FERC Order 745
Comments submitted by Tom Rudebusch on behalf of NYAPP

Ms. Pratt,

The New York Association of Public Power has the following comments on the NYISO's Demand Response (DR) cost allocation proposal, to be submitted in a compliance filing in response to FERC's Order No. 745. In brief, the NYISO has adopted an "all load pays" approach to DR cost allocation. To the contrary, FERC says the costs should be allocated to "entities that purchase in the relevant energy markets." (See attached excerpt). NYAPP submits that transmission customers with bilateral contracts are entities that do not purchase in the relevant energy markets.

Specifically, with respect to slide 34 of your recent presentation, it says that since all load is actually consumed in real time, all load benefits from load reductions. If DR is called for reliability purposes, all load may benefit from a load reduction through improved reliability. But, in a post-Order 745 world, FERC had determined the DR should be compensated by the full LMP for participating in the energy markets for economic reasons. The entities that benefit, and therefore should be allocated the cost of DR, are the entities that "purchase in the relevant energy markets" and "benefit from the lower prices produced by dispatching demand response." The benefit is a PRICE reduction, not a LOAD reduction.

Entities that purchase transmission service from the NYISO to deliver products purchased through bilateral contracts to not purchase in the NYISO energy market. This is particularly true of customers that have long-term cost-based contracts. They do not benefit from price reductions in the NYISO's energy markets produced by the participation of DR or otherwise. Therefore, it is not appropriate to share the cost of DR among all load.

The NYISO's DR cost allocation proposal is not in compliance with Order No. 745. The NYISO's position is that "FERC will decide." NYAPP reserves all of its rights with regard to the FERC compliance filing.

Thank you for your attention to this matter.

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In some hours in which transmission constraints do not exist, RTOs establish a single LMP for their entire system (a single pricing area) in which case the demand response would result in a benefit to all customers on the system. When transmission constraints are present, however, LMPs often vary by zone, or other geographic areas. Allocating the costs associated with demand response compensation proportionally to all entities that purchase from the relevant energy market in the area(s) where the demand response resource reduces the market price for energy at the time when the demand response resource is committed or dispatched will reasonably allocate the costs of demand response to those who benefit from the lower prices produced by dispatching demand response.[195]

101. We reject the various other methods of cost allocation suggested by commenters. Assignment of all costs to the LSE associated with the demand response provider, as suggested by some commenters, would not include others who benefit from the demand response. Bifurcated assignment of costs to the LSE and to others appears to represent an arbitrary division of cost responsibility without regard to the degree to which each receives benefits.

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[195] This approach is consistent with long-standing judicially-endorsed cost allocation principles. See, e.g., Midwest ISO Transmission Owners v. FERC, 373 F.3d 1361, 1368, 1370-71 (D.C. Cir. 2004); see also Illinois Commerce Comm'n v. FERC, 576 F.3d 470, 476 (7th Cir. 2009).

102. We therefore find just and reasonable the requirement that each RTO and ISO allocate the costs associated with demand response compensation proportionally to all entities that purchase from the relevant energy market in the area(s) where the demand response reduces the market price for energy at the time when the demand response resource is committed or dispatched. Accordingly, each RTO and ISO is required to make a compliance filing on or before July 21, 2011 that either demonstrates that its current cost allocation methodology appropriately allocates costs to those that benefit from ~~the demand reduction~~ or proposes revised tariff provisions that conform to this requirement.

E. Commission Jurisdiction

1. Comments

103. Some commenters, including several state commissions and LSEs, express concern about whether and how standardizing demand response compensation in the wholesale market will affect treatment of demand response at the retail level. They assert that the issue of demand response compensation is fundamentally intertwined with retail rates, ratepayer issues, and state jurisdictional concerns.[196] Some commenters note general concerns about the need for federal and state level coordination. They assert that

[196] See, e.g., CAISO May 13, 2010 Comments at 12; PJM May 13, 2010 Comments at 8 (appropriate and efficient demand response compensation may require coordination between the Commission, retail regulatory authorities, competitive retail suppliers, and other RTOs).