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

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| **New York Independent System Operator, Inc.** | **)** | **Docket No. ER14-2006-000** |

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

Pursuant to Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"),[1] the New York Independent System Operator, Inc. ("NYISO") respectfully seeks leave to answer and submits this answer ("Answer"). The Answer responds to the June 11, 2014, protest of Demand Response Supporters ("Protest")[2] regarding the NYISO's May 21, 2014, compliance filing in the above-captioned proceeding ("Compliance Filing") to permit the participation of demand response facilitated by behind-the-meter generation in its Day-Ahead Demand Response Program ("DADRP").[3]

The Commission should reject the Protest and accept the NYISO's proposed tariff revisions without modification. As described below, the NYISO's proposed tariff revisions protested by Demand Response Supporters are necessary for the NYISO to satisfy the Commission's directives in its November 22, 2013, order ("November Order") to ensure that resources are compensated only for their actual Demand Reduction,[4] maintain system reliability,

[1] *See* 18 C.F.R. § 385.213 (2013).

[2] *New York Independent System Operator, Inc.*, Protest of Demand Response Supporters, Docket No. ER14-2006-000 (June 11, 2014) ("Protest"). Demand Response Supporters consist of EnerNOC, Inc., Viridity, Inc., Comverge, Inc., and EnergyConnect, a Johnson Controls Company.

[3] *New York Independent System Operator, Inc.*, Compliance Filing of New York Independent System Operator, Inc., Docket No. ER14-2006-000 (May 21, 2014) ("Compliance Filing").

[4] Capitalized terms not otherwise defined herein shall have the meaning specified in Article 2 of the NYISO's Market Administration and Control Area Services Tariff and Article 1 of the NYISO's Open Access Transmission Tariff.

and provide for comparable treatment of demand response resources participating in the DADRP.[5]

## I. REQUEST FOR LEAVE TO ANSWER

The Commission has discretion to, and routinely accepts, answers to protests where, as here, they help to clarify complex issues, provide additional information, are otherwise helpful in the development of the record in a proceeding, or assist in the decision-making process.[6] The NYISO's Answer to the Protest satisfies these standards and should be accepted because it addresses inaccurate or misleading statements, and provides additional information that will help the Commission to fully evaluate the arguments in this proceeding.

## II. ANSWER

### A. The Metering of a Demand Side Resource's Local Generator Is Required to Ensure Demand Side Resources Are Only Compensated for Actual Demand Reduction, to Maintain System Reliability, and to Ensure Comparable Treatment of Demand Side Resources

Demand Response Supporters protest the NYISO's proposed tariff requirement that a Demand Side Resource participating in the DADRP that has a Local Generator must have an hourly-interval meter that measures the output of that generator, regardless of whether the Demand Side Resource plans to use the Local Generator in the program. For the reasons

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[5] *Demand Response Supporters v. New York Independent System Operator, Inc.*, Order Granting Complaint, in Part, 145 FERC ¶ 61,162 (2013) ("November Order") at P 37.

[6] *See, e.g., Southern California Edison Co*., 135 FERC ¶ 61,093 at P 16 (2011) (accepting answers to protests "because those answers provided information that assisted [the Commission] in [its] decision-making process"); *New York Independent System Operator, Inc*., 134 FERC ¶ 61,058 at P 24 (2011) (accepting 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).

described below, the Commission should reject the Protest and accept the NYISO's proposed metering requirement without modification.

The NYISO measures a Demand Side Resource's Load reduction, as scheduled in the NYISO's Day-Ahead Market for Energy, by reference to an estimated baseline of Load for that Demand Side Resource. The NYISO currently uses the Customer Baseline Load ("CBL") methodology to calculate the estimated baseline Load of a Demand Side Resource participating in the DADRP.

The NYISO proposes to require that each Local Generator of a Demand Side Resource participating in the DADRP have an hourly-interval meter that measures the output of the generator, so that the NYISO can monitor the accuracy of the Demand Side Resource's baseline and confirm that actual Demand Reduction is occurring in response to the NYISO's scheduling the resource in its Day-Ahead Market. This requirement is consistent with the Commission's directive in the November Order that the NYISO develop tariff provisions to ensure Demand Side Resources "are compensated only for the demand response service they actually provide."[7]

When a Demand Side Resource has one or more Local Generators, the NYISO cannot rely solely on the Demand Side Resource's net Load meter to ensure that the resource's baseline is accurate and that the resource is only being compensated for Demand Reduction it provides in response to its schedule in the NYISO's Energy market. If the NYISO does not have visibility regarding the output of behind-the-meter generation, the NYISO cannot determine through the net Load meter data whether actual Demand Reduction is occurring, rather than a resource using a Local Generator to improperly influence the calculation of its baseline.

[7] November Order at P 37.

A change in a Local Generator's output in conjunction with an upcoming economic schedule could result in overstatement of either the baseline or the in-day adjustment to the baseline, which would result in the NYISO compensating the resource for more Load reduction than it actually performed during the scheduled period. For example, a Demand Side Resource could selectively lower the output of a Local Generator to increase the amount of energy it requires from the NYISO's markets to satisfy its Load, resulting in an overstated baseline. In such instance, the NYISO would not be able to discern whether any reduction from the improperly overstated baseline of the Demand Side Resource's Load as measured by the net Load meter is actual Load reduction resulting from the resource curtailing its Load or operating its Local Generator in response to the schedule the resource received in the NYISO's Day-Ahead Market or is phantom Load reduction based on the overstated baseline.

A Demand Side Resource could also selectively operate a Local Generator to exclude from the calculation of its baseline certain days in which its Load is lower than usual, resulting in the resource being compensated based on its Load reduction from a higher, overstated baseline level. On days in which a Demand Side Resource expects to have lower than usual Load, such as during a planned partial or full shutdown of a facility, the Demand Side Resource could selectively operate a Local Generator differently from its normal output level in a manner that will not draw the NYISO's attention to a significant change in net Load, but would exclude the low Load day from the baseline calculation under the NYISO's exclusion requirements for low usage days. While Demand Response Supporters make light of the risk of baseline manipulation, finding it "difficult to imagine,"[8] the Commission has assessed penalties to

[8] Protest at p 7.

demand response providers in other regions for manipulating their baselines by using behind-the-meter generators to inflate these baselines and, thus, getting paid for phantom Load reductions.[9]

In developing its compliance filing, the NYISO evaluated several alternatives for addressing these concerns, including considering the potential costs associated with the different options, before settling on the proposed metering requirement. Other Suppliers participating in the NYISO's Energy market are required to connect through their local Transmission Owner and install real-time metering and telemetry that is then relayed to the NYISO every six seconds. For example, Demand Side Resources that provide real-time services, such as Operating Reserves and Regulation Service, through the NYISO's Demand Side Ancillary Services Program ("DSASP") are required to have real-time metering and telemetry.[10] The Commission referenced these DSASP metering and telemetry requirements in its November Order as part of its determination that the NYISO had previously enacted measurement and verification requirements that ensure demand response facilitated by behind-the-meter generation is compensated only for the actual Demand Reduction.[11] The NYISO, however, did not adopt this approach for the DADRP because it concluded after careful evaluation that real-time metering and telemetry, which are relatively expensive to install and maintain, are not required at this time to measure and verify Demand Side Resources' participation in the DADRP. Instead, the NYISO initially proposed to stakeholders that a Demand Side Resource with a Local Generator

[9] *See*, e.*g.*, *Rumford Paper Company*, Order Approving Stipulation and Consent Agreement, 142 FERC ¶ 61,218 (2013); *Rumford Paper Company*, Order to Show Cause and Notice of Proposed Penalty, 140 FERC ¶ 61,030 (2012).

[10] The telemetry and real-time metering requirements for DSASP are required to maintain reliability and to satisfy the reliability rules of the Northeast Power Coordinating Council for resources providing Operating Reserves and Regulation Service.

[11] November Order at P 37 fn 46.

participating in the DADRP must install a New York State Public Service Commission ("NYPSC")-approved revenue-grade, hourly-interval meter for its Local Generator. The data from this meter would be reported after-the-fact to the NYISO solely for monitoring purposes. In response to stakeholder concerns about cost, the NYISO modified the required metering from the NYPSC-approved revenue-grade, hourly-interval meters to the more affordable hourly-interval meter that can measure the output of the Local Generator within a 2% accuracy threshold.[12] The NYISO's revised proposal in the Compliance Filing minimizes the investment for a Demand Side Resource with a Local Generator that would like to participate in the DADRP as compared to the other reasonable alternatives, and still provides the NYISO with the data needed to verify a Demand Side Resource's participation in the DADRP.

Demand Response Supporters argue that this metering requirement is inexplicable for the portion of Local Generators that are renewable resources, which output they argue cannot be reasonably controlled or manipulated. The DADRP, however, is an economic demand response program in which the Demand Reduction Provider[13] is paid for its provision of a specific quantity of reduced electricity demand that it offers in the NYISO's Day-Ahead Market for Energy. When the Demand Reduction Provider offers Demand Reduction in the NYISO's Day-Ahead Market for Energy, its offer is evaluated against other Suppliers. As with a conventional Supplier, the NYISO expects that the offer reflects a Demand Side Resource's capability to

[12] The NYISO's proposed use of non-revenue grade metering for a Local Generator should significantly reduce the costs of such metering. A Demand Side Resource in New York State has the option of obtaining metering from many sources, including its respective Transmission Owner. The purchased meter may qualify for an incentive payment from the New York State Energy Research and Development Authority ("NYSERDA") that could offset a significant portion of the meter's costs.

[13] The "Demand Reduction Provider" may offer the Demand Reduction of an individual Demand Side Resource registered as a DADRP resource or a group of Demand Side Resources collectively registered as a single DADRP resource.

deliver the specific quantity of Load reduction associated with its offer, including the ability to manage that Load reduction for the duration of its schedule. Accordingly, the definition of a Demand Side Resource requires that the resource be able to control demand in a responsive, measurable, and verifiable manner within time limits.[14] If a Demand Side Resource cannot accurately manage its Load quantity due to uncontrollable behind-the-meter renewable resources, the NYISO will not be able to determine an accurate baseline for the Demand Side Resource or confirm that actual Demand Reduction is occurring. Given the potential impact of behind-the-meter renewable resources on the Load of a Demand Side Resource, metering these resources is just as important as other behind-the-meter resources.

Finally, the NYISO's proposed metering requirements should apply equally to *all* Demand Side Resources with a Local Generator that participate in the DADRP, regardless of whether the resource indicates that it will participate in the program by curtailing its Load, operating a Local Generator, or some combination of both. As the Commission directed in the November Order, the NYISO's tariff provisions should provide for comparable treatment in the DADRP of resources providing demand response facilitated by behind-the-meter generation and all other demand response resources.[15] The potential for baseline manipulation facilitated by behind-the-meter generation exists for any Demand Side Resource with a Local Generator, regardless of whether the resource informs the NYISO of its intent to operate a Local Generator to provide Demand Reduction. The NYISO's proposed metering requirement is necessary to

[14] A "Demand Side Resource" is defined in Section 2.4 of the Services Tariff as "A Resource located in the NYCA that is *capable of controlling demand in a responsive, measurable and verifiable manner within time limits . . . .*" (emphasis added). The NYISO's proposed revisions to this definition in the Compliance Filing do not change the requirement that a Demand Side Resource must be capable of controlling its demand in a responsive, measureable and verifiable manner.

[15] November Order at P 37 (emphasis added).

protect against such manipulation and to ensure compensation only for actual Demand Reduction and should apply on a comparable basis to all resources with a Local Generator participating in the DADRP.[16] In addition, the Demand Side Resources currently enrolled in the DADRP have elected not to participate at all in the DADRP over the past three years even without such metering requirements.[17] There is, therefore, no basis for Demand Response Supporters' argument that applying these metering requirements to currently enrolled resources will somehow negatively shift the economics of their participation in the program. However, the NYISO's proposed revisions to permit demand response facilitated by behind-the-meter generation to participate in the DADRP could facilitate new enrollees in the DADRP that are interested in participating in the program.

For these reasons, the Commission should accept the NYISO's proposed metering requirements as applicable to all Demand Side Resources with a Local Generator participating in the DADRP.

[16] The NYISO believes that all of its proposed revisions in the Compliance Filing are within the scope of Commission's directives in the November Order, including the applicability of the proposed metering requirement to *all* Demand Side Resources with a Local Generator that participate in the DADRP. To limit the metering requirement to only a subset of Demand Side Resources with a Local Generator that participate in the DADRP would result in two tiers of participation requirements, rather than the comparable treatment of resources, without good cause, as the NYISO's need to ensure compensation only for actual Demand Reduction and to protect against baseline manipulation applies equally to all resources participating in the DADRP.

[17] As reported in the NYISO's annual year-end reports, the offer activity and resulting schedules for DADRP activity began to decline in 2009 and dropped off completely by the next year-end report. *See, e.g., New York Independent System Operator, Inc.*, Annual Report in Docket No. ER01-3001-000; Docket No. ER01-3001-000 (January 15, 2014) at Attachment II at p 4 (indicating no activity in the DADRP during the reporting period).

## B. The Prior 30 Days of Meter Data Are Required to Ensure Demand Side Resources Are Only Compensated for Actual Demand Reduction

Demand Response Supporters protest the NYISO's proposed tariff revision to require that a Demand Side Resource provide its hourly-interval metered Load data for all hours of each of the thirty days preceding the day the resource is scheduled. For the reasons set forth below, the Commission should reject the Protest and accept the NYISO's proposed reporting requirement without modification.

A Demand Side Resource participating in the DADRP is already responsible for maintaining the 30 days of meter data requested by the NYISO.[18] This meter data is used by the Demand Reduction Provider in calculating the Demand Side Resource's baseline. As an initial matter, the Demand Reduction Provider uses the previous thirty days of data as part of the first step in developing the Demand Side Resource's CBL. In this first step, the Demand Side Resource's peak hourly Load is reviewed over the past thirty days to calculate the seed value that is used to determine which days to exclude from the calculation of the CBL pursuant to the NYISO's low usage exclusion criteria.[19] The seed value is determined by looking at all hours of a day, not just at those hours in which the Demand Side Resource was scheduled. In addition, the Demand Side Resource's CBL is calculated using the meter data from the ten preceding *eligible* days. Because weekend, low usage, and other scheduled days are excluded from the

[18] *See, e.g.,* Article 10 of the NYISO Market Administration and Control Areas Services Tariff; Section 6.4 of the NYISO Day-Ahead Demand Response Manual.

[19] Section 5.1.I.A of the NYISO Day-Ahead Demand Response Manual ("Step 1. Establish the CBL Window. Establish a set of days that will serve as representative of participant's typical usage. A.1.a Determine the participant's peak hourly load over the past 30 days or the period covered by the load data file, whichever is smaller. This value becomes the initial seed value for the *average event period usage level."*)

CBL calculation, meter data from as far back as thirty days could be required to calculate the baseline.

The NYISO requires the requested data to verify the accuracy of the Demand Side Resource's CBL and to confirm that actual Demand Reduction occurred.[20] Because the Demand Side Resource could be scheduled for multiple, non-contiguous hours during the course of a day, the NYISO requires all twenty-four hours of each day to ensure it can verify the in-day adjustment calculation of the baseline.

The submission to the NYISO for measurement and verification purposes of a small subset of the data that is already required to be maintained by the Demand Side Resource and is already used by the Demand Reduction Provider is reasonable and does not constitute an unreasonable burden to the resource. In developing its compliance filing, the NYISO reviewed several alternatives to the proposed reporting requirement and determined that its proposed requirement was the least burdensome. The NYISO's request for the prior thirty days of data is not a rolling requirement, but is only initiated when the resource is scheduled. This data reporting requirement is in lieu of the data that is normally provided to the NYISO by Suppliers in the NYISO's Energy market that are in communication with the NYISO via telemetry.[21] Because the NYISO is not requiring telemetry for the DADRP, the NYISO will not have access to the data required to verify the seed value that allows for the exclusion of low usage days or

[20] Because the NYISO will always require the previous thirty days of meter data to determine the low usage days for the baseline calculation, it does not make sense and would be administratively more burdensome to the NYISO and Demand Side Resource to require the NYISO to request anew the thirty days of meter data after each time the Demand Side Resource is scheduled, as suggested by Demand Response Supporters.

[21] For comparison, the NYISO's reporting requirements for DSASP resources, real-time telemetry and after-the-fact hourly interval meter data, are identical to those of other Suppliers of Operating Reserves and Regulation Service.

sufficient data to confirm the CBL against which the Demand Side Resource's performance is measured, unless the NYISO establishes the proposed 30-day reporting requirement for each DADRP schedule. The current requirement to submit data to the NYISO for settlement purposes occurs at 55 days after the scheduled Load reduction occurs, which provides the Demand Reduction Provider with sufficient time to verify the meter data, calculate the baseline, and determine the actual Load reduction prior to submitting that Load reduction data to the NYISO for settlement.

For these reasons, the Commission should accept the NYISO's proposed reporting requirement and reject the Protest.

## III. CONCLUSION

WHEREFORE, the New York Independent System Operator, Inc. respectfully requests that the Commission accept the NYISO's proposed tariff revisions in the Compliance Filing and reject the Protest.

Respectfully submitted,

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Date: June 26, 2014

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document 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 Rules of Practice and Procedure, 18 C.F.R. §385.2010.

Dated at Rensselaer, NY this 26th day of June, 2014.

*/s/ Mohsana Akter*

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