P 92.

[24] NYISO September 26, 2011 Answer at 10.

[25] OxyChem September 9, 2011 Protest at 11.

[26] Rule 508(d) of the Commission's Rules of Practice and Procedure allows the Commission to "take official notice of any matter that may be judicially noticed by the courts of the United States…." 18 C.F.R. § 385.508(d) (2016). Federal courts have taken judicial notice of documents located on government websites. *See, e.g., Denius v. Dunlap*, 330 F.3d 919, 926 (7th Cir. 2003).

reimburse NYPA for "NYISO Transmission and Related Charges" that NYISO assesses to NYPA.[27]

25. In its request for rehearing, NYISO further explains its argument as to why load served under the bilateral contracts for NYPA Replacement Power and Expansion Power are part of a larger New York market, and benefit from the lower prices produced by dispatching demand response in the New York energy market. NYISO explains that loads served under bilateral contracts for NYPA Replacement Power and Expansion Power are assessed a Transmission Usage Charge, which is composed of both the congestion price component and the marginal losses price component of the LBMP in NYISO's day-ahead energy market, and therefore this load would benefit from lower Transmission Usage Charges when demand response is dispatched in NYISO's day-ahead energy market and lowers the day-ahead LBMP.[28]

26. In NYISO's rehearing request, it also explains that the NYISO day-ahead energy market economically schedules all suppliers to meet all load, at least cost, which includes the loads with bilateral contracts.[29] NYISO explains that, regardless of the existence of a bilateral contract between the supplier and load, the supplier may be making purchases in NYISO's energy market or obtaining service from another supplier to satisfy its obligation to serve the load under the bilateral contract when it is economically efficient to do so.[30] NYISO states that NYPA (the transmission customer and the supplier under the bilateral contracts for NYPA Replacement Power and Expansion Power) benefits from the economic efficiencies produced by NYPA's ability to choose whether to purchase from the NYISO Day-Ahead Market (at prices reduced as a result of demand response), or to obtain service from another supplier. NYISO also asserts that it would be unable to identify which portions of a supplier's schedules were satisfying LBMP load or load served by a bilateral contract.[31]

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[27] *See* Service Tariff No. WNY-1 at Original Leaf No. 10, http://www.nypa.gov/trustees/2010%20minutes/July/1a-Yahoo!%20%-%20NOPH%20-%20Tariff%20WNY-1%20-%20Exh%20A-2.pdf.

[28] NYISO June 17, 2013 Request for Rehearing at 16. We note that NYISO also argues that this load would benefit from the lowering of certain ancillary services charges when demand response is dispatched in NYISO's day-ahead energy market, because the lost opportunity cost component of Regulation Service and Operating Reserves Service would be lower. *Id*. at 17.

[29] NYISO June 17, 2013 Request for Rehearing at 8.

[30] *Id.*

[31] *Id.*

27. We find that, when demand response is dispatched in NYISO's day-ahead energy market, reductions in the congestion price component and the marginal losses price component directly benefit load that must pay Transmission Usage Charges under bilateral contracts for NYPA Replacement Power and Expansion Power. We agree that NYPA benefits from the economic efficiencies produced by its ability to choose whether to purchase from the NYISO day-ahead market, or to obtain service from another supplier. We also find it reasonable to assign demand response costs in the NYISO day-ahead market to all customers because, even if NYISO were aware of all of the terms of all of the existing bilateral contracts, it would still be unable to identify which portions of a suppliers' schedules were satisfying LBMP load or load served by a bilateral contract.

28. The cost allocation methodology required in Order No. 745 is based upon the benefits of demand response to wholesale load that accrue from changes in LBMP in NYISO's day-ahead energy market, not the overall position of any particular market participant as a direct purchaser in NYISO's day-ahead energy market. Such benefits include not only lower energy prices, but also reductions in losses and congestion, as well as other economic efficiencies that result from participation of demand response resources.

29. Based upon the foregoing, we grant rehearing and accept NYISO's original August 19, 2011 proposal to allocate demand response costs as Schedule 1 uplift costs that are then allocated to transmission customers on the basis of load ratio shares. As set forth below, we separately address NYISO's proposals to adopt an hourly cost allocation, and to add four additional coefficients, which would enable NYISO to allocate costs when more than one interface is constrained, to its cost allocation methodology.

30. Finally, with regard to NYISO's request for clarification regarding whether it may change its net benefits test in light of the changes required in its existing cost allocation methodology ordered by the May 16, 2013 Order, we dismiss this request for clarification as moot, given that we have granted rehearing on the cost allocation issue in the May 16, 2013 order, and accepted NYISO's original August 19, 2011 proposal to allocate demand response costs as Schedule 1 uplift costs that are then allocated to transmission customers on the basis of load ratio shares.

#### b. Demand Response Supporters' Request for Rehearing

31. Demand Response Supporters argue that the May 16, 2013 Order permits undue discrimination against demand response facilitated by behind-the-meter generation by excluding it from compensation as a demand response resource. Specifically, Demand Response Supporters argue that: (1) Order No. 745 does not allow NYISO to discriminate among demand response resources; (2) the exclusion of demand response facilitated by behind-the meter generation from participation as a demand response resource departs from Commission regulations and from the practice of other regional

transmission organizations; (3) such exclusion does not square with the Commission's wholesale market design; (4) such exclusion is contrary to Commission precedent that supports only looking at the net impact on the grid; and (5) such exclusion is inconsistent with the FPA-based limitation on the Commission's jurisdiction that stops at the retail meter.

32. Demand Response Supporters point to the Commission's brief filed in response to the appeal of the order on NYISO's Order No. 745 compliance filing,[32] which states that "[s]ubstantial record evidence supports the Commission's finding that existing, differing compensation methods for demand response participation in organized wholesale energy markets present a barrier to that participation and result in unreasonable and discriminatory rates in those markets." They also argue that the removal of barriers to demand response participation and treating demand response comparably to generation are main goals of Order No. 745. Thus, Demand Response Supporters conclude that Order No. 745 dictates that the Commission must not allow NYISO to price discriminate against demand response facilitated by behind-the-meter generation and it must allow such resources to receive full locational marginal price when the net benefits threshold is met and the measurement and verification protocols are followed. They add that Order No. 745 does not permit or require ISOs or RTOs to peek 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.

33. Demand Response Supporters state that the Commission has also recognized that demand response is a grid-balancing service and, as such, the focus is not on the source of the demand response but rather, on the benefit that it provides to the grid. Demand Response Supporters assert that by allowing NYISO to exclude demand response facilitated by behind-the-meter generation, the Commission is effectively erecting a barrier to a vital grid-balancing tool, which goes against Order No. 745's directive to remove barriers to demand response participation.

34. With respect to the Commission's 2003 approval of NYISO's decision not to compensate demand response facilitated by behind-the-meter generation, Demand Response Supporters state that, at that time, Order No. 745 had not yet mandated that demand response be compensated at full locational marginal price and the order has been rendered obsolete by all that has occurred since it was issued.[33] Demand Response Supporters also assert that Order No. 719[34] requires ISOs and RTOs to accept balancing

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[32] Brief for Respondent at 21, *Electric Power Supply Association v. FERC*, No. 11-1486 (D.C. Cir. filed Aug. 28, 2012).

[33] Demand Response Supporters June 17, 2013 Request for Rehearing at 6 (citing *New York Indep. Sys. Operator, Inc.*, 102 FERC ¶ 61,313 (2003)).

bids from demand response, so long as certain criteria are met. They state that the Commission has not shown that demand response facilitated by behind-the-meter generation does not meet these criteria.

35. Demand Response Supporters also argue that not compensating demand response facilitated by behind-the-meter generation departs from Commission regulations and Commission orders with respect to other RTOs. They state that the Commission's regulations do not vary the definition of demand response by source,[35] and full compensation for demand response facilitated by behind-the-meter generation is in line with other RTOs, such as ISO-New England,[36] PJM,[37] and MISO.[38]

36. Demand Response Supporters also argue that creating different levels of demand response compensation based on how the demand response is accomplished runs contrary to the Commission's approach to wholesale market design, which does not permit different levels of energy market compensation for supply resources based on how the supply resource's metered injection into the grid is produced. They further argue that Commission precedent of behind-the-meter netting supports only looking at the net impact on the grid and concerns itself only with the impact of metered consumption on the wholesale markets for electric energy, capacity, and ancillary services.

**Commission Determination**

37. As we stated in the May 16, 2013 Order, the Commission in Order No. 745, neither required 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;[39] nor did it prohibit such differentiation. We find that this matter is

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[34] *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, FERC Stats. & Regs. ¶ 31,281 (2008), *order on reh'g*, Order No. 719-A, 74 Fed. Reg. 37,776 (July 29, 2009), FERC Stats. & Regs. ¶ 31,292, *order on reh'g*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

[35] 18 C.F.R. § 35.28(b)(4) (2016) ("Demand Response means a reduction in the consumption of electric energy by customers from their expected consumption in response to an increase in the price of electric energy or to incentive payments designed to induce lower consumption of electric energy.").

[36] Demand Response Supporters June 17, 2013 Request for Rehearing at 9 (citing *ISO New England Inc.*, 138 FERC ¶ 61,042, at P 76 (2012)).

[37] *Id*. (citing *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,216, at P 90 (2011)).

[38] *Id*. (citing *Midwest Indep. Transmission System Operator, Inc.*, 137 FERC ¶ 61,212, at P 71 (2011)).

beyond the scope of this Order No. 745 compliance filing. We stated in the May 16, 2013 Order that if NYISO or its stakeholders determined that changes were warranted with respect to NYISO's existing practices in this area, such changes should be presented to the Commission in a separate proceeding.[40] Moreover, on June 17, 2013, the same day that Demand Response Supporters filed their request for rehearing in the instant proceeding, they also filed a complaint against NYISO in Docket No. EL13-74-000, (Complaint) alleging that NYISO's tariffs discriminate against demand response facilitated by behind-the-meter generation and making the same arguments they make here. In a November 22, 2013 order,[41] the Commission granted the Complaint, in part. The Commission found the NYISO tariff provisions that establish the terms of NYISO's Day Ahead Demand Response Program (DADRP) to be unduly discriminatory because they exclude demand response facilitated by behind-the-meter generation from participation in the DADRP, while permitting participation by similarly-situated demand response accomplished without the use of such behind-the-meter generation. However, the Commission declined to grant Demand Response Supporters' specific request for relief to require a minor modification in the tariff definitions and, instead, ordered NYISO to develop and file, within 180 days, appropriate tariff language for integrating demand response facilitated by behind-the-meter generation into the DADRP. On June 3, 2016, the Commission issued an order accepting NYISO's compliance filing, which included NYISO's revised tariff provisions to integrate demand response facilitated by behind-the-meter generation into the DADRP.[42]

38. Accordingly, we dismiss Demand Response Supporters' rehearing request as beyond the scope of this proceeding, but also as moot because in NYISO, the question of the participation of demand response facilitated by behind-the-meter generation in the NYISO DADRP has been resolved in the complaint proceeding.

## IV. Compliance Filing

39. On August 14, 2013, NYISO filed a further compliance filing to address the Commission's directives in the May 16, 2013 Order. Specifically, according to NYISO, this filing: (1) provides additional support for NYISO's exclusion of off-peak hours in constructing the supply curve for the reference month used for NYISO's net benefits test, and additional support for NYISO's use of the highest point of the representative supply

[39] May 16, 2013 Order, 143 FERC ¶ 621,134 at P 101.

[40] *Id.*

[41] *Demand Response Supporters v. New York Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,162 (2013) (November 22, 2013 Order), order on *reh'g*, 155 FERC ¶ 61,151 (2016).

[42] *New York Independent System Operator, Inc.*, 155 FERC ¶ 61,243 (2016).

curve as the net benefits threshold; (2) revises Section 4.2.1.9 of the NYISO Services Tariff to remove the NYISO's proposed adjustment to the monthly net benefits threshold price for changes in natural gas prices that occur after the posting of the threshold; (3) provides additional support for NYISO's use of the net benefits threshold price as an offer floor for the NYISO's DADRP; (4) provides additional support for NYISO's use of a cap for the in-day adjustment to a Demand Side Resource's ECBL; (5) clarifies that NYISO's use of the ECBL for the DADRP does not preclude a consideration of alternative baseline methodologies; (6) inserts data reporting requirements in Attachment R of the NYISO OATT; (7) revises the methodology for allocating DADRP costs in Attachment R of the NYISO OATT by excluding load limited to bilateral contracts governing the former NYPA Replacement Power and Expansion Power program; and (8) includes certain ministerial changes to the tariff sheets provided with the August 2011 Filing.[43]

40. NYISO states that the precise timeframe for it to develop, test, and deploy the software changes necessary to support its compliance will depend on the project schedule and available resources at the time the Commission issues its order in this proceeding. It states that, assuming the Commission accepts its compliance filing by December 31, 2013, without significant modification, NYISO estimates that would be in the fourth quarter of 2014. Accordingly, NYISO requests a flexible effective date with the proposed tariff revisions to be effective on a date to be designated by NYISO in a filing with the Commission within thirty days of the Commission's acceptance of its August 14, 2013 Compliance Filing.

### A. Notice of Filing and Responsive Pleadings

41. Notice of NYISO's August 14, 2013 filing to comply with the May 16, 2013 Order was published in the *Federal Register*, 78 Fed. Reg. 52,171 (2013), with interventions and protests due on or before September 4, 2013. NRG Companies filed a motion to intervene. The New York Transmission Owners (NYTOs)[44] filed a motion to intervene and comments in support of NYISO's filing. OxyChem and NYAPP filed comments. Demand Response Supporters filed a protest.

42. On September 19, 2013, NYISO and the NYTOs filed answers to Demand Response Supporters' protest and on September 24, 2013, NYAPP filed an answer

[43] NYISO August 14, 2013 Compliance Filing at 1-2.

[44] 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.

to NYISO's answer. On October 4, 2013, NYISO filed an answer to NYAPP's September 24, 2013 answer and Demand Response Supporters filed an answer to the September 19, 2013 answers of NYISO and the NYTOs. On October 16, 2013, NYAPP filed an answer to an answer to NYISO's October 4, 2013 answer. On October 21, 2013, NYISO filed an answer to Demand Response Supporters' October 4, 2013 answer.

### B. Compliance Procedural Matters

43. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2016), prohibits an answer to a protest unless otherwise ordered by the decisional authority. Except as to the answers concerning NYISO's arguments supporting its original proposal on the methodology to allocate costs of demand response and on the issue of treatment of load under bilateral contracts, which answers are rejected,[45] we will accept the answers filed in this proceeding because they have provided information that assisted us in our decision-making process.

### C. Substantive Compliance Matters

#### 1. Net Benefits Test

44. In the May 16, 2013 Order, the Commission found that, to the extent NYISO wanted to exclude off-peak hours from its calculation of the net benefits threshold, it must demonstrate how this exclusion changes the threshold results and must fully support why such an outcome is reasonable. Similarly, the Commission found that NYISO had not provided support for selection of the highest point on its representative supply curve at which the curve becomes inelastic or an intermediate point as the threshold point for the net benefits test and that NYISO must provide sufficient evidence that this proposal complies with Order No. 745 and must fully support why this outcome is reasonable.

45. The Commission also rejected 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 and, thus, required NYISO to submit tariff revisions to remove that language from its tariff. In addition, the Commission required NYISO to either provide further justification for its proposal to modify its existing DADRP offer floor to

[45] In its August 14, 2014 Compliance Filing, NYISO raises arguments intended to support its original proposal for the allocation of demand response costs on the basis of load, which the Commission rejected in the May 16, 2013 Order. On compliance, the only issue is: Did the company comply with the Commission's directive? Arguments seeking a change in what the Commission ruled or directed are more properly raised in a request for rehearing. Likewise, new proposals based on such arguments seeking a change in the Commission's directives are not appropriate in a compliance filing proceeding. Accordingly, to the extent that the answers address such arguments and proposals, they address issues not properly raised on compliance.

reflect the results of the net benefits test or to submit revised tariff sheets to eliminate any DADRP offer floor.

46. As discussed more fully below, the Commission finds that NYISO met its compliance obligation with respect to the net benefits test and the Commission accepts NYISO's related tariff revisions.

#### a. Exclusion of Off-Peak Hours from the Calculation of the Net Benefits Threshold

##### i. NYISO's Filing

47. NYISO asserts that its exclusion of off-peak hours to construct the supply curve for the reference month is reasonable as it aligns the supply curve with the high-load hours in which actual demand reduction is likely to occur. NYISO states that, in line with the Commission's directive in the May 16, 2013 Order, it has calculated the impacts of excluding low-load hours from the calculation of the net benefits test threshold and has included in its filing its calculation of net benefits test thresholds for 13 reference months with and without exclusion of low-load hours.[46] In support, NYISO states that a net benefits threshold that accurately represents high-load hours is reasonable and consistent with the actual performance of demand response resources and the purpose of Order No. 745.[47] NYISO avers that an accurate representation of the supply curve during only peak hours is desirable as these are the hours in which demand reduction is likely to occur. NYISO asserts that the type of demand reduction that Order No. 745 seeks to facilitate occurs during peak hours and is not present during low-load hours. NYISO adds that, in low-load, off-peak hours, resources to meet load are plentiful and retail rates are generally greater than the wholesale cost of electricity. Therefore, according to NYISO, such hours already provide incentives for demand resources to reduce load regardless of participation in DADRP and there is no need to subsidize demand response during these hours. NYISO states that, in its experience, demand response provided in low-load hours is more likely to be the result of free riders who are being paid for behavior that would have occurred regardless of participation in demand response programs. Moreover, NYISO contends that such free-ridership is the kind of behavior that led NYISO to implement the DADRP offer floor. Furthermore, NYISO states that if it were to include all hours in the construction of the supply curve, the resulting thresholds would align more closely with what is available during low-load hours and would not accurately represent the supply curve during high-load hours when demand response is most likely to occur.[48]

[46] NYISO August 14, 2013 Filing at 7.

[47] *Id*.

[48] *Id*. at 8-9.

### ii. Comments and Protests

48. NYTOs support NYISO’s filing. They agree with NYISO that it should base its determination of the net benefits threshold price on a supply curve that consists of offers to supply energy submitted during peak hours.[49]

49. Demand Response Supporters disagree and argue that NYISO's proposal to only use high-load, peak hours in the modeling of its supply curve is arbitrary and capricious and inconsistent with Order No. 745. They state that Order No. 745 requires a demand resource participating in an organized wholesale energy market to be paid the locational marginal price when: (1) the demand resource has the capability to balance supply and demand as an alternative to a generation resource; and (2) dispatch of that demand response resource is cost-effective as determined by the net benefits test. Demand Response Supporters assert that neither Order No. 745, nor anything contained in NYISO’s compliance filings, suggests that demand resources are unable to meet either of these conditions outside of NYISO’s selected peak hours. As a result, NYISO offers no reasonable justification for its decision to exclude all hours other than those selected from the net benefits calculation.[50]

50. Demand Response Supporters contend that because the hours with highest demand will tend to overlap with the hours of highest locational marginal price, excluding hours with lower demand will tend to exclude many hours with lower locational marginal price, and factoring the lower-priced hours out of the equation predictably raises the net benefits threshold above what it would be if all hours were considered. Demand Response Supporters state that information supplied by NYISO in its August 14, 2013 compliance filing demonstrates that NYISO's proposal to include only seven high-load period hours per day increases the net benefits threshold, on average, by over nine percent, or more than $5/MWh. Demand Response Supporters assert that NYISO has not provided any credible evidence to support its peak-hours proposal.[51]

51. Demand Response Supporters also assert PJM, MISO, and ISO-NE each proposed using all hours to calculate a net benefits threshold, consistent with the directives of Order No. 745. Demand Response Supporters argue that, to ensure consistency, the Commission must require NYISO to use all hours in its net benefits calculation. They conclude that NYISO is erecting a barrier to the participation of demand response by artificially increasing the net benefits threshold.[52]

[49] NYTOs September 4, 2013 Comments at 4.

[50] Demand Response Supporters September 4, 2013 Protest at 4.

[51] *Id*. at 4-5.

[52] *Id*. at 6-7.

### iii. Answers

52. NYISO answers that its exclusion of off-peak hours from its supply curve methodology reasonably implements the net benefits test and fully complies with Order No. 745. NYISO states that Order No. 745 did not mandate a standardized approach to implementing the net benefits test and the net benefits thresholds that result from the exclusion of off-peak hours are neither anomalous nor unjustifiably high. NYISO asserts that it fully explained and supported its reasons for adopting that supply curve methodology in its compliance filing.

53. NYISO contends that if excluding off-peak hours were incompatible, the Commission would not have fashioned the May 16, 2013 Order so as to permit NYISO to provide additional evidence to support that exclusion in the compliance filing. NYISO also contends that its approach is just and reasonable, does not constitute a "barrier" to demand response participation, and there can be no "barrier" to demand response in the low-load hours because retail rates will typically exceed wholesale power costs. NYISO argues that there is no reason to pay consumers for not consuming power when the spot price of power is lower than their retail rate. Indeed, power that would be uneconomic to purchase at the retail rate should not, at least in the NYISO context, be included in baseline consumption because any demand response supposedly resulting from such power would, in fact, represent free riding and not actual demand response.[53]

54. NYTOs contend that, contrary to Demand Response Supporters' assertions, NYISO's proposal fully complies with Order No. 745 because the proposal pays the LBMP for demand response provided during any hour in which the price exceeds the threshold price. NYTOs further contend that nothing in Order No. 745 requires ISOs and RTOs to include all hours in the supply curve upon which the threshold price is based, but that NYISO's proposal, consistent with Order No. 745, ensures the payment of LBMP for demand response that benefits consumers during peak load hours.[54]

55. Demand Response Supporters argue that, while it may be true that the monthly average day-ahead spot prices are higher in New York than in neighboring zones in PJM and ISO-NE, these prices do not support the inflated net benefits threshold values NYISO proposes.[55] Demand Response Supporters further argue that the higher prices in New York zones account for only a small fraction of the substantial difference between the net benefits threshold values in New York and the net benefits threshold value in neighboring RTO zones.[56] Specifically, Demand Response Supporters allege that

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[53] NYISO September 19, 2013 Answer at 4.

[54] NYTOs September 19, 2013 Answer at 3.

[55] Demand Response Supporters October 4, 2013 Answer at 4.

NYISO's exclusion of non-peak hours from its supply curve, faulty method for smoothing the supply curve, as well as its exclusion of actual supply offers combine to cause NYISO's net benefits threshold to be a noticeable outlier relative to the net benefits thresholds of neighboring zones.[57] Demand Response Supporters further contend that their data refutes NYTOs' claim that Order No. 745 does not require all hours to be included in the supply curve, because excluding those hours artificially increases the net benefits threshold, creating a barrier to demand response participation.[58]

56. NYISO responds that Demand Response Supporters incorrectly argue that the relationship between the threshold price and the average wholesale price in any given sub-region should be the same.[59] In support, NYISO argues that the threshold price depends, among other things, on the shape and values of the supply curve, which can differ regionally, and that the differences between the threshold price and average wholesale price vary across sub-regions due to transmission congestion.

## Commission Determination

57. In the May 16, 2013 Order, the Commission directed NYISO to demonstrate how excluding off-peak hours changes the threshold results and to fully support with evidence why such an outcome is reasonable. The Commission finds that NYISO has complied with its directive. NYISO provides data demonstrating the different thresholds for applying the net benefits test using all hours and using only peak hours (HB13 through HB19) for the reference months associated with the thirteen months that were addressed in the August 19, 2011 filing. NYISO demonstrates that a supply curve that includes only low load hours or all hours does not provide a good representation of the supply curve for peak hours, during which actual demand reduction is likely to occur.

58. Demand Response Supporters argue that NYISO has not supported its approach and that neither PJM, nor MISO, nor ISO-NE has proposed excluding any hours from their respective net benefits calculations. The Commission finds that, while NYISO's method may differ from methods used by other RTOs/ISOs, NYISO has provided adequate support for its use of peak hours. We believe that NYISO's exclusion of off-peak hours from the calculation of the net benefits threshold yields a reasonable result as it is during peak hours when demand response resources in NYISO are more likely to be dispatched to assist in the balancing of supply and demand.

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[56] *Id*. at 5.

[57] *Id*. at 6-7.

[58] *Id*. at 7.

[59] NYISO October 22, 2013 Answer at 2 (citing Demand Response Suppliers October 4, 2013 Answer at 4-7).

**b. Selection of the Highest Point on the Representative Supply Curve as the Net Benefits Threshold**

**i. NYISO's Filing**

59. In the May 16, 2013 Order, the Commission found that NYISO had not provided support for selection of the highest point in its representative supply curve at which it becomes inelastic as the threshold point for the net benefits test.[60] The Commission directed NYISO to fully support why this outcome is reasonable and complies with Order No. 745.[61]

60. NYISO asserts that its use of the highest point on the representative supply curve as the net benefits threshold is reasonable. NYISO states that, in its August 19, 2011 filing, it proposed to use a specific polynomial equation to describe the representative supply curve because this equation allows the estimated best fit supply curve to fit well with both the curved and flat regions of the actual supply curve. NYISO renews that proposal here and, in support, states that it selected a functional form that would have a good fit in the range between the flat, linear portion of the curve to the extremely steep high-priced portion of the curve.

61. NYISO adds that the functional form used to estimate the fitted supply curve has the property that it may have two points of unitary elasticity. NYISO provides graphics and a description showing that, in the range between these two points, supply would be elastic and therefore the net benefits test would not be satisfied.[62] Thus, NYISO contends, if it were to use the lower of the two points as the offer floor to dispatch demand response, demand response would continue to be scheduled above this lower threshold, even though the net benefits test would not be satisfied for a substantial number of hours because the range between the lower and higher thresholds is the range in which the net benefits test is not satisfied. Hence, NYISO states, there would be hours in which demand response would be dispatched when the cost of such demand response was greater than the benefit to load of scheduling it. NYISO concludes that using the

[60] May 16, 2013 Order, 143 FERC ¶ 61,134 at P 40.

[61] *Id*.

[62] NYISO August 14, 2013 Filing at 14. NYISO explains that this is the case because the functional form of the estimated supply curve was chosen to fit the supply curve in the region where supply shifts from elasticity to inelasticity. However, NYISO states, this functional form does not provide a good representation of the supply curve along the lower, flat part of the curve. It is in this flat part of the curve where the second, lower point of unitary elasticity is found, and, according to NYISO, this lower threshold is best thought of as an artifact of the estimation methodology rather than an accurate reflection of the elasticity of supply at low load levels.

higher of the two points is an approach that does not face this problem; the higher of the two points of unitary elasticity establishes a threshold above which all points on the supply curve are inelastic.[63]

#### ii. Comments and Protests

62. NYTOs agree with NYISO that it must set its net benefits threshold price at the highest point on the monthly supply curve at which that supply curve becomes inelastic, and that setting the threshold price below this point will merely cause demand response to be dispatched at times when the supply of electricity is elastic, and the cost of paying demand response providers will exceed the impact of demand response on the price that the remaining energy consumers pay.[64]

63. Demand Response Supporters ask the Commission to require NYISO to test additional functional forms for estimating its representative supply curve and choose a functional form that does not suffer from multiple inflection points. They argue that NYISO does not fully support the use of the highest point on the supply curve at which the curve becomes inelastic as a reasonable approach to calculating a net benefits threshold.

64. Demand Response Supporters assert that NYISO’s approach is producing flawed results because it continues to use a flawed functional form that suffers from multiple inflection points, and it cannot guarantee that its net benefits threshold will be set at the pricing point at which the "billing unit effect" no longer exists.[65] Demand Response Supporters contend that NYISO's functional form does not accurately represent the actual supply curve at the lower of the two inflection points and therefore, NYISO argues that the lowest inflection point should be disregarded and the highest inflection point should be used as the net benefits threshold. According to Demand Response Supporters, the actual point at which the “billing unit effect” is eliminated likely lies at a value between the two inflection points. Demand Response Supporters assert that NYISO concedes that its representative supply curve is not a good representation of the curve around the lower of the two inflection points, and instead of addressing this problem by smoothing the supply curve, NYISO simply proposes to use the higher of the two inflection points, which results in a net benefits threshold value that exceeds the point at which the “billing

[63] NYISO August 14, 2013 Filing at 11-14.

[64] NYTOs September 4, 2013 Comments at 3.

[65] Demand Response Supporters September 4, 2013 Protest at 7-8. The “billing unit effect” takes place when dispatching demand response resources may result in an increased cost per unit to the remaining wholesale load due to the inherent, overall decreased amount of load paying the bill. May 16, 2013 Order, 143 FERC ¶ 61,134 at P 15.

unit effect" is eliminated. Demand Response Supporters contend that rather than choosing a method that calculates the approximate point at which the net benefits to customers is greater than zero, NYISO is choosing a method that would deny customers millions of dollars in "net benefits" by foreclosing opportunities for demand response to participate in NYISO energy markets.

65. Demand Response Supporters also contend that other RTOs and ISOs have chosen functional forms that do not suffer from the inconsistencies of functional forms that produce multiple inflection points.[66]

### iii. Answers

66. NYISO answers that its chosen functional form is reasonable for NYISO markets and effectively establishes the point at which the "billing unit effect" no longer exists. NYISO argues that Demand Response Supporters assert without any support that because NYISO's "model and functional form incorporate multiple inflection points, NYISO cannot guarantee that its net benefits threshold will be set at the pricing point at which the billing unit effect no longer exists," and simply declare that the point at which the billing unit effect is eliminated "likely" lies at a value between the two inflection points. NYISO argues that Order No. 745 does not require it to determine the net benefits threshold at the point where the billing unit effect is *likely* gone, but at the point where it is established to be eliminated by the net benefits test and "[b]eyond that point, a reduction in quantity everywhere along an upward sloping supply curve would be cost-effective."[67]

67. NYISO states that Demand Response Supporters offer no alternative function that better fits the underlying supply curve in the NYISO region, and instead simply point out that PJM and MISO chose different functions. NYISO also contends that the PJM functional form does not provide a good representation of the actual NYISO supply curve, and would actually result in a higher net benefits threshold than the function chosen by NYISO. NYISO concludes that it smoothed the curve with a just and reasonable mathematical function that fulfills the purpose of the net benefits test and provides a readily identifiable inflection point beyond which the billing unit effect does not exist, as well as provided extensive justification for its choice. The Commission should therefore accept the NYISO's proposal to use the highest point on the supply curve at which the curve becomes inelastic as a just, reasonable, and Order No. 745 compliant approach to calculating a net benefits threshold.[68]

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[66] Demand Response Supporters September 4, 2013 Protest at 10.

[67] NYISO September 19, 2013 Answer at 7 (citing Order No. 745 at n.161).

[68] NYISO September 19, 2013 Answer at 9.

68. NYTOs contend that NYISO's decision to utilize a smoothed supply curve with two inflection points will more closely resemble the actual supply curve, which will, contrary to Demand Response Supporters' claim, more likely yield a threshold price that ensures demand response is only paid the LBMP when it yields positive net benefits.[69]

69. Demand Response Supporters contend that NYISO has the burden of providing an Order No. 745-compliant functional form, and that NYISO's proposed functional form with multiple inflection points fails to meet that burden.[70] They argue that unlike NYISO, the other RTOs/ISOs were able to use a functional form that does not suffer from multiple inflection points, which creates an unacceptably high threshold for demand response to participate in the NYISO energy market, and is therefore inconsistent with Order No. 745.[71] Moreover, Demand Response Supporters contend, NYISO's explanation for using a multiple inflection point functional form merely provides a description of a "black box" formula that fails to define many of the coefficients of that formula, effectively hiding NYISO's method for smoothing the supply curve.[72] Demand Response Supporters argue that the Commission should require that NYISO's net benefits test be transparent.[73]

70. In addition, Demand Response Supporters argue that NYISO's use of a formula combining heat rates and natural gas prices instead of using actual supply offers inflates the offer price that NYISO has constructed for low-priced resources, such as nuclear, hydroelectric and wind, whose costs are not affected by gas prices.[74] Demand Response Supporters contend that those inflated offer prices elevate the entire left-hand portion of the supply curve, increasing the net benefits threshold.[75]

71. NYISO responds that Demand Response Supporters' contention that NYISO's decision to base its supply curve on heat rate inflates the net benefits threshold is not properly before the Commission, because Demand Response Supporters failed to raise the issue in their original protest, and their contention was not made in response to any NYISO argument in NYISO's answer to that protest.[76] NYISO also contends that the

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[69] NYTOs September 19, 2013 Answer at 4.

[70] Demand Response Supporters October 4, 2013 Answer at 8-9.

[71] *Id*. at 9-10.

[72] *Id*. at 10-11.

[73] *Id*. at 11.

[74] *Id*. at 7-8.

[75] *Id*. at 8.

construction of an implied heat rate is done to bring offer prices to common grounds to compare them across units and time. Second, NYISO argues that the use of heat rate to develop the supply curve does not systematically inflate the net benefits threshold, because those units whose marginal costs do not change with the price of natural gas would appear to deflate in times of high natural gas prices.[77]

72. NYISO contends that it is highly unlikely that imputing gas costs to wind units would inflate the net benefits threshold because a wind generator never offers supply in the day-ahead market, and if a wind generator did so, it would have to account for the risk of having to "buy out" of its day-ahead market position at real-time prices (which vary with natural gas prices), meaning the wind generator's negative and zero offers would not be inflated.[78] NYISO further argues that hydroelectric power that is not run-of-the river may be offered at prices reflecting the opportunity cost of selling in other higher-priced hours, which does vary with gas prices, because such generators could store water until prices increase. NYISO next argues that nuclear, run-of-the-river hydro, and wind generation are usually offered as price takers and thus can be found on the far left of the supply curve and are therefore simply not relevant to the supply elasticity in the range of the net benefits thresholds.[79] NYISO contends that its proposed supply curve was constructed using actual supply offers, contrary to Demand Response Supporters' assertions, and therefore complies with Order No. 745.[80]

73. NYISO lastly contends that neither Demand Response Supporters, nor any other party to this proceeding, identified any single inflection point functional form that would be able to accurately describe the New York supply curve, and they admitted that the single inflection point formula used by PJM does not result in a formula that accurately describes the New York supply curve. Moreover, NYISO contends that it has not been able to identify any single inflection point formula that could accurately describe the New York supply curve without further restricting the portion of the supply curve used to fit the curve.[81]

## Commission Determination

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[76] NYISO October 22, 2013 Answer at 4.

[77] *Id*. at 4-5.

[78] *Id*. at 5.

[79] *Id*.

[80] *Id*. at 6.

[81] *Id*.

74. In the May 16, 2013 Order, the Commission found that NYISO had not provided support for selection of the highest point on its representative supply curve at which supply becomes inelastic as the threshold point for the net benefits test, as opposed to selecting the lowest point at which supply becomes inelastic or an intermediate point as the threshold.[82] As explained below, the Commission finds that NYISO has provided support and reasoning that responds to the Commission's directive. Specifically, we find persuasive NYISO's description that the lower of the possible points of unitary elasticity is an artifact of the mathematical smoothing function rather than a point on the supply curve with economic significance.

75. Demand Response Supporters assert that NYISO's approach is producing flawed results because it continues to use a flawed functional form that suffers from multiple inflection points. Although Demand Response Supporters have asserted that a single inflection point functional form should have been used and that it would have produced a lower threshold, it has not offered such a functional form, or demonstrated that the single-point functional form used by PJM would produce more accurate thresholds. Furthermore, NYISO explains that it selected a functional form that would fit the NYISO supply curve well, particularly in the range between the flat, linear portion of the curve and the steep, high priced portion of the curve. This functional form NYISO chose *happens* to have the characteristic that, in some instances, it will have two points with unitary elasticity. In such cases, the lower of the two points is inherent in the math of the curve fitting process but does not represent a meaningful economic location on the supply curve; and the lower of the two points does not hold meaning with respect to the physical characteristics of the generation portfolio. We agree with NYISO that setting the threshold price below the upper point of unit elasticity may cause demand to be dispatched at times when it is not cost effective, and find that Demand Response Supporters have not provided evidence that suggests that a lower inflection point has any particular economic meaning. Accordingly, we find that NYISO has complied with the directives of the May 16, 2013 Order by providing support for the selection of the highest point on its representative supply curve at which supply becomes inelastic as the threshold point for the net benefits test, and we find this to be reasonable.

### c. <u>Other Issues Concerning the Net Benefits Test</u>

76. In the May 16, 2013 Order, the Commission directed NYISO to either provide further justification for its proposal to modify its existing DADRP offer floor or to eliminate any DADRP offer floor. NYISO asserts that its use of the monthly net benefits threshold price as an offer floor for the DADRP is reasonable. NYISO contends that: (1) the use of such an offer floor reduces free-ridership and improves DADRP's net social welfare impacts; (2) removal of the offer floor would require a new compensation

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[82] May 16, 2013 Order, 143 FERC ¶ 61,134 at P 40.

mechanism for DADRP resources scheduled below the net benefits threshold price; and (3) the Commission accepted a similar offer floor in ISO New England Inc. (ISO-NE).[83]

77. In addition, in the May 16, 2013 Order, the Commission rejected 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. NYISO has proposed revisions to its Services Tariff that remove its proposed adjustment to the monthly net benefits threshold price after posting of the monthly price. NYISO also proposes to correct a typo in the definition of the term "Monthly Net Benefit Offer Floor" included in the tariff revisions to Article 2 of the Services Tariff provided with the August 19, 2011 Filing. In those revisions, the term was inadvertently included as "Monthly New Benefit Offer Floor." NYISO includes with this filing the revised tariff section for Article 2 of NYISO's Services Tariff correctly including the term as "Monthly Net Benefit Offer Floor."[84]

78. We find that NYISO has adequately supported its proposal to maintain the DADRP offer floor and we accept the proposed tariff revisions discussed above.

### 2. <u>Measurement and Verification</u>

79. In the May 16, 2013 Order, the Commission found NYISO's proposed ECBL to be a reasonable method of establishing a baseline but directed NYISO to provide further justification for the necessity of its proposed cap on in-day adjustments. In addition, the Commission directed NYISO to justify why the use of alternative baseline methodologies to the ECBL are not acceptable, and to include its data reporting requirements in section 24.3 of its Services Tariff.

#### <u>NYISO's Filing</u>

80. NYISO states that, in developing the ECBL, its proposed new methodology to determine a better estimate of the baseline of resources that are scheduled more frequently, it elected not to make any change to the existing in-day adjustment process or cap. NYISO argues that the cap has been widely applied in all of its demand response programs for over a decade without protest, and that its 2011 analysis evaluated three alternatives to the existing Customer Service Baseline Load, both with and without the in-day adjustment mechanism. NYISO adds that the results of that analysis indicated that the ECBL with the in-day adjustment showed the lowest mean absolute error.[85]

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[83] NYISO August 14, 2013 Compliance Filing at 19.

[84] *Id*. at 31.

[85] *Id*. at 21 (citing the ECBL with the weather adjustment performed better than the other Customer Service Baseline Load alternatives. *See* NYISO August 9, 2011,

NYISO explains that it is currently in the process of a detailed review of its baseline methodologies, which will provide it with an opportunity to explore with its stakeholders whether there is empirical support for, among other possible changes to baselines, amending the existing 20 percent cap.[86] NYISO asks that the Commission permit it to continue to apply the in-day adjustment cap and to explore with its stakeholders based on the empirical evidence provided in the review whether changes to the cap are appropriate.[87]

81. With respect to alternative baseline methodologies to the ECBL, NYISO states that, although not explicitly specified in its August 19, 2011 filing, it does not preclude a stakeholder from proposing an alternative baseline methodology and is amenable to considering such alternatives with stakeholders.[88]

82. With respect to the insertion in the tariff of the data reporting requirements, NYISO proposes to remove the references to ISO Procedures and the specific data reporting requirements in section 24.3 of Attachment R of the NYISO OATT, and to insert a new section 24.4 that includes a list of the data reporting requirements. Specifically, section 24.4 will include data reporting requirements for: (i) the enrollment of Demand Side Resources participating in the DADRP, (ii) the verification of reductions scheduled in the NYISO's energy market; (iii) additional data required upon the NYISO's request to verify participation in the DADRP and NYISO's energy market, and (iv) references to the market monitoring reporting requirements set forth in Attachment O of the NYISO OATT.

## Commission Determination

83. We find that NYISO's existing cap for the in-day adjustment and its proposed measurement and verification methodology comply with the requirements of Order No. 745 and we accept NYISO's proposed tariff revisions.[89] Nothing in Order No. 745

Market Issues Working Group presentation entitled "NYISO's Compliance Filing to Order 745: Demand Response Compensation in Organize Wholesale Energy Markets" at slides 46- 49 (ECBL is referred to as CBL4), http://www.nyiso.com/public/webdocs/markets_operations/committees/bic_miwg/meeting_materials/2011-08-09/Compliance_Filing_on_Order_745.pdf).

[86] NYISO asserts that a consultant is analyzing NYISO's Customer Service Baseline Load and Average Coincident Load performance evaluation methodologies. NYISO will discuss the results of the study with its stakeholders and explore with them any revisions to the Customer Service Baseline Load methodologies, including to the in-day adjustment process and its cap.

[87] NYISO August 14, 2013 Compliance Filing at 21-22.

[88] *Id*. 22-23.

or this proceeding prevents stakeholders or NYISO from pursuing alternative measurement and verification methodologies through the stakeholder process and submitting proposed tariff revisions pursuant to section 205 of the FPA. Indeed, NYISO states that it is currently in the process of a detailed review of the baseline methodologies for its demand response programs, including alternative baseline methodologies, and based on the results of this study, NYISO may explore changes to baseline methodologies and/or expanding the use of alternatives, as well amending the existing 20 percent cap.

### 3. Cost Allocation

#### a. Allocation of Demand Response Costs to Load Under Bilateral Contracts

84. In the May 16, 2013 Order, the Commission rejected NYISO's original August 19, 2011 proposal to allocate the costs of demand response as Schedule 1 uplift costs that are then allocated to transmission customers on the basis of load ratio shares, because NYISO had failed to demonstrate how its proposal appropriately allocates costs to those that benefit from demand reductions.[90] The Commission directed NYISO 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 locational based marginal price at the time when the demand response is committed or dispatched.[91]

##### i. NYISO's August 14, 2013 Compliance Filing

85. In its August 14, 2013 Compliance Filing, NYISO states that, in the May 16, 2013 Order, the Commission concluded that "purchasers of NYPA Replacement Power and Expansion Power do not purchase energy in the relevant NYISO energy market."[92] NYISO explains that it is has previously sought rehearing of this determination, and continues to believe that customers with bilateral contracts under NYPA's Replacement Power and Expansion Power Program, the successor to that program,[93] or any

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[89] We note that, in a previous order, the Commission accepted NYISO's proposed sections 24.3 and 24.4 of Attachment R of the NYISO OATT, as those sections were amended by NYISO's compliance filing in Docket No. ER14-2006-000. *New York Independent System Operator, Inc.*, 155 FERC ¶ 61,243, at P 39 (2016).

[90] May 16, 2013 Order, 143 FERC ¶ 61,134 at P 92.

[91] *Id.* (citing Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 102).

[92] NYISO August 14, 2013 Compliance Filing at 26 (citing May 16, 2013 Order at P 92).

comparable program, benefit from changes in LBMP that result from the dispatch of Demand Side Resources. NYISO states that, nevertheless, the May 16, 2013 Order requires NYISO to exclude from the allocation of DADRP costs the load associated with NYPA customers taking service under Replacement Power and Expansion Power programs based on the Commission's explicit determination that these customers do not benefit from the lower prices produced by dispatching demand response. Therefore, NYISO states that it is proposing compliance tariff revisions to section 24.1 of Attachment R of the NYISO OATT to only exclude such customers (who now purchase under the successor Western New York program) from cost allocation, but it is not proposing to exclude any other loads from cost allocation for reasons set forth in the filing.[94]

86. NYISO explains that NYPA is an instrumentality of the State of New York that generates, transmits, and sells electric power and related energy services to a broad array of retail energy consumers, including to businesses under certain energy-based economic development programs, and that it supplies these consumers through both its hydropower units and power purchased in NYISO's energy market.[95] NYISO states that NYPA purchases power from NYISO's energy market to serve its retail load beyond its hydropower units' capacity and to replace the power generated by its hydropower units when such units are off-line or when it is more economical to purchase power in NYISO's energy market. Through such market purchases, NYISO argues that NYPA benefits when there is a lower LBMP in NYISO's energy market as a result of the dispatch of a Demand Side Resource. NYISO states that, as a general matter, it does not have visibility into how NYPA uses its hydropower units and market purchases to supply its retail load under its different programs. NYISO asserts that it charges, and is paid by, NYPA for the charges associated with NYPA's purchases in the NYISO's energy market, and does not generally have visibility into and does not play a role with regard to how NYPA further assesses such charges to retail load taking service under bilateral contracts with NYPA.[96]

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[93] NYPA's Replacement Power and Expansion Power program was recently replaced by its "Western New York program." NYISO interprets the May 16, 2013 Order's directive regarding the Replacement Power and Expansion Power program as applying to the Western New York program.

[94] NYISO August 14, 2013 Compliance Filing at 27.

[95] NYISO explains that NYPA does not possess sufficient generation to serve all of its retail load solely by means of its own generation resources. NYISO August 14, 2013 Compliance Filing at 27.

[96] *Id*. at 27-28.

87. NYISO states that under NYISO's current DADRP cost allocation methodology in Attachment R of the NYISO OATT, NYISO allocates the DADRP costs to NYPA for its retail load, including its retail load served under NYPA's Replacement Power and Expansion Power Programs.[97] In response to the May 16, 2013 Order, NYISO states that it has had discussions with NYPA regarding its Replacement Power and Expansion Power Programs, which were recently replaced by NYPA's Western New York Power Program. It states that, unlike many bilateral transactions in New York, NYISO is able to track the contract path of specific bilateral transactions under the Western New York Power Program in its Market Information System from: (i) the supply offers that NYPA makes on an hourly basis in the NYISO's energy market for specific NYPA hydropower units supplying Western New York Power Program participants to (ii) the point of consumption at load buses that are specific to the customers participating in the Western New York Power Program.[98]

88. NYISO states that, in compliance with the May 16, 2013 Order, although it notes that it has sought rehearing of the May 16, 2013 Order on this issue, NYISO proposes to revise section 24.1 of Attachment R of the NYISO OATT to exclude load associated with NYPA customers taking service under the Western New York Power Program. NYISO contends that the May 16, 2013 Order did not determine, and there is little record in this proceeding showing, that load served under bilateral contracts outside of the Western New York Program will not benefit from the lower prices produced by dispatching demand response.[99] NYISO argues that it does not have visibility into, and is not aware of, the contractual terms of each of the bilateral contracts in New York, and therefore cannot assess the extent to which particular loads would benefit more or less than other loads from any price impacts of demand response under Order No. 745.[100] NYISO argues that it is generally not aware of whether the load under a particular bilateral contract with a load serving entity is being supplied by a specific generating resource under a cost-based contract that does not depend in any way on prices in NYISO's energy market, through purchases in the NYISO's energy market, or through some mix of both. NYISO argues that load taking service under bilateral contracts do benefit from a reduction in the day-ahead energy market price resulting from the dispatch of Demand Side Resources even under fixed price bilateral contracts.[101]

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[97] *Id*. at n.81(stating that "[i]t is the NYISO's understanding that NYPA has not passed these charges on to its retail customers under the Replacement Power and Expansion Power programs, but will begin to pass through such costs as part of the new Western New York Power program.").

[98] *Id*. at 28.

[99] *Id*.

[100] *Id*. at 29.

89. Moreover, NYISO states that it generally does not have visibility into the extent to which its charges to load serving entities, including charges associated with DADRP costs, are further assessed to their retail customers. NYISO also is concerned that excluding additional loads served under the numerous and diverse bilateral contracts outside of the NYPA Western New York Power Program that collectively account for approximately one-half of the energy transactions in New York would arbitrarily and unfairly shift costs to the remaining loads.

**ii. Protests and Comments**

90. OxyChem agrees with NYISO that NYISO has complied with the Commission's May 16, 2013 Order by excluding load served pursuant to contracts under NYPA's Western New York Power Program (the successor program to NYPA's Replacement Power and Expansion Power Program) from DADRP cost allocation. But, OxyChem states that it would like to correct, for the record, a misstatement in which NYISO states "that Loads who are participating in the Western New York Power Program, as well as other NYPA programs, are eligible to re-sell the energy they purchase into NYISO's demand response programs."[102] OxyChem argues that DADRP participants, including loads participating in the Western New York Power Program and other NYPA programs, do not "re-sell" energy; in fact, customers are prohibited from reselling the energy they purchase from NYPA. OxyChem contends that DADRP participants, including loads participating in the Western New York Power Program and other NYPA programs, receive a demand response compensation payment, when DADRP criteria are satisfied, for reducing their consumption of energy, but the fact that this demand response compensation payment equals the LBMP in NYISO does not transform the transaction into a resale of energy.[103]

91. NYAPP argues that NYISO's proposal on cost allocation must be rejected. NYAPP contends that allocation to all transmission customers through uplift does not meet the requirement that "each RTO and ISO allocate the costs associated with demand response compensation to all entities that purchase for the relevant energy market in the area(s) where the demand response reduces the market price of energy."[104] NYAPP contends that NYISO has failed to demonstrate how continuing to propose allocating DADRP costs to transmission customers on a load ratio share basis, albeit on an hourly

[101] *Id*. at 28-29.

[102] OxyChem September 4, 2013 Comments at 2 (citing NYISO Compliance Filing at 30, n.85).

[103] *Id*. at 3.

[104] NYAPP September 4, 2013 Comments at 2 (citing May 16, 2013 Order, 143 FERC ¶ 61,134 at P 92 (quoting Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 102).

rather than a daily basis, complies with the Commission's finding that NYISO 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.[105] NYAPP states that the proposal to revise the DADRP cost allocation methodology to exclude customers served under NYPA's Replacement Power and Expansion Power Programs from the load ratio share allocation ignores that there is other load, including that of NYAPP's members, that takes service under NYPA's Preference Power Program, as well as other fixed-price bilateral contracts. NYAPP contends that the Commission's finding in the May 16, 2013 Order is not limited to NYPA's Replacement and Expansion Power customers and that NYAPP's members have bilateral contracts with NYPA that are fixed at cost and extend until 2025.[106]

**Commission Determination**

92. As discussed above, we grant rehearing on the cost allocation issue, and accept NYISO's original August 19, 2011 proposal to allocate demand response costs as Schedule 1 uplift costs that are then allocated to transmission customers on the basis of load ratio shares. Accordingly, we direct NYISO to file to revise its tariff cost allocation methodology to reinstitute its original August 19, 2011 proposal to allocate demand response costs as Schedule 1 uplift costs that are then allocated to transmission customers on the basis of load ratio shares, within 60 days of this order.

**b. Hourly Cost Allocation and Additional Coefficients**

93. In its August 19, 2011 filing, NYISO proposed to retain its current cost allocation methodology with one refinement. NYISO's cost allocation rules contained in Attachment R, section 24 to the Services Tariff provide for the allocation of the costs of demand reduction to transmission customers on the basis of their load ratio shares while taking into account the probability that any particular demand reduction will benefit them, given historical transmission congestion patterns.[107] NYISO stated that it identifies frequently constrained NYCA interfaces and then calculates a set of coefficients to represent the expected fraction of time when these interfaces are constrained. NYISO proposed to amend Attachment R to refine its existing cost allocation method by adding four additional coefficients, which would enable NYISO to allocate costs when more than one interface is constrained.[108] In the May 16, 2013 Order, the Commission did not

[105] NYAPP September 4, 2013 Comments at 2 (citing May 16, 2013 Order, 143 FERC ¶ 61,134 at P 92).

[106] NYAPP September 4, 2013 Comments at 3.

[107] May 16, 2013 Order, 143 FERC ¶ 61,134 at P 74.

specifically address NYISO's methodology with respect to daily versus hourly cost allocation or with respect to the additional interface coefficients. However, the Commission rejected NYISO's cost allocation methodology for other reasons.[109]

#### i. NYISO's August 14, 2013 Compliance Filing

94. NYISO states that in its August 19, 2011 Compliance filing, it proposed to continue to allocate DADRP costs to loads that are deemed to benefit based upon the historic congestion patterns on a daily load ratio share basis. NYISO states that, following additional discussions with its stakeholders, NYISO has concluded that allocating such costs on an hourly basis will more appropriately allocate costs to those that benefit from the lower prices produced by dispatching demand response in the energy market. NYISO states that its proposed hourly approach will align the costs with the occurrence of the demand reduction and is consistent with how costs are allocated for its other demand response programs. To implement this change, NYISO proposes to change the word "daily" where it appears in section 24.1 of Attachment R to "hourly."[110]

95. NYISO states that it is responsible under Attachment R of the NYISO OATT 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 the May 16, 2013 Order did not address NYISO's proposal to add four additional coefficients to its DADRP cost allocation formula. Therefore, NYISO states that it renews its proposed revisions to refine its cost allocation process by adding four additional coefficients in the formula set forth in section 24.1 of Attachment R of the NYISO OATT.[111] NYISO asserts that this change will enable it to more appropriately allocate costs to the beneficiaries of demand response when more than one interface is constrained. It argues that, taken together, these revisions will more accurately reflect the impacts of NYCA system congestion, which limit the LBMP benefits of demand reduction scheduled in NYISO's energy markets.

#### ii. Comments and Protests

96. OxyChem agrees with the allocation of DADRP costs on an hourly load ratio share basis, as set forth in the NYISO's proposal.[112]

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[108] NYISO August 19, 2011 Filing at 10.

[109] May 16, 2013 Order, 143 FERC ¶ 61,134 at P 92.

[110] NYISO August 14, 2013 Compliance Filing at 25.

[111] *Id*. at 26.

[112] OxyChem September 4, 2013 Comments at 1.

**Commission Determination**

97. With regard to the hourly, rather than daily, approach to calculating load ratio shares, we agree that NYISO's proposal will result in a more accurate allocation of demand response costs. Similarly, we agree that NYISO's addition of four coefficients to its demand response cost allocation formulas to reflect periods when multiple interfaces are constrained will more accurately reflect the impacts of congestion in the NYISO system when determining the appropriate allocation of demand response costs. Thus, we accept NYISO's proposed changes regarding hourly calculation of load ratio shares and the addition of coefficients to the cost allocation formulas to account for periods when multiple interfaces are constrained.

**D. Effective Date**

98. We grant NYISO's request for a flexible effective date for its compliance filing, but with the proposed tariff revisions to be effective on a date to be designated by NYISO in its filing to comply with the instant order to be made within 60 days of this order.

The Commission orders:

(A) Clarification of the May 16, 2013 Order is denied, and rehearing of the May 16, 2013 Order is hereby granted, in part, and dismissed, in part, as discussed in the body of this order.

(B) NYISO's August 14, 2013 Compliance Filing is hereby accepted, in part, and rejected, in part, to be effective on a date to be designated by NYISO in a filing to comply with the directives of this order.

(C) NYISO is hereby directed to submit a compliance filing within 60 days of the date of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,
Deputy Secretary.