

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

ISO New England Inc.

Docket No. ER11-4336-000

**MOTION TO INTERVENE AND PROTEST
OF INDUSTRIAL ENERGY CONSUMERS OF AMERICA**

On August 19, 2011, ISO New England Inc. (“ISO-NE”), filed with the Federal Energy Regulatory Commission (the “Commission”) a proposed compliance filing in response to the Commission’s Final Rule on Demand Response Compensation in Organized Wholesale Energy Markets (“Order No. 745”).¹ The Industrial Energy Consumers of America “IECA” moves to intervene as a full party pursuant to Rule 214, and protests ISO-NE’s filing pursuant to Rule 211 of the Commission’s Rules of Practice and Procedure.²

I. PLEADINGS AND OTHER COMMUNICATIONS

Service of all documents filed in this proceeding should be addressed to the following persons whose names and addresses should be placed on the official service list compiled by the Secretary for this proceeding:

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¹ *Demand Response Compensation in Organized Wholesale Energy Markets*, Order No. 745, III FERC Stats. & Regs., Regs. Preambles ¶ 31,322, 76 Fed. Reg. 16658 (2011) (Order No. 745).

² 18 C.F.R. §§ 385.214 and 385.211.

II. INDUSTRIAL ENERGY CONSUMERS OF AMERICA

Industrial Energy Consumers of America is a 401C 6 non-profit trade association organized under the laws of the District of Columbia of leading manufacturing companies with \$700 billion in annual sales and with more than 750,000 employees nationwide. It is an organization created to promote the interests of manufacturing companies through advocacy, and collaboration for which the availability, use and cost of energy, power or feedstock play a significant role in their ability to compete in domestic and world markets. IECA membership represents a diverse set of industries including: plastics, cement, paper, food processing, brick, chemicals, fertilizer, insulation, steel, glass, industrial gases, pharmaceutical, aluminum and brewing. IECA and its member companies is directly affected by the ISO-NE's filing because they are both a significant electricity customer, a provider of energy efficiency in general and generators of electricity through either cogeneration or waste heat recovery. The ISO-NE's filing, if approved, could have negative adverse impacts.

III. MOTION TO INTERVENE

Industrial Energy Consumers of America moves to intervene in the above captioned proceeding. IECA and its member companies have a significant and unique interest that will be directly affected by the outcome of the above-captioned proceeding that cannot be protected by any other party. IECA's participation in this docket is therefore clearly in the public interest.

For these reasons, the Commission should grant IECA's motion to intervene and grant the IECA status as a full party to this proceeding.

IV. PROTEST

Order No. 745 represents a major milestone in the evolution of energy markets in the United States. Since the enactment of the Public Utility Regulatory Policy Act of 1978 (“PURPA”), Congress and the Commission have advanced policies intended to encourage the use of demand response where doing so would provide a cost-effective alternative to generating electricity. Such policies simultaneously promote national security, increased economic efficiency and productivity, and environmental protection. Order No. 745 represents the penultimate step in the evolution of these policies, requiring the comprehensive integration of cost effective demand response into the energy markets managed by the nation’s Independent System Operators and Regional Transmission Organizations (“ISOs/RTOs”). The ultimate step, of course, is the implementation of tariffs integrating demand response into these markets. The proposed compliance tariff filed by ISO-NE on August 19, 2011 is the subject of this proceeding.

Since the outset of PURPA, a number of utilities have resisted the implementation of demand response policy. Such resistance arose from a variety of concerns and misconceptions. Over the course of thirty years, however, each concern, real or imagined, has been addressed or otherwise resolved in a manner that protects the reasonable financial needs of customers, utilities and generators while advancing the overriding public policy of increased reliance on demand response whenever doing so can be done cost effectively in place of generation.

Unfortunately, several of the nation’s ISOs/RTOs have taken up the banner of opposing comprehensive integration of demand response into their energy markets on a basis fully equivalent to electric generation. The combination of opposition by these operators, and the varying nature of their compliance filings, presents a real and substantial threat to the success of the implementation of Order 745. The Commission should recognize these strategies for what they are: a final effort to prevent the comprehensive integration of cost effective demand

response into the nation's energy markets. For the reasons discussed herein, we urge the Commission to reject those portions of ISO-NE's filing that exceed the scope of Order No. 745 or that undermine its critical policy objectives.

A. ISO-NE's filing goes beyond the scope of a compliance filing.

Although ISO-NE characterizes its filing as a compliance filing, its provisions inappropriately go well beyond the scope required for a compliance filing.³ Specifically, without calling attention to it, ISO-NE is proposing a substantial policy modification not required or addressed by Order No. 745 that would prohibit participation in its wholesale markets by prospective demand response providers that are served by Behind The Meter Generation ("BTMG"). FERC should reject all elements of the compliance filing that discriminate against such providers, and direct ISO-NE to address this issue, if at all, in a separate proceeding.

B. ISO-NE's filing discriminates against consumers utilizing BTMG.

One of the fundamentals of FERC energy policy is that small, independent generation as promoted by PURPA should be treated evenly and fairly by utilities. This fairness doctrine also applies to the operators of the nation's regional transmission systems, without nondiscriminatory access to which, these smaller generators would be harmed, and without such generation, consumers would not be able to benefit. By drawing an arbitrary and unnecessary distinction between generation behind the meter and generation outside the meter, ISO-NE is discriminating against the consumers utilizing BTMG generation to satisfy all of part

³ 18 C.F.R. § 154.203(b) states in relevant part: "Filings made to comply with Commission orders must include only those changes required to comply with the order. . . . A compliance filing that includes other changes or that does not comply with the applicable order in every respect may be rejected."

of their load. Such discrimination is contrary to PURPA and FERC policy, and should be rejected by FERC.

C. ISO-NE's filing will damage all consumers by failing to maximize Demand Response resources to lower electric rates.

Congress made a clear statement of the country's policy in the Energy Independence and Security Act of 2007 to maximize the amount of demand response resources that could be developed and deployed in order to benefit all consumers. It did so in order to reduce peak electric rates for all consumers, promote the benefits of the country's developing smart grid; reduce the country's reliance on imported energy resources, and reduce the costs to consumers of developing unnecessary transmission infrastructure. In Order 745, FERC properly directed the operators of the country's regional transmission systems to maximize the consumer (and societal) benefits of demand response. ISO-NE's compliance filing damages all consumers in its region by failing to maximize consumer benefits associated with all cost-effective demand response resources. By arbitrarily discouraging consumers with BTMG from participating in demand response programs by failing to adequately compensate them, ISO-NE's proposal harms all New England consumers by maintenance of high peak electricity rates, and investment in unnecessary transmission infrastructure.

D. ISO-NE's filing will damage the economic viability of consumers utilizing BTMG and the jobs that these consumers provide.

Manufacturers that utilize BTMG do so typically either through a distributed renewable resource or a more traditional, yet highly efficient cogeneration technology that can produce electricity with up to 80 percent efficiency versus electric utility

single pass systems used by most grid generators, at about 32 percent efficiency. These consumers have made significant investments to purchase, install and maintain their BTMG systems. The current ISO-NE DR program allows these consumers to fully participate and be fully compensated for their complete contribution to grid stability and lower grid prices. ISO-NE's compliance filing will directly damage these consumers by reducing the compensation they receive through their BTMG systems and participation in DR programs. ISO-NE's proposal will also expose these consumers to the same economic harm discussed previously: higher peak electricity pricing through reliance on expensive peaking units to replace substantial DR resources that utilize BTMG to meet all or part of their load. The proposal also will result in higher grid charges imposed through the construction of unnecessary transmission infrastructure needed to serve new or expanded grid generation required by the lack of participation of such DR resources.

The types of consumers who utilize BTMG to satisfy all or part of their load are typically industrial or large commercial consumers, such as manufacturing plants, colleges and universities, and hospitals. These consumers are usually the largest, or one of the largest, economic engines in their communities and regions. Reducing the economic viability of such large consumers by reducing their compensation for participation in DR and by exposure to unnecessarily high peak electricity or grid transmission charges, not only hurts their ability to provide direct jobs in their communities, but also creates secondary economic harm as vendors and suppliers are affected by the large consumer's reduced economic activity.

E. ISO-NE's filing will harm the environment by promoting utilization of peaking generation, as opposed to efficient BTMG using renewables or cogeneration.

Demand response resources by definition interrupt load to help lower peak electric demand. This has the effect of reducing the need for operation of marginal peaking units in order to meet regional grid demand. Encouraging consumers who utilize renewable or cogeneration systems behind the meter to participate in DR programs will employ that BTMG, which is already running, to help meet grid demand without the startup of expensive marginal grid generation. This provides a direct net environmental benefit to a region's air quality that will be lost if consumers with BTMG are discouraged from participation through discriminatory schemes such as ISO-NE's compliance filing. In addition, the displacement of single-pass marginal grid generation with the generation from consumer owned or operated cogeneration results in less pollution per MMBTU of heat input from fuels, due to the higher efficiency of cogeneration.

ISO-NE's proposed rules would result in fewer resources participating in DR programs and would specifically discourage consumers that meet their load with BTMG that is either renewable or utilizes cogeneration. More marginal generation from peaking units would be needed, resulting in increased air pollution, especially during the summer peaking season which also happens to be the New England ozone season. These environmental impacts are not only avoidable, but the solution utilizing renewable or cogeneration resources is both economically and environmentally preferable.

V. CONCLUSION

Wherefore, IECA respectfully urges that the Commission:

1. Grant this Motion to Intervene and order that IECA be allowed to participate fully as a party in this proceeding;
2. Deny any and all portions of ISO-NE's request, and strike any and all portions of proposed tariff revisions that would prohibit participation in its wholesale markets by demand response providers served by Behind The Meter Generation or otherwise limit the participation of such consumers; and
3. Grant such further relief as the Commission deems just and proper.

Respectfully submitted,



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Dated: September 8, 2011

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.

Dated this 8th day of September, 2011.



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