

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

FirstEnergy Service Company,)	
)	
)	
Complainant,)	
)	
)	
v.)	Docket No. EL14-55-000
)	
)	
PJM Interconnection, L.L.C.,)	
)	
)	
Respondent.)	
)	
Demand Response Compensation)	Docket No. RM10-17-003
In Organized Wholesale Energy Markets)	

ANSWER OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

In accordance with Rule 213 of the Commission’s Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. (“NYISO”), respectfully seeks leave to answer, and submits this answer to, the *Motion on Remand of EPSA v. FERC and Comments in Opposition on Complaint of NRG Companies* (“NRG Motion”). NRG Companies (“NRG”) filed the NRG Motion on October 22, 2014 in response to the Amended Complaint filed by FirstEnergy Services Company on September 9, 2014.² The Amended Complaint was prompted

¹ 18 C.F.R. § 385.213 (2013).

² *Amended Complaint of FirstEnergy Service Company*, Docket No. EL14-55-000 (September 9, 2014) (“Amended Complaint”).

by the United States Court of Appeals for the District of Columbia Circuit’s recent decision in *EPSA*.³

The NYISO takes no position on the question of whether the relief requested by the NRG Motion is appropriate for the PJM Interconnection, L.L.C. (“PJM”) or for ISO New England, Inc (“ISO-NE”). But the NYISO opposes the NRG Motion’s request to the extent that it is asking the Commission to remove demand response from the NYISO capacity market, or other NYISO-administered markets, before there is final resolution of the *ESPA* case and further FERC guidance.⁴

Such a step would unnecessarily eliminate the reliability and economic benefits of demand response before an orderly transition to alternative “post-*EPSA*” arrangements, if any are needed, could be made. More generally, the NYISO does not believe that there is likely to be any single “one size fits all” response that would be suitable for all of the organized markets. The Commission should provide guidance on *ESPA*’s legal implications in the near future, as the NYISO has requested.⁵

Additionally, each ISO/RTO that administers an organized capacity market should be allowed to work with its stakeholders and the state regulators in its region to craft an appropriate regional response.

³ *Elec. Power Supply Ass’n v. FERC*, 753 F.3d 216 (D.C. Cir. 2014) (“*EPSA*”).

⁴ To the extent that other parties in this proceeding have made, or make, similar requests that would apply to New York, the NYISO also opposes them for the reasons specified in this pleading. *See, e.g., Comments of the Electric Power Supply Association*, Docket No. EL14-55-000 at 6 (October 22, 2014) (“Like PJM, ISO-NE and other independent system operators (“ISOs”)/regional transmission organizations (“RTOs”) should be directed to exclude demand response from participating as supply in their capacity auctions.”)

⁵ *See Motion to Intervene and Comments of the New York Independent System Operator, Inc.*, Docket No. EL14-55-000 (October 22, 2014) (“October 22 Comments”) at 1-2, 5-6.

I. CONDITIONAL REQUEST FOR LEAVE TO ANSWER

The Commission allows answers to motions as a matter of right and does not prohibit answers to pleadings styled as “comments.” The NYISO therefore understands that it is entitled to answer the NRG Motion.⁶ Nevertheless, to the extent that the Commission deems the NRG Motion to be tantamount to a protest it should exercise its discretion under Rule 213(a)(2) to accept this answer. The Commission has accepted such answers when they help to clarify complex issues, provide additional information, or are otherwise helpful in the development of the record in a proceeding.⁷ The Commission should accept this filing because it will provide additional information relevant to the complex issues raised by the Amended Complaint and by *EPSA*.

II. ANSWER

The NRG Motion asks the Commission to take three actions with respect to the organized capacity markets, namely: (1) to mandate that demand response resources “not assume any new obligations in the upcoming forward capacity auctions for the 2018/2019 delivery year;” (2) to provide clarity to demand response resources on their performance obligations moving forward; and (3) to require ISOs/RTOs to “develop rules for reflecting retail demand response activity in

⁶ The NRG Motion was filed in both the Amended Complaint docket (EL14-55) and the original Order No. 745 docket (RM10-17). Because the NYISO previously filed comments in Docket No. RM10-17-000, and because RM10-17 is a rulemaking, the NYISO is already a party in that proceeding. The NYISO is therefore authorized to file its answer to the NRG Motion in Docket No. RM10-17-003 and has referenced that docket in the caption to this filing.

⁷ See, e.g., *New York Independent System Operator, Inc.*, 108 FERC ¶ 61,188 at P 7 (2004) (accepting the NYISO’s answer to protests because it provided information that aided the Commission in better understanding the matters at issue in the proceeding); *Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.*, 93 FERC ¶ 61,017 at 61,036 (2000) (accepting an answer that was “helpful in the development of the record . . .”).

setting capacity market requirements.”⁸ With respect to the first action, NRG asks the Commission to require that:

No less than 60 days prior to the next regularly scheduled annual capacity auction, each ISO/RTO with a demand response program shall file to temporarily suspend tariff provisions that allow demand-side resources to assume new capacity supply obligations for future delivery. That suspension shall remain in effect until such time as there is a final resolution of the *EPSA* case, including the expiration of the Stay.⁹

NRG appears to envision that this requirement would apply to the NYISO in advance of the “NYISO Six Month Strip Auction, which closes on March 31 [2015].”¹⁰ The NRG Motion characterizes its proposals as a “conservative no regrets” approach.¹¹ But in reality, NRG’s requested relief would be premature, disruptive, and inconsistent with an orderly transition to a new market construct in New York (to the extent that one is needed). The Commission should therefore not eliminate demand response from the NYISO-administered markets as a mere precautionary measure. It should only require such a step after it concludes, or the courts specify, that existing rules permitting demand response to participate in those markets are no longer valid under the Federal Power Act. Even in that scenario, existing market arrangements should be allowed to continue until an orderly transition to post-*EPSA* alternatives can occur.

As previously noted,¹² there is a great deal of uncertainty concerning the reach of *EPSA*’s vacatur of Order No. 745 as it relates to the organized capacity markets. The Commission itself

⁸ NRG Motion at 2.

⁹ NRG Motion at 4.

¹⁰ *Id.*

¹¹ *Id.* at 3.

¹² *See* October 22 Comments at 5-6.

has stated in recent appellate court filings that these implications are unclear.¹³ The *EPSA* petitioners have suggested that the question must be litigated before the Commission,¹⁴ and the Amended Complaint represents the first attempt to do so.¹⁵

The NYISO administers a capacity market with substantial demand response participation. Although demand side participation has varied over time it has been substantial in the New York capacity market in recent years,¹⁶ has contributed to reliability, and has benefitted consumers.¹⁷ For example, during the summer of 2013, demand response provided an average of 915 MW of reduction over five hours on the peak day which was very helpful to the NYISO's ability to successfully meet record-breaking load levels. Abruptly removing demand response from the capacity market would be needlessly disruptive and could result in substantial price increases in upcoming capacity auctions. It would be unreasonable to accept NRG's motion with regard to the NYISO and thereby impose such increases on New York consumers given that demand resources would still exist and still be able to provide reliability and economic benefits.

¹³ See, e.g., *Motion of Federal Energy Regulatory Commission to Stay Issuance of Mandate*, U.S. Court of Appeals for the District Columbia Circuit, Case Nos. 11-1486, *et al.*, at 8 (September 22, 2014) ("It is unclear whether the panel majority intended simply to invalidate the Rule, for lack of jurisdiction, to the extent it offers a particular high level of compensation for demand response resources participating in particular energy markets, or whether the panel majority intended its jurisdictional ruling to reach beyond the particular rulemaking on review and to extend to other levels of compensation or to capacity and ancillary markets as well.")

¹⁴ See, e.g., *Petitioners' Response to Respondents' Motions to Stay Issuance of Mandate*, U.S. Court of Appeals for the District Columbia Circuit, Case Nos. 11-1486, *et al.*, at 7 ("The Commission's final rule applies only to the energy markets. As a result, the broader precedential effects of the Court's decision — as it may relate to the capacity markets and other markets — will have to be resolved in future cases and in the first instance by the Commission.")

¹⁵ Amended Complaint, Section II.

¹⁶ See October 22 Comments at 4.

¹⁷ The NYISO also administers a reliability-based Emergency Demand Response Program and accommodates demand side participation in its energy and ancillary services markets. But demand side participation in the other NYISO-administered markets has been at lower levels than its involvement in the capacity market.

Simply stated, the NYISO's market rules and procedures that account for the benefits of demand response should not be suspended before the relevant legal questions have been addressed and before an orderly transition to alternative post-*EPSA* arrangements is developed. Instead, the Commission should provide guidance in the near future to indicate whether such a transition is needed and to inform discussions among the NYISO, its stakeholders, and the New York State Public Service Commission regarding the design and timing of any potential transition.

In addition, the NYISO does not believe that the practical market design issues raised by *EPSA* lend themselves to a single generic solution. Given the significant differences in the NYISO, PJM, and ISO-NE capacity market designs, including most notably, the absence of a multi-year forward commitment period in New York, the three regions should be allowed to develop their own responses to *EPSA*. Obviously, these responses will all need to be consistent with any further legal guidance provided by the courts or the Commission. But the practical consequences of those determinations are certain to vary in each market. Each ISO/RTO should therefore be permitted to find solutions, and to adopt a transition approach, that makes sense given its circumstances.

In the NYISO's case, such flexibility would allow for an alternative design to be implemented on a schedule that gave stakeholders a reasonable opportunity to adapt their strategies well in advance of any NYISO auctions that would exclude demand side resources. It would avoid the potential disruption and harm of having an interim period during which the NYISO might be required to ignore the genuine economic and reliability benefits of demand response. It would instead allow time for alternative arrangements that capture those benefits to be developed before existing ones were suspended or terminated.

III. CONCLUSION

For the reasons set forth above the NYISO respectfully requests that the Commission not impose the NRG Motion's proposals on the NYISO, provide guidance in the near future regarding the legal implication of *EPSA* that the NYISO has requested, and allow each ISO/RTO, in conjunction with its stakeholders, to develop its own implementation plans in response to that guidance.

Respectfully Submitted,

/s/ Ted J. Murphy

Counsel to the
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November 6, 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 6th day of November, 2014.

By: /s/ John C. Cutting

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