

November 10, 2014

Hon. Kathleen H. Burgess  
Secretary to the Commission  
New York State Public Service Commission  
Agency Building 3, 19<sup>th</sup> Floor  
Albany, NY 12223-1350

**Subject: Case No. 14-M-0101: Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision**

Dear Secretary Burgess:

Submitted for filing herewith in the above-captioned matter are “Comments of the New York Independent System Operator, Inc,” in response to the September 24, 2104 NYS Register SAPA Notice I.D. No. PSC-38-14-00018-P, entitled “New Electric Utility Demand Response Tariffs May Be Adopted.”.

Please contact me at (518) 356-8540 or at [gcampbell@nyiso.com](mailto:gcampbell@nyiso.com) if you have any questions or concerns.

Very truly yours,

*/s/ Gregory J. Campbell*

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**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

**Case No. 14-M-0101**

**Proceeding on Motion of the Commission in Regard to  
Reforming the Energy Vision**

**Comments of the New York Independent System Operator, Inc.**

The New York Independent System Operator, Inc. (“NYISO”) respectfully submits these comments in the above-captioned matter.

**I. Background**

On September 24, 2014, the New York State Public Service Commission (“PSC” or “Commission”) issued a State Administrative Procedure Act Notice (“SAPA Notice”) in which it proposed to consider modifying the regulation of electric utilities by “implementing reliability-based demand response programs” in response to local and bulk power system operating conditions.<sup>1</sup> The SAPA Notice arises out of the New York State Department of Public Service (“DPS”) Staff Straw Proposal, issued August 22, 2014, in the Reforming the Energy Vision (“REV”) proceeding (“Staff Straw Proposal”).<sup>2</sup>

In a section entitled “Building the DSP Market,” the Staff Straw Proposal recommended that the Commission initiate a process wherein stakeholders, distribution utilities, the NYISO, and DPS staff develop programs within the REV paradigm to facilitate demand response activity to respond to system conditions currently addressed by the NYISO’s Special Case Resource

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<sup>1</sup> I.D. No. PSC-38-14-00018-P –*New Electric Utility Demand Response Tariffs May Be Adopted* (issued Sept. 24, 2014).

<sup>2</sup> Case 14-M-0101 – *Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision, Developing the REV Market in New York: DPS Staff Straw Proposal on Track One Issues* (issued Aug. 22, 2014) (hereinafter *DPS Straw Proposal*).

(“SCR”) and Emergency Demand Response Programs (“EDRP”).<sup>3</sup> The Staff Straw Proposal stated that DPS staff would immediately begin conversations with stakeholders and utilities to initiate the process of developing Commission-jurisdictional demand response tariffs.<sup>4</sup>

An immediate goal of the proposed utility demand response tariffs, as announced in the Staff Straw Proposal, is to act as a substitute for the NYISO SCR program if that program is determined to be non-FERC jurisdictional. While the Staff Straw Proposal focused on maintaining market certainty in the near-term, DPS staff also encouraged the PSC to account for longer-term goals to take advantage of economic opportunities that may be created in the future.

## **II. Comments**

The NYISO currently administers four demand response programs in New York: the Day-Ahead Demand Response Program (“DADRP”); the Demand Side Ancillary Services Program (“DSASP”); the EDRP; and the SCR Program. The Day-Ahead and Emergency Demand Response Programs participate in the energy market, while DSASP is a part of the Ancillary Services Market, and the SCR Program is part of the NYISO’s capacity market. While FERC Order No. 745<sup>5</sup> addressed payment for demand response resources in energy markets, the decision of the United States Court of Appeals for the District of Columbia Circuit in *EPSA v. FERC*<sup>6</sup> has the potential to disrupt not just the NYISO’s DADRP and EDRP, but all of the NYISO’s demand response programs.

There exists a great deal of uncertainty concerning the reach of *EPSA*, including whether FERC and the courts will interpret it as applying to demand response in capacity markets. FERC

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<sup>3</sup> *DPS Straw Proposal*, *supra* note 2, at 63.

<sup>4</sup> *Id.*

<sup>5</sup> *Demand Response Compensation in Organized Wholesale Energy Markets*, Order No. 745, FERC Stats. & Regs. ¶ 31,322, *order on reh’g*, Order No. 745-A, 137 FERC ¶ 61,215 (2011).

<sup>6</sup> *Elec. Power Supply Ass’n v. FERC*, 753 F.3d 216 (D.C. Cir. 2014) (“*EPSA*”).

itself has stated that the implications are unclear, and parties have until December 16 to seek a *Writ of Certiorari* at the United States Supreme Court.<sup>7</sup> The NYISO is participating in various proceedings addressing the current status of demand response, including the PSC’s REV proceeding and FirstEnergy Service Company’s FERC complaint proceeding against the PJM Interconnection, Inc.<sup>8</sup> At this time, however, the NYISO continues to have demand response programs in its tariffs and is obligated to operate under those tariffs until there is further action by FERC. To the extent a transition away from current demand response programs is required, an orderly and measured approach will be necessary to reduce market impacts.

Because of this uncertainty, the NYISO is working to develop market design concepts that could potentially apply in the event the NYISO’s demand response programs are determined to be non-FERC jurisdictional. The NYISO recognizes that it may not have the luxury of time to make capacity market changes that might be required under *EPSA*. Thus, the NYISO is also actively exploring shorter-term “stopgap” plans to address *EPSA*’s potential jurisdictional implications. The NYISO has also requested guidance from FERC that would inform discussions among the NYISO, its stakeholders, and the PSC with respect to the NYISO’s potential responses to the *EPSA* decision.<sup>9</sup> Incorporating demand response into utility tariffs, as recommended by DPS staff, is likely to be an important component of post-*EPSA* market design in the event that the decision is broadly interpreted. In the event that the NYISO’s current demand response programs are found to be non-FERC jurisdictional, the NYISO will also need to work with its stakeholders and file with FERC to remove the affected provisions of its current

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<sup>7</sup> 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.”).

<sup>8</sup> See *Amended Complaint of FirstEnergy Service Company*, Docket No. EL14-55-000 (September 9, 2014).

<sup>9</sup> *Motion to Intervene and Comments of the New York Independent System Operator, Inc.*, Docket No. EL14-55-000 at 6 (October 22, 2014).

wholesale tariffs. In addition, new approaches for reflecting the benefits in the wholesale market of any new, retail demand response programs – and generally addressing the intersection of the wholesale markets with any new retail programs – will likely require revisions to the NYISO tariffs.

As the Commission moves forward with both the REV proceeding and its determination on whether to include demand response in utility tariffs, the NYISO desires to work closely with DPS staff and the Commission to lessen the potential market disruption caused by *EPSA*. Because the potential changes to New York’s demand response programs made in response to a broad interpretation of *EPSA* could require both state utility tariffs and revisions to the NYISO’s tariffs, it is important that these complementary processes are coordinated.

### **Conclusion**

The NYISO respectfully requests that the New York State Public Service Commission consider these comments in its review of the potential for new electric utility demand response tariffs.

Respectfully submitted,

/s/ Gregory J. Campbell

Gregory J. Campbell

Attorney

New York Independent System Operator, Inc.

November 10, 2014

**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.

Dated at Rensselaer, NY this 10<sup>th</sup> day of November, 2014.

*/s/ John C. Cutting*

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