

September Management Committee ORDER 745 UPDATE

Background

- The United States Court of Appeals for the District of Columbia Circuit issued an order on May 23rd that struck down FERC Order No. 745 on the basis that (i) demand response is principally a retail activity and not subject to FERC jurisdiction; and (ii) that Order No. 745's compensation scheme for demand response resources in *energy* markets was improper.
- The NYISO did not receive an implementation order from FERC regarding its Order 745 compliance filing and has not implemented any aspect of Order No. 745 due to pending filings on the issue.
- While the D.C. Circuit's opinion narrowly addresses the appropriateness of Order 745's compensation scheme for ISO/RTO energy markets, there is concern that the Court's rationale could extend to ICAP resources.
- On September 17th the Court denied the en banc rehearing requests.
- Typically, the Court would issue a "mandate" that would place its ruling in effect within 7 days of the rehearing denial.
- However, on September 22nd, FERC and a coalition of industrial end users and demand response providers separately requested a stay of that mandate for at least 90 days to consider whether to appeal the decision to the U.S. Supreme Court. That decision would need to be made by mid-December.
- The Court has given parties until October 6th to respond to the motions to stay the issuance of the mandate, and Court rules indicate that the mandate will not be issued while a stay request is pending. The Court typically does not act on motions for stays until the response period has ended.
- At this time, the NYISO does not expect there to be any further action by the court until after October 6.

What does this mean for the NYISO?

- Until the NYISO receives an Order from the FERC or the courts, it must continue to administer its energy markets and ICAP auctions to include demand response as required by the tariff.
- NYISO Staff is analyzing the potential effects of the order.
- NYISO will continue to keep stakeholders apprised of developments in this area and will engage in discussions with stakeholders to better inform our collective decision making to the extent changes are required to the markets or operations. We would like to hear from you if you have ideas that you would like to share.