

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

Demand Response Supporters	)	
Complainants,	)	
	)	
v.	)	Docket No. EL13-74-000
	)	
New York Independent System Operator, Inc.	)	
Respondent.	)	

**ANSWER OF THE
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. ("NYISO") respectfully submits this answer to the *Joint Complaint of Demand Response Supporters* ("Complaint").² Demand Response Supporters³ allege that the NYISO's treatment of demand response facilitated by behind-the-meter generation is inconsistent with the Federal Power Act, Order No. 745, other Commission orders, as well as other non-binding statements by the Commission and third parties. Demand Response Supporters request that the Commission order the NYISO to modify its tariffs so that demand response facilitated by behind-the-meter generation is eligible for compensation at full Locational Marginal Pricing ("LMP").⁴ Demand Response Supporters have failed to satisfy their

¹ 18 C.F.R. § 385.213 (2013).

² *Demand Response Supporters v. New York Independent System Operator, Inc.*, Joint Complaint of Demand Response Supporters, Docket No. EL13-74-000 (June 17, 2013) ("Complaint").

³ Demand Response Supporters consist of: EnerNOC, Inc., Viridity, Inc., Wal-Mart Stores, Inc., Convergence, Inc., and EnergyConnect, a Johnson Controls Company.

⁴ Capitalized terms not otherwise defined herein shall have the meaning specified in the NYISO's Market Administration and Control Area Services Tariff ("Services Tariff") or its Open Access Transmission Tariff ("OATT"). For convenience in this Answer, "LMP" and its NYISO equivalent, *i.e.*, the Locational Based Marginal Price ("LBMP"), are referred to interchangeably.

burden of proof under the Federal Power Act, and there is no basis for compelling the NYISO to revise its tariffs. Accordingly, the Complaint, including Demand Response Supporters' proposed revisions to the NYISO's tariffs, should be denied.

The NYISO's Day-Ahead Demand Response Program ("DADRP") allows for a Demand Side Resource to offer its load curtailment capability into the NYISO's Day-Ahead Market for Energy and, if selected, to be paid the Locational Based Marginal Price ("LBMP") at which the market settles. While behind-the-meter generation is eligible to participate in all other NYISO demand response programs, it is not currently eligible to participate in the DADRP.

As described below, the DADRP's eligibility requirements are just and reasonable and not unduly discriminatory. The Commission has found that dissimilar treatment of dissimilar resources does not constitute undue discrimination.⁵ In this instance, there are multiple factors that justify treating behind-the-meter generation differently than other demand response resources. Behind-the-meter generation raises particular market and reliability concerns that justify its current ineligibility to participate in the DADRP.

The NYISO has limited operational control over and visibility into behind-the-meter generation, which hinders its ability to identify when these resources are running and for what reason. This would impede the NYISO's ability to establish for the DADRP an accurate baseline for demand response facilitated by behind-the-meter generation and to measure and verify that demand response actually occurs as a result of a NYISO dispatch. Moreover, such limited control and visibility would create opportunities in the DADRP for behind-the-meter generation to receive multiple payments for the same output and to potentially game the DADRP rules to receive payments without actually providing demand response.

⁵ See *California Independent System Operator Corp.*, 119 FERC ¶ 61,061 (2007) at P 70.

The NYISO's current DADRP, as approved by a majority of NYISO stakeholders and accepted by the Commission, is designed for load curtailment resources and does not address the particular concerns raised by behind-the-meter generation. The program revisions that would be required to facilitate the use of behind-the-meter generation as a supply resource in the energy market are complex and would have to be carefully evaluated by the NYISO and its stakeholders. The simplistic tariff revisions proposed by Demand Response Supporters ignore complex implementation considerations and would not provide the NYISO with the ability to incorporate behind-the-meter generation into the DADRP.

The NYISO is currently exploring with its stakeholders the possibility of creating an enhanced economic demand response program that would replace the DADRP. As part of this process, the NYISO is already reviewing with its stakeholders whether and to what extent behind-the-meter generation should be allowed to participate in the revised program. Consistent with its precedent, the Commission should not permit Demand Response Supporters to bypass this stakeholder process. Rather, the NYISO should be permitted to continue to work with its stakeholders to fully and carefully evaluate the participation of behind-the-meter generation in the NYISO's demand response programs.

I. BACKGROUND

A. Eligibility of Behind-the-Meter Generation to Participate in the NYISO's Demand Response Programs

The NYISO administers four separate demand response programs, each described below, including both reliability and economic demand response programs. Qualifying behind-the-meter generation is eligible to participate in all but one of these programs.

Behind-the-meter generation has been eligible to participate in the NYISO's reliability demand response programs – the Emergency Demand Response Program ("EDRP") and the

Special Case Resources (“SCR”) program – from their inception more than a decade ago. The SCR program has historically been the NYISO’s demand response program with the most participating resources and the most MWs of demand response. Under the EDRP and SCR program, a Demand Side Resource – that at the direction of the NYISO can curtail its load or use behind-the-meter generation to reduce the energy that it draws from the grid – is eligible to receive energy and capacity⁶ payments. The ability of these resources to reduce demand on the system at the direction of the NYISO helps to maintain the reliability of the New York State bulk power system. A resource in these programs is paid for verified load reductions that are directed by the NYISO.⁷ The NYISO pays demand response facilitated by behind-the-meter generation in these programs at the same rate as other Demand Side Resources – the greater of \$500/MWh or real-time LBMP.⁸ This rate was designed to encourage participation in these reliability programs and has resulted in Demand Side Resources being compensated at rates that have exceeded the LBMP paid to conventional generation during past demand response events.

The NYISO and its stakeholders have created a further opportunity for behind-the-meter generation to participate as demand response in the Demand Side Ancillary Services Program (“DSASP”). DSASP is an economic program that provides a Demand Side Resource or a group of Demand Side Resources that can meet telemetry and other requirements and that can be dispatched by the NYISO the opportunity to bid their load curtailment capability into the Day-

⁶ Capacity payments are limited to NYISO customers that participate in the SCR program.

⁷ Reductions are voluntary for EDRP participants, which are eligible to receive energy payments only. SCR participants are required to reduce their load at the direction of the NYISO, and in return they are paid comparably to conventional generators through the NYISO’s Installed Capacity market for agreeing in advance to perform a load reduction at the NYISO’s request.

⁸ See NYISO Services Tariff Attachment B §§ 17.1.2.2.1, 17.1.2.3; NYISO Services Tariff Attachment G § 22.10.2.

Ahead Market and/or Real-Time Market to provide Operating Reserves or Regulation Service. DSASP Resources are not eligible for Energy payments, but do receive the appropriate market clearing price for Operating Reserves or Regulation Service. At this time, behind-the-meter generation is only eligible to provide non-synchronized Operating Reserves under the DSASP pursuant to the requirements of the Northeast Power Coordinating Council.⁹

Behind-the-meter generation currently is not eligible to participate in the NYISO's DADRP. The DADRP is an economic demand response program pursuant to which a Demand Side Resource, or a group of Demand Side Resources registered as a single DADRP resource, may offer its load curtailment capability into the NYISO's Day-Ahead Market for Energy. If its offer is selected, the resource is paid the LBMP at which the Day-Ahead Market settles for the relevant hour and location and must curtail load by that amount in real-time.

At the inception of the program, *diesel* behind-the-meter generation was not eligible to participate in the DADRP.¹⁰ In 2003, the NYISO, with the approval of its stakeholders and the Commission, amended the DADRP to preclude *all* behind-the-meter generation from participating in the DADRP.¹¹ Stakeholders were concerned, among other things, about creating undue incentives for existing "in front of the meter" generators to go behind-the-meter, and thereby avoid the various reporting and operating requirements, which would limit the NYISO's visibility and control over them. Whereas generators that provide energy through offers scheduled and dispatched in the NYISO's energy market are required to have meters installed

⁹ Behind-the-meter generation is not currently eligible to provide synchronized Operating Reserves and Regulation Service under DSASP under the requirements set forth in Section 5.14 of the Northeast Power Coordinating Council's Directory No. 5, Operating Reserves.

¹⁰ *New York Independent System Operator, Inc.*, 95 FERC ¶ 61,223 (2001).

¹¹ *New York Independent System Operator, Inc.*, 103 FERC ¶ 61,374 (2003) at P 3.

and validated by the local Transmission Owner, maintain real-time telemetry through the local Transmission Owner to the NYISO, report operational availability and outages, and be available for supplemental instructions by NYISO operators, Demand Side Resources participating in the DADRP have no such requirements.

B. The NYISO's Order No. 745 Compliance Proceeding

On March 15, 2011, the Commission issued Order No. 745 concerning compensation for demand response resources participating in ISO/RTO-administered energy markets.¹² Order No. 745 provided that when a demand response resource participating in an ISO/RTO-administered energy market can balance supply and demand as an alternative to generation and when dispatch of the demand response resource is cost-effective as determined by a net benefits test, the demand response resource must be compensated for its demand reduction in the energy market at the LMP for energy.¹³ To implement this compensation approach, Order No. 745 established requirements for a net benefits test, required the review and modification, if necessary, of measurement and verification procedures, and set forth a method for allocating the costs of demand response payments among customers that benefit from the lower LMP.

On August 19, 2011, the NYISO submitted its compliance filing in response to Order No. 745.¹⁴ The NYISO described how Demand Side Resources are full participants in the NYISO DADRP and are compensated at LBMP.¹⁵ The NYISO proposed a net benefits test,¹⁶ certain

¹² *Demand Response Compensation in Organized Wholesale Energy Markets*, Order No. 745, 134 FERC ¶ 61,187 (March 15, 2011) ("Order No. 745"); *reh'g denied*, Order No. 745-A, 137 FERC ¶ 61,215 (Dec. 15, 2011); *reh'g denied*, Order No. 745-B, 138 FERC ¶ 61,148 (2012).

¹³ Order No. 745 at P 2.

¹⁴ *New York Independent System Operator, Inc.*, Demand Response Compensation in Organized Wholesale Energy Markets, Docket No. ER11-4338-000 (August 19, 2011) ("August 2011 Filing").

¹⁵ August 2011 Filing at p 2. The NYISO also indicated that it does not currently administer a demand response program in its real-time market, but is exploring the development of a mechanism for

revisions to its verification and measurement requirements,¹⁷ and minor modifications to its existing cost allocation methodology.¹⁸ Demand Response Supporters¹⁹ and certain others²⁰ protested the NYISO's compliance filing, arguing that the NYISO is required under Order No. 745 to allow behind-the-meter generation to participate as a Demand Side Resource in the DADRP and receive LBMP for the demand reduction that it facilitates.

In its May 16, 2013, order ("May 16 Order"), the Commission accepted the NYISO's compliance filing in part and directed the NYISO to make certain revisions.²¹ The Commission denied the requests of the Demand Response Supporters and other protestors regarding the participation of behind-the-meter generation in the DADRP, finding the requested relief outside the scope of Order No. 745.²² Specifically, the Commission stated:

In Order No. 745, the Commission did not require an RTO or ISO to differentiate between demand response resources for which demand response is facilitated by

the real-time dispatch of Demand Side Resources that will be consistent with the Order No. 745 requirements. August 2011 Filing at p 3.

¹⁶ August 2011 Filing at pp 3-10.

¹⁷ August 2011 Filing at pp 11-12.

¹⁸ August 2011 Filing at p 10.

¹⁹ *New York Independent System Operator, Inc.*, Comments and Protests of Demand Response Supporters, Docket No. ER11-4338-000 (September 9, 2011) at pp 10-16. Demand Response Supporters consisted of: Converge, 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.

²⁰ Additional protestors included: the American Council for an Energy Efficient Economy, American Forest & Paper Association, Industrial Energy Consumers of America, and U.S. Clean Heat & Power Association.

²¹ *New York Independent System Operator, Inc.*, Order on Compliance Filing, 143 FERC ¶ 61,134 (2013), at P 1 ("May 16 Order"). The Commission acknowledged the NYISO's ongoing work to develop a mechanism by which technically capable demand response resources can participate in the real-time energy market. May 16 Order at P 105.

²² May 16 Order at P 101.

behind the-meter generation and other demand response resources. Order No. 745 also did not prohibit such differentiation. If NYISO or its stakeholders determine that changes are warranted with respect to NYISO's existing practices in this area, such changes should be presented to the Commission in a separate proceeding.²³

C. Demand Response Supporters' Complaint

On June 17, 2013, Demand Response Supporters filed the complaint in this proceeding under Section 206 of the Federal Power Act arguing that the NYISO's current treatment of demand response facilitated by behind-the-meter generation is inconsistent with the Federal Power Act, Order No. 745, and other Commission orders, as well as other non-binding statements by the Commission and third parties. Demand Response Supporters requested that the Commission order the NYISO to modify its tariffs so that demand response facilitated by behind-the-meter generation would be eligible for compensation at full LMP.²⁴ Demand Response Supporters proposed a handful of simplistic tariff revisions to amend the defined terms "Demand Reduction Incentive Payment" and "Demand Side Resources" to implement their proposal.²⁵ They also requested that the Commission require the NYISO to make any other required tariff revisions that bar demand response facilitated by behind-the-meter generation from being compensated at full LMP.²⁶

²³ *Id.*

²⁴ Complaint at p 5.

²⁵ Complaint at p 5.

²⁶ Complaint at p 5.

II. ANSWER

A. **Behind-the-Meter Generation's Current Ineligibility to Participate in the DADRP Is Just and Reasonable and Not Unduly Discriminatory**

Behind-the-meter generation's ineligibility to participate in the NYISO's DADRP is just and reasonable and not unduly discriminatory. The Commission has recognized that the "dissimilar treatment of dissimilar resources does not constitute undue discrimination."²⁷ Behind-the-meter generation differs from other demand response resources and raises particular market and reliability concerns that justify their current ineligibility to participate under the existing DADRP.

The NYISO has limited operational control and visibility over behind-the-meter generation. This fact hinders the NYISO's ability to identify when and for what reason the resource is running. It would also impede the NYISO's ability under the DADRP to establish an accurate baseline for demand response facilitated by behind-the-meter generation and to measure and verify whether such demand response actually occurs. Moreover, the limitations on visibility and control would create opportunities under the DADRP for behind-the-meter generation to receive multiple payments for the same output and to potentially game DADRP rules to receive payments without actually reducing demand.²⁸

The NYISO's existing DADRP, as approved by the NYISO stakeholders and accepted by the Commission, is designed for load curtailment resources and does not address the particular concerns that would be raised by incorporating behind-the-meter generation. Given the complex

²⁷ See *California Independent System Operator Corp.*, 119 FERC ¶ 61,061 (2007) at P 70.

²⁸ To be clear, the NYISO is not alleging that the Demand Response Supporters have, or would, engage in gaming or other market abuses. It is simply observing that: (i) there is a danger that such conduct could occur, as recent developments in other markets appear to demonstrate; and (ii) the NYISO's ability to guard against abuses involving behind-the-meter generation in its DADRP would be relatively limited.

issues raised by behind-the-meter generation, the NYISO and its stakeholders must carefully evaluate whether the resources can be incorporated into the DADRP and what revisions to DADRP procedures would be required to accommodate them if their participation is found to be practicable. As described in Part II.B below, the NYISO is already exploring this matter with its stakeholders.

1. Behind-the-Meter Generation's Participation in DADRP Would Raise Particular Market and Reliability Concerns

In its complaint, Demand Response Supporters argue that demand response facilitated by behind-the-meter generation is no different from demand response facilitated by load curtailment.²⁹ There are, however, legitimate grounds for distinguishing between different sources of demand response for purposes of the DADRP.³⁰

The NYISO has limited operational control and visibility with regard to the participation of behind-the-meter generation in the energy market. Whereas conventional “in front of the meter” generators that participate in the NYISO-administered energy market are subject to the NYISO’s operational control and visibility requirements, behind-the-meter generation is not subject to the same metering, reporting, and operational requirements.

For conventional generators, output is measured and reported through real-time telemetry at six second intervals with meters installed, maintained, and verified by the Transmission Owner in the Transmission District in which the generator is located. In addition, the

²⁹ Complaint at pp. 5-6.

³⁰ The NYISO also distinguishes in its SCR program, EDRP, and DSASP between demand response facilitated by behind-the-meter generation and load curtailment to address particular considerations with each resource type. Such distinctions are necessary and must be done in a deliberate and detailed manner with stakeholder input. For example, the NYISO recently revised the SCR program requirements in the NYISO’s tariffs and procedures to address specific enrollment and measurement and verification requirements for behind-the-meter generation’s participation in the SCR program. *See New York Independent System Operator, Inc.*, 143 FERC ¶ 61,011 (2013).

Transmission Owners provide independent meter data for each conventional generator that the NYISO uses to compare and validate the real-time telemetry data. The NYISO's procedures, combined with the Transmission Owners' independent generator meter data reporting, facilitate accurate measurement of generators' participation in NYISO markets. In addition, conventional generators must satisfy the NYISO's interconnection study processes as well as extensive operational availability and outage reporting requirements.

By contrast, behind-the-meter generation is not subject to these metering or reporting requirements, and the NYISO does not at this time have operational visibility into its availability or its actual performance. Rather, the NYISO is dependent on hourly metering load data and has limited information regarding when the behind-the-meter generation is running and its reason for running.

The lack of visibility and control hinders the NYISO's ability to determine when behind-the-meter generation is running and for what reason. This impedes the NYISO's ability under the DADRP to establish an accurate baseline for demand response facilitated by behind-the-meter generation and to measure and verify whether such demand response actually occurs. Given the absence of a verifiable, accurate baseline, the NYISO cannot clearly determine whether behind-the-meter generation is operating in response to a NYISO schedule, and the NYISO could end up providing demand response payments under the DADRP for load reduction that is not actually occurring or is occurring for some reason other than a NYISO schedule.

The NYISO addressed similar concerns with regard to behind-the-meter generation's participation in the DSASP, after conducting an extensive stakeholder process, by requiring metering and other requirements for behind-the-meter generation.³¹ For the DSASP, there are

³¹ The EDRP and SCR programs do not require the same metering or reporting requirements; however, for purposes of the EDRP and SCR program, the NYISO's tariffs and procedures set forth

telemetry requirements to send real-time data between the DSASP Resource and the NYISO. Further, the DSASP Resource receives and must follow the NYISO's basepoint signals, which are provided in six-second intervals. In addition, NYISO operations tests all DSASP Resources for their ability to transmit the required telemetry data and satisfy other requirements that demonstrate that the NYISO has adequate visibility and control of the resource before it is qualified to participate in the program. The NYISO presently does not require similar real-time telemetry data or other reporting requirements for demand response participating in the DADRP.

The NYISO's understanding is that other ISO/RTOs have adopted similar requirements as a prerequisite for compensating demand response facilitated by behind-the-meter generation. For example, ISO-NE requires that such generators located behind an individual end-use customer be separately measured using an interval meter with output being reported to ISO-NE on five minute intervals.³² As stated in the affidavit by Henry Y. Yoshimura, Director of Demand Resource Strategy for ISO-NE, which Demand Response Supporters attempt to rely on as support for their argument:³³

Each generator located behind an individual end-use customer's retail delivery point must be separately metered using an interval meter and must be reported to the ISO at an interval of five minutes. While these data will not be used for settlement purposes, customers with behind-the-meter generators are uniquely positioned to manipulate their adjusted Demand Response Baseline. For example, a customer can create a high baseline by just turning off its generator during a period in which meter data are used to establish or adjust the baseline. Data on

specific measurement and verification requirements for demand response facilitated by both behind-the-meter generation and load curtailment. The DADRP rules do not currently include measurement and verification, metering, or reporting requirements for demand response facilitated by behind-the-meter generation, and the NYISO would have to develop such requirements that are specific to that program.

³² *ISO New England, Inc.*, Order No. 745 Compliance Filing, Docket No. ER11-4336-000 (August 19, 2011) ("ISO-NE Compliance Filing") at p 21.

³³ Demand Response Supporters' reliance on an ISO-NE witness' testimony regarding demand response within ISO-NE and the ISO-NE's specific market design proposal is not precedential on the NYISO and has limited value regarding the NYISO's system and its market design.

the output of behind-the-meter generators are needed by the ISO's market monitors to determine whether such "gaming" is occurring.³⁴

The NYISO does not presently have similar requirements in its tariffs or procedures for the DADRP and the implementation of such metering requirements, including who would be responsible for installing and maintaining such necessary equipment in New York, how metering data would be used to establish accurate baselines and to monitor and verify demand response, and how the data would be validated, would require careful evaluation by the NYISO and its stakeholders.

2. Behind-the-Meter Generation's Participation in DADRP Would Create Opportunities for Multiple Payments and for Possible Gaming of the DADRP Requirements

In their complaint, Demand Response Supporters state: "The Commission does not concern itself with what happens on the other side of the supply meter, and, likewise, the Commission should not concern itself with what happens on the other side of the retail meter. Neither should the NYISO."³⁵ Both the Commission and the NYISO, however, have legitimate grounds for concern about what happens behind the meter as it pertains to demand response attempting to reduce load from the grid. The NYISO's limited control and visibility over a behind-the-meter generator would create opportunities under the DADRP for the generator to receive multiple payments for its output and to potentially game DADRP rules to receive payments without actually reducing demand. It is in no way inconsistent with the Federal Power Act or an infringement on state jurisdiction for the NYISO to be concerned about these risks, or for the Commission to protect the jurisdictional markets from them.

³⁴ ISO-NE Compliance Filing, Attachment V, Yoshimura Affidavit at p 27.

³⁵ Complaint at p 6.

Even if the NYISO receives accurate telemetry data from a behind-the-meter generator, there is a risk, with the NYISO's limited visibility and control over such resource, that the generator could receive multiple payments for the same output. In New York, loads with behind-the-meter generation are permitted to sell output to the local distribution utility under a retail tariff at a contracted price that typically reflects the LBMP of either the NYISO's day-ahead or real-time energy market price. When the load sells the output, it may appear as a load reduction from the transmission and/or distribution system. Were demand response facilitated by behind-the-meter generation to receive a DADRP schedule during any hour in which the energy was being provided to the local distribution utility under the retail tariff provision, the load reduction would be compensated twice – once under the retail tariff, and again as a wholesale market supply resource in DADRP. The NYISO's existing DADRP rules do not address this scenario because they are designed for demand response facilitated by load curtailment, which does not make such retail sales.

In addition, the NYISO's lack of visibility and control over behind-the-meter generation provides opportunities for gaming DADRP rules such that the generator could be paid for performing demand response that does not actually occur – *i.e.*, phantom load reductions. “Phantom” reductions can occur when the demand response resource or the demand response provider representing it in the wholesale market misrepresents the load reduction provided by the demand response resource, either by manipulating the baseline or withholding information that is relevant to the demand response resource's enrollment or participation. The Commission has recently brought several enforcement actions against companies that have used behind-the-meter generation in a scheme to inflate their baseline and then be paid for what appeared to be a load

reduction.³⁶ For example, the Commission brought an action against Rumford Paper Company (“Rumford”), alleging that Rumford curtailed the use of its behind-the-meter generation during days in which the baseline for its demand response was being measured establishing a baseline that was not consistent with the company’s normal operations.³⁷ Using this inflated baseline, Rumford then claimed and was paid for load reductions against its normal operations without actually reducing any load.³⁸ As the NYISO does not have visibility as to when and for what reason a behind-the-meter generator is running, the potential for such gaming in the DADRP and the payment for load reduction that does not actually occur present a danger that must be carefully evaluated by the NYISO and its stakeholders.

3. NYISO’s DADRP as Presently Designed Cannot Incorporate Behind-the-Meter Generation

In their complaint, Demand Response Supporters request that the Commission require the NYISO to revise the definition of the terms “Demand Reduction Incentive Payment” and “Demand Side Resource” in the NYISO’s Services Tariff and amend any other sections of its tariffs that bar demand response facilitated by behind-the-meter generation from being compensated at LMP.³⁹ However, as described above, the NYISO’s DADRP is presently designed for load curtailment resources and does not address the particular issues associated with behind-the-meter generation. Simply adopting Demand Response Supporters’ minimal tariff

³⁶ See, e.g., *Rumford Paper Company*, Order to Show Cause and Notice of Proposed Penalty, 140 FERC ¶ 61,030 (2012) (“Rumford Order”); *Lincoln Paper and Tissue, LLC*, Order to Show Cause and Notice of Proposed Penalty, 140 FERC ¶ 61,031 (2012).

³⁷ Rumford Order at P 2.

³⁸ Rumford Order at P 2.

³⁹ Complaint at p 5.

revisions, while ignoring complex implementation considerations, would not provide the NYISO with the means for including behind-the-meter generation in the DADRP.

The NYISO does not have eligibility or measurement and verification requirements for the participation of behind-the-meter generation in the energy market through the DADRP. In addition, unlike for its DSASP, the NYISO does not require that resources participating in the DADRP be metered and provide such data in a way that demonstrates their performance to the NYISO. Absent these requirements, the NYISO does not have the visibility and control required to ensure that behind-the-meter generation is actually providing the required demand response. Moreover, the NYISO does not have the means to know if a resource is being compensated multiple times for the same output or whether these resources are potentially gaming the DADRP to be compensated for load reductions that do not occur.

Any determination to include behind-the-meter generation in a NYISO economic demand response program would require an extensive evaluation by the NYISO of its existing DADRP rules and would require the NYISO to develop and implement new rules that recognize the use of behind-the-meter generation as a supply resource in the energy market. Requirements and procedures developed for demand response would need to be designed to provide confidence in the validity of the information provided for enrollment, measurement and verification, and settlements of behind-the-meter generation in the energy market. As described in Part II.B below, the NYISO is already exploring these issues with its stakeholders, and the stakeholder process is the appropriate venue for considering them.

4. Order No. 745 Does Not Require an ISO/RTO to Make Changes to the Eligibility of Behind-the-Meter Generation for Demand Response Compensation

Demand Response Supporters argue that the ineligibility of behind-the-meter generation to participate in the DADRP and receive LMP is inconsistent with Order No. 745.⁴⁰ In its May 16 Order, however, the Commission already reviewed and rejected the arguments made by Demand Response Supporters.

As described above, Order No. 745 was limited to addressing compensation for demand response resources participating in the markets administered by ISO/RTOs. The Commission has been clear that Order No. 745 does not require ISOs/RTOs to make changes to the eligibility of behind-the-meter generation for demand response compensation. Specifically, the Commission has found that Order No. 745 “focused exclusively on the amount of payment demand response would receive and did not require any changes with respect to whether load relying on behind-the-meter generation would be entitled to demand response compensation.”⁴¹ The Commission, therefore, has rejected, as outside the scope of Order No. 745, changes to the eligibility of behind-the-meter generation for demand response compensation.⁴² The Commission specifically refused to find that the NYISO’s exclusion of behind-the-meter generation from its demand response program was inconsistent with Order No. 745.⁴³

⁴⁰ Complaint at pp 9 -12.

⁴¹ *Midwest Independent Transmission System Operator, Inc.*, Order on Rehearing and Compliance, 140 FERC ¶ 61,059 (2012) at P 29.

⁴² See, e.g., *Midwest Independent Transmission System Operator, Inc.*, Order on Compliance Filing, 137 FERC ¶ 61,212 (2011) at P 71, *on reh’g*, Order on Rehearing and Compliance, 140 FERC ¶ 61,059 (2012) at P 29 (rejecting a change in behind-the-meter generation’s eligibility to receive demand response compensation as outside the scope of Order No. 745); *PJM Interconnection, L.L.C.*, Order on Compliance Filing, 137 FERC ¶ 61,216 (2011) at P 94 (rejecting protesters’ arguments for the elimination of demand response compensation to demand response customers with behind-the-meter generation as not required under Order No. 745).

⁴³ May 16 Order at P 101.

Demand Response Supporters also argue that the Commission should require the NYISO to revise its DADRP in part because other ISOs/RTOs compensate demand response facilitated by behind-the-meter generation.⁴⁴ However, neither Order No. 745 nor other Commission orders require that there be a “standard market design” among ISOs/RTOs for their demand response programs. Each ISO/RTO has established demand response programs specific to the characteristics of its region and in line with existing technical capabilities to conduct such programs. It is the NYISO’s understanding that where other ISOs/RTOs compensate demand response facilitated by behind-the-meter generation, they have greater visibility into and control over the resources than the NYISO’s current capabilities for the DADRP, through, for example, real-time or dedicated metering of the behind-the-meter generation. As described above, the NYISO already allows for behind-the-meter generation to participate in all of its other demand response programs. The NYISO does not, however, have procedures or capabilities currently in place to address the particular concerns associated with behind-the-meter generation’s participation in the DADRP.

B. The Commission Should Not Permit Demand Response Supporters to Make an End Run Around an Ongoing Stakeholder Process Exploring Whether to Allow Behind-the-Meter Generation in a Revised Economic Demand Response Program

A thorough process of review and development, in collaboration with stakeholders, is necessary to determine whether and to what extent behind-the-meter generation may participate in the NYISO’s DADRP. As described above, there are complex issues regarding behind-the-meter generation that must be carefully evaluated, and the participation of such resources in the NYISO’s economic demand response programs would require the development of eligibility and measurement and verification requirements that do not currently exist.

⁴⁴ Complaint at pp 7-9.

In its complaint, Demand Response Supporters allege that “[b]ased on their experience in the NYISO stakeholder process, [they] perceive virtually no opportunity to resolve this issue other than” through the Commission granting the complaint.⁴⁵ This assertion is unsupported, without merit, and contrary to Commission precedent recognizing the value and encouraging the use of ISO/RTO stakeholder processes. It ignores the fact that the NYISO is already exploring through its stakeholder process revisions to its demand response programs that expressly includes discussions of the role of behind-the-meter generation in a revised economic demand response program.

In 2012, the NYISO proposed and brought through its governance process its conceptual design for a dispatchable demand response program. If implemented, such a program would ultimately supplant the DADRP and allow all qualifying demand response resources to bid directly into the day-ahead and real-time energy markets. The NYISO anticipates engaging in a discussion with stakeholders regarding the market rules for this dispatchable demand response program during the remainder of 2013. As part of this proposal, the NYISO will be discussing market design changes under which behind-the-meter generation may participate in this program.

In October 2012 and December 2012, the NYISO presented its market design concepts that explicitly stated that market rules and procedures would include resources using behind-the-meter generation to achieve the load reduction.⁴⁶ In addition, the NYISO began work in June 2013 on a study on distributed energy resources to determine their current penetration, anticipated development, meter configuration, and other information that will inform the

⁴⁵ Complaint at p 16.

⁴⁶ See, e.g., NYISO’s December 5, 2012, Business Issues Committee presentation entitled “Market Design Concepts for Demand Response in the Real-Time Energy Market,” available at: http://www.nyiso.com/public/webdocs/markets_operations/committees/bic/meeting_materials/2012-12-05/agenda_08_Demand_Response_in_the_Real-Time_Energy_Market-for_12-5-12_BIC.pdf.

development of requirements for the participation of behind-the-meter generation in a revised economic demand response program. The NYISO has informed stakeholders of this study and is currently planning a workshop involving the consultant performing the study and stakeholders to identify issues regarding behind-the-meter generation that should be addressed in the study's scope.

Numerous Commission orders discourage parties from attempting "end-runs" around ISO/RTO governance processes by proposing tariff changes that have not had the benefit of stakeholder vetting.⁴⁷ Allowing such short-cuts would create harmful incentives to avoid collaboration and compromise. The Commission should act consistent with this principle here and not preempt this stakeholder process.

In addition, the Commission should for the same reasons reject Demand Response Supporters' request that any implementation details for behind-the-meter generation be worked out through settlement judge procedures.⁴⁸ This request is inconsistent with the Commission's precedent, which favors the use of an ISO/RTO's stakeholder process. The Commission should not prejudge the outcome of the ongoing stakeholder process or establish a separate litigation-style proceeding in Washington, D.C., which would be likely to be less efficient, more time-

⁴⁷ See, e.g., *ISO New England Inc.*, 130 FERC ¶ 61,145, at P 34 (2010) ("we encourage parties to participate in the stakeholder process if they seek to change the market rules..."); *ISO New England Inc.*, 125 FERC ¶ 61,154 at P 39 (2008) (directing that unresolved issues be addressed through the stakeholder process); *ISO New England*, 128 FERC ¶ 61,266 at P 55 (2009) (declining to grant a party's specific request for relief because the Commission "will not ... circumvent that stakeholder process"); *New York Independent System Operator, Inc., New York Transmission Owners*, 126 FERC ¶ 61,046, at PP 53-54 (2009) (directing that a proposal be "presented to and discussed among ... stakeholders and filed as a section 205 proposal, not unilaterally presented to the Commission"); *New England Power Pool*, 107 FERC ¶ 61,135 at PP 20, 24 (2004) (declining to accept changes proposed for the first time in a FERC proceeding by an entity that participated in the stakeholder process because the "suggested revisions have not been vetted through the stakeholder process and could impact various participants").

⁴⁸ Complaint at pp 16-17.

consuming, less accessible to New York-based stakeholders with limited resources, and more expensive.

The NYISO should therefore be permitted to continue to work with its stakeholders to address the issue of behind-the-meter generation's participation in the NYISO's demand response programs as it develops the market rules for a revised NYISO economic demand response program.

III. COMMUNICATIONS

Communications regarding this proceeding should be addressed to:

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⁴⁹ The NYISO respectfully requests waiver of 18 C.F.R. § 385.203(b)(3) (2011) to permit service on counsel for the NYISO in both Washington, D.C. and Richmond, VA.

IV. COMPLIANCE WITH COMMISSION RULE 213(c)(2)(i)

Attachment I to this answer addresses the formal requirements of Commission Rule 213(c)(2) to ensure the NYISO's full compliance with them.

V. CONCLUSION

For the foregoing reasons, the New York Independent System Operator, Inc. respectfully requests that the Commission deny the Complaint including the proposed revisions to the NYISO tariffs.

Respectfully submitted,

/s/ Michael J. Messonnier, Jr.

Michael J. Messonnier, Jr.

Counsel for the

New York Independent System Operator, Inc.

July 8, 2013

cc: Travis Allen
Michael Bardee
Gregory Berson
Anna Cochrane
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Attachment I

Compliance with Commission Rule 213(c)(2)

A. Specific Admission and Denials of Material Allegations

In accordance with Commission Rule 213(c)(2)(i), to the extent practicable and to the best of the NYISO's knowledge and belief at this time, the NYISO admits or denies below the material factual allegations in the Complaint. To the extent that any fact or allegation in the Complaint is not specifically admitted below, it is denied. Except as specifically stated herein, the NYISO does not admit any facts in the form or manner stated in the Complaint.

1. Denials

- The NYISO denies that its current treatment of demand response facilitated by behind-the-meter generation is inconsistent with the Federal Power Act, Order No. 745, and other Commission orders and regulations. (Complaint at 4-5, 9)
- The NYISO denies that the Commission should require the NYISO to recognize demand response facilitated by behind-the-meter generation as it does all other demand response and compensate it at full LMP. (Complaint at 9)
- The NYISO denies that neither the Commission nor the NYISO have appropriate concerns regarding actions taken behind-the-meter and that the source of demand response is irrelevant. (Complaint at 6, 9-11, 13)
- The NYISO denies that it is erecting a barrier to demand response and to the provision of grid-balancing service. (Complaint at 10-11)
- The NYISO denies that it has undermined a primary goal of Order No. 745 by "looking at the source facilitating the demand response." (Complaint at 9)
- The NYISO denies assertions that Order No. 745 requires ISOs/RTOs to change the eligibility of behind-the-meter generation for demand response compensation. (Complaint at 9-10)
- The NYISO denies allegations that the Commission did not properly address the NYISO's tariffs compliance with Order No. 745. (Complaint at 10-11)
- The NYISO denies that "the NYISO's decision to exclude demand response facilitated by BTMG is anti-competitive and inconsistent with the directives of Order Nos. 719 and 745." (Complaint at 12)
- The NYISO denies that statements made by the Commission in an appellate court briefing concerning Order No. 745 are precedential (Complaint at 6 and 7).

- The NYISO denies that there is no opportunity to address the issues in this proceeding through the NYISO stakeholder process. (Complaint at 16)
- The NYISO denies that settlement judge procedures should be used in place of the NYISO stakeholder process to negotiate implementation details. (Complaint at 16-17)
- The NYISO denies that the Commission's 2003 order regarding the ineligibility of behind-the-meter generation to participate in the DADRP has been rendered obsolete. (Complaint at 11).
- The NYISO denies the description of the Commission's jurisdiction under the Federal Power Act with regard to demand response which source is behind-the-meter. (Complaint at P 14)

2. Admissions

- The NYISO admits that the descriptions of Demand Response Supporters and the NYISO in Section III of this Complaint are correct. (Complaint at 2-3).
- The NYISO admits that Section IV of the Complaint's high-level description of Order No. 745 is accurate. (Complaint at 3)
- The NYISO admits that Section IV of the Complaint's high-level description of the NYISO's Order No. 745 compliance filing and Demand Response Supporters' arguments in response to the compliance filing are accurate. (Complaint at 4).
- The NYISO admits that there are variations among the ISO/RTOs' demand response programs, but does not admit or deny the description of other ISO/RTOs' programs in the Complaint (Complaint at 7-9)

B. Defenses

In accordance with Commission Rule 213(c)(2)(ii), the NYISO sets forth the following defenses:

- Complainant has failed to meet its burden of proof under Section 206 of the Federal Power Act and Commission Rule 206. Complainant has not shown that the NYISO tariffs are unjust or unreasonable or unduly discriminatory, and, therefore, has not shown that the NYISO's tariffs should be amended.
- Complainant's attempt to make an end-run around the NYISO stakeholder process and to impose its own unilaterally preferred tariff revisions is inconsistent with Commission policy and precedent.

C. Proposed Resolution Process

Commission Rule 213(c)(4) states that an answer "is also required to describe the formal

or consensual process it proposes for resolving the complaint.” In compliance with that requirement, the NYISO requests that the Complaint be dismissed based solely on the basis of the pleadings in this proceeding.