UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc.	)	**Docket No. ER11-4338-002**

REQUEST FOR LEAVE TO SUBMIT LIMITED ANSWER AND LIMITED ANSWER OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

Pursuant to Rule 212 and 213 of the Federal Energy Regulatory Commission ("Commission") Rules of Practice and Procedure,[1] the New York Independent System Operator, Inc. ("NYISO") respectfully submits this *Request for Leave to Submit Limited Answer and Limited Answer*, which addresses certain material inaccuracies in the October 4, 2013 *Motion for Leave to Answer and Answer* of EnerNOC, Inc.; Viridity, Inc.; Wal-Mart Stores, Inc.; Comverge, Inc.; and EnergyConnect, a Johnson Controls Company (collectively, "Demand Response Supporters" or "DRS") (the "DRS Answer").[2]

I. REQUEST FOR LEAVE TO ANSWER

The Commission has discretion to accept, and has accepted, answers to responsive pleadings when doing so assures a complete record, provides helpful information, permits the issues to be narrowed or clarified, or aids the Commission in understanding and resolving issues.[3] This answer satisfies these standards because it is narrowly drawn to address certain

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1 *See* 18 C.F.R. §§ 385.212, 385.213 (2013).

2 *Motion for Leave to Answer and Answer of Demand Response Supporters*, Docket No. ER11-4338-002 (October 4, 2013) ("DRS Answer").

3 *See, e.g., New York Independent System Operator, Inc*., 134 FERC ¶ 61,058 at P 24 (2011) (accepting the answers to protests and answers because they provided information that aided the Commission in better understanding the matters at issue in the proceeding*); New York Independent System Operator, Inc*., 140 FERC ¶ 61,160 at P 13 (2012) and *PJM Interconnection, LLC*, 132 FERC ¶ 61,217 at P 9 (2010) (accepting answers to answers and protests because they assisted in the Commission's decision-making process).

material inaccurate or misleading assertions in the DRS Answer. In deference to the Commission's procedural rules, the NYISO is not answering any of the other points in the DRS Answer at this time.[4]

II. ANSWER

A. The NYISO has Demonstrated that Net Benefits Thresholds are Higher in New York Because Underlying Prices are Higher than in Neighboring Regions

1. DRS' Claim that the Relationship Between the Threshold Price and the Average Wholesale Price in any Given Sub-region Should Be the Same Is Not Correct

While acknowledging that "the monthly average day-ahead spot prices are higher in New York than in neighboring zones in PJM and ISO-NE,"[5] DRS now argue, incorrectly, that the relationship between the threshold price and the average wholesale price in any given sub-region should be the same.[6] This is not true because (i) the threshold price depends on the shape and values of the supply curve, among other things, and there can be regional differences in the supply curve, and (ii) the differences between the threshold price and the average wholesale price vary across sub-regions as a result of transmission congestion. Therefore, DRS' claim that the relationship between the threshold price and any given average wholesale price in a sub-region should be the same is incorrect and should be disregarded.

2. The Monthly Average Day-Ahead Spot Prices and Net Benefits Tests Provided by DRS for New England and PJM Are Conceptually or Mathematically Flawed

DRS have presented another chart of their own invention purporting to compare the monthly average day-ahead spot price and net benefits threshold values for the NYISO with

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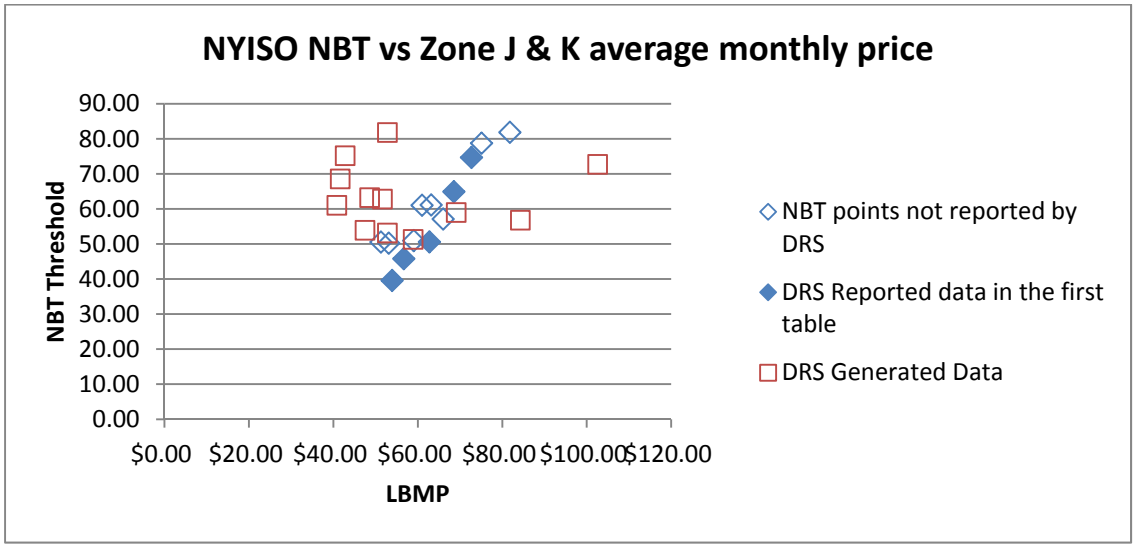
[4] The NYISO's silence on these other points should therefore not be construed as agreement or acquiescence with them.

[5] DRS Answer at 4.

[6] *Id.* at 4-7.

those in ISO New England, Inc. ("ISO-NE") and PJM Interconnection, LLC ("PJM").[7] The results set forth in this chart are, at a minimum, improbable. While DRS provide no explanation of how they generated the "NYISO NBT" column of data, for example, a cursory examination of these purported net benefits thresholds shows that they do not exhibit the same relationship between the net benefit thresholds and the NYISO Zone J and K prices that the DRS show in their prior table,[8] as is illustrated in the following chart.



Moreover, there is unquestionably a conceptual or mathematical error with DRS' methodology given that it would set the net benefit threshold far below the average wholesale price, sometimes at less than half of the average wholesale price. This approach has the irrational result of subsidizing demand response when the spot wholesale price is far below the retail rate. As the NYISO explained in its August 14, 2013 compliance filing in this proceeding (the "Compliance Filing"), setting the net benefit threshold far below the average wholesale price is inconsistent with the Commission's fundamental reasons for concluding that demand response

7 *Id.* at 5-6.

8 *Id.* at 5.

should be paid at the locational marginal price ("LMP") for energy.[9] Consequently, the comparisons provided by DRS have no probative value and should be disregarded.

B. The NYISO's Use of Heat Rates and Natural Gas Prices Produces an Accurate Supply Curve

1. The Use of Heat Rates Does Not Inflate the Net Benefits Threshold

In the DRS Answer, DRS incorrectly state that the NYISO's decision to base its supply curve on heat rate inflates the net benefits threshold.[10] "Imputing pretended costs of natural gas 'consumption' to nuclear, hydroelectric, or wind units, simply inflates the offer price that NYISO has constructed for these low-priced resources that do not burn natural gas."[11]

There are several problems with this argument, even after setting aside the fact that the argument was not raised in DRS' original protest[12] and was not made in response to any NYISO argument in its answer to that protest,[13] and is therefore not properly before the Commission. First, the construction of an implied heat rate is done to bring offer prices to common grounds, not to inflate or deflate thresholds. Implied heat rate is an economics concept in this context (normalization), that is reasonably used to compare offer prices across units and time.

Second, the use of heat rate to develop the supply curve does not systematically inflate the net benefits thresholds. Bringing offer prices to common grounds can appear to either inflate or deflate the adjusted offer prices. If there are units whose marginal costs (including

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9 *New York Independent System Operator, Inc.*, Compliance Filing, Docket No. ER11-4338-002 (Aug. 14, 2013), P 9.

10 The NYISO explained the methodology used to develop its supply curve in its August 19, 2011 compliance filing and on its website. *See New York Independent System Operator, Inc.*, Compliance Filing, Docket No. ER11-4338-000 (Aug. 19, 2011) ("2011 Compliance Filing"), pp 3-9.

11 DRS Answer at 8.

12 *Protest of Demand Response Supporters*, Docket No. ER11-4338-002 (Sept. 4, 2013).

13 *Answer to Comments and Request for Leave to Answer and Answer to Protest of the New York Independent System Operator*, Docket No. ER11-4338-002 (Sept. 19, 2013).

opportunity costs) do not change with the price of natural gas, then in times of low gas prices, use of a heat rate can appear to inflate those offers relative to units with costs that change in response to the price of natural gas. The opposite would be true for these same units in times of high natural gas prices, when their offers would appear to be deflated relative to the offers of units with marginal costs proportional to natural gas prices.

Third, it is highly unlikely that imputing gas costs to wind units would inflate the net benefits threshold, as wind units almost never offer supply in the day-ahead market and negative and zero offers would not be "inflated" by indexing because if a wind unit were to offer in the day-ahead market, the generator would have to account in its offers for the risk of there being less wind than expected in real time and thus would have to account for the risk of having to "buy out" of their day-ahead market position at real-time prices (which vary with natural gas prices).

Fourth, hydro power that is not run of the river[14] may be offered at prices reflecting the opportunity cost of selling in other higher priced hours, which does vary with gas prices. This is because hydro power that is not run of the river can store water until it would be more valuable to use the water to generate electricity.

Finally, 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.

As the NYISO explained previously in its August 19, 2011 compliance filing,[15] the use of heat rate to construct the supply curve is reasonable and consistent with Order No. 745.

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[14] Run-of-the-river hydro is generally offered as a price taker in the NYISO's market because there is no alternate, valuable use for the water if it is not used for generating energy.

[15] 2011 Compliance Filing at 6.

2. DRS Incorrectly Claim that the NYISO's Supply Curve is Not Constructed Using Actual Supply Offers

DRS incorrectly state, "NYISO uses the formula 'Heat Rate = Offer Price / Gas Price' as a substitute for actual supply offers."[16] The statement is incorrect because the "Offer Price" in this formula is based on actual supply offers. Contrary to what DRS indicated in their restated formula "Heat Rate x Gas Price = Offer Price," the NYISO does not generate or create an offer price by multiplying a heat rate by the gas price. The NYISO constructed the supply curve using actual supply offers, and therefore the NYISO complied with the requirement of Order No. 745 that it "undertake an analysis on a monthly basis, based on historical data and the RTO's or ISO's previous year's supply curve, to identify a price threshold to estimate where customer net benefits . . . would occur."[17]

C. The NYISO's Use of a Functional Form with Multiple Inflection Points Is Reasonable and Consistent with Order No. 745

DRS claim that the NYISO has not explained its use of multiple inflection points.[18] Yet DRS themselves admit that the single inflection point formula used by PJM does not result in a formula that accurately describes the New York supply curve. Furthermore, DRS do not identify any other single inflection point formula that would be able to accurately describe the New York supply curve.

To be clear, the NYISO 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. Nor has any other party to this proceeding identified any single inflection point formula that would be able to accurately describe the New York

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[16] DRS Answer at 8.

[17] Demand Response Compensation in Organized Wholesale Energy Markets, Order No. 745, III FERC Stats. & Regs., Regs. Preambles ¶ 31,322 (2011) ("Order No. 745"), ¶ 79.

[18] DRS Answer at 10-11.

supply curve. The use of multiple inflection points in New York is reasonable and consistent with Order No. 745.

III. CONCLUSION

WHEREFORE, the New York Independent System Operator, Inc. respectfully requests that the Commission accept the compliance filing filed on August 14, 2013 in the above referenced docket without requiring any modifications.

Respectfully submitted,

/s/ Ted J. Murphy
Hunton & Williams, LLP
Counsel for
New York Independent System Operator, Inc.

October 21, 2013

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Commission Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2013).

Dated at Washington, D.C. this 21st day of October 2013.

/s/ Catherine Karimi

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