

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

ISO NEW ENGLAND, Inc.)	Docket No. ER11-4336-000
)	ER11-4336-001
)	ER11-4336-002

**MOTION FOR LEAVE TO ANSWER AND ANSWER OF
THE MAINE PUBLIC UTILITIES COMMISSION AND
THE MAINE OFFICE OF PUBLIC ADVOCATE**

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), the Maine Public Utilities Commission (“MPUC”), by and through counsel, Lisa Fink and Benjamin J. Smith, State of Maine Public Utilities Commission, 18 State House Station, Augusta, Maine 04333-0018, and the Maine Office of Public Advocate (jointly “Maine Public Parties”) file this Motion for Leave to Answer and Answer to the Answers filed by ISO New England (“ISO-NE) the ISO-NE Internal Market Monitor (“IMM”) (together “the ISO parties”) and the Electric Power Supply Association (“EPSA”) on September 23, 2011 in the above-captioned proceeding.

I. MOTION FOR LEAVE TO ANSWER

Although the Commission’s rules generally do not permit the filing of answers in response to answers, the Commission has allowed answers to be filed if they clarify the issues in dispute, provide information to assist in the Commission’s decision-making

process or ensure the record is complete and accurate.¹ The Maine Public Parties request that the Commission accept this Answer because it will assist the Commission in clarifying the Order 745 compliance issues before the Commission. In addition, the Answer addresses arguments raised by ISO-NE for the first time in its answer.

II. ANSWER

A. Introduction

The Maine Public Parties, the Consumer Demand Response Initiative (“CEDRI”), Verso Paper Corp, (“Verso”), the Industrial Consumers Energy Group, EnerNOC, Inc, Converge, Inc. Viridity Energy Inc., Maine Pulp & Paper Association, Wisconsin Paper Council, Wisconsin Industrial Energy Group, and Minnesota Large Industrial Group (collectively the “Joint Parties”) and the Northeast Heat and Power Initiative (“NECHPI”) filed protests to the ISO-NE compliance filing in this docket. All of these protests had one concern in common—that the ISO-NE proposal to eliminate or drastically reduce compensation to demand responders that primarily self-supply power from behind-the-meter generation is inconsistent with the goal of Order 745 to increase opportunities for demand response. These protests demonstrated that under current rules, these demand responders have been providing value to the system and receiving full compensation for their demand response. As discussed below, the ISO, IMM and EPSA answers leave these points unrefuted, but attempt to redirect the Commission’s attention

¹ See *Transcontinental Gas Pipeline Corp.*, 119 FERC ¶ 61,039 at P 3 (3004) (accepting an answer to an answer where the information assisted the Commission in making its determination.); *ANR Pipeline Co.*, 108 FERC ¶ 61,323 at n.10 (2004) (accepting ANR’s answer since it helped clarify the issues); *Michigan Electric Transmission Co.*, 106 FERC ¶ 61,064 at P 3 (2004) (allowing an answer that “provides information that clarifies the issues and aids [the Commission] in the decisional process”).

to matters that are not at issue in this proceeding. In addition, most of the ISO-NE answer, like its compliance filing, is based on a fundamentally flawed construct of an electric grid that ends at the retail meter.

B. The Answers Do Not Even Attempt to Address Key Points in the Maine Public Parties' Protest. These Points Remain Unrefuted.

1. Nothing in the Answers Explains Why Compensation Currently Provided to a Certain Type of Demand Responder is Now Proposed for Elimination.

The Maine Public Parties, Verso and NECHPI all explained that the current ISO-NE programs pay customers that primarily rely on self supply for generation to participate in the ISO-NE demand response programs. For example, the Maine Public Parties explained that the ISO proposal would limit Locational Marginal Price (“LMP”) payment to these demand responders with behind-the-meter generation to the “net flow over the retail meter” and that this proposal is inconsistent with the existing compensation structure available to such demand responders. Maine Public Parties Protest at 2. As NECHPI observes, the ISO-NE proposal “is fundamentally a change to the current eligibility requirements for participation in demand response. This change is designed to exclude a defined subset of customer: customers whose load reduction – the provision of demand response service – results in exports of generation previously used to serve those loads.” NECHPI Protest at 5. Finally, Verso, through its pleading and the affidavit of Glenn Poole (“Poole Affidavit”), demonstrates that the current rules *do not* limit payment to demand responders with behind-the meter generation to only the amount of those responders’ purchases in the wholesale energy markets. Under the current rules, when Verso reduces its consumption in order to export generation from its behind-the-meter generator across the retail meter, ISO-NE pays for both its demand response and its

generation export. Verso Protest at 7. The ISO answers do not contest that the payment that they now say is inappropriate is currently allowed under the market rules, nor the fact that without the payment for the load reduction, the customer would not be able to export its behind-the-meter generation over the retail meter. That the ISO parties do not address the fact that it is changing the rules for this group of customers, on whom it currently relies to help balance the system, is not surprising. Admitting that its proposal is a change in the status quo—a change that reduces participation in demand response rather than increasing it as sought by Order 745—would highlight that this aspect of the ISO-NE compliance filing fails to comply with Order 745.

2. The ISO Parties Do Not Contest the Facts that Show that the Demand Response Provided By Customers With Behind-the-Meter Generation Provides Value to the System Equivalent to the Value Provided by Similar Facilities Operating “Outside the Meter.”

The Maine Public Parties, the Joint Parties and CEDRI all demonstrated the LMP benefits provided by Demand Response with behind-the-meter generation. Based on calculations that remain unchallenged by ISO-NE, the Maine Public Parties showed the two separate and cumulative price discipline effects that are provided by the customer with a behind-the-meter generator that simultaneously reduces load (previously served by that generator) and exports the power from its behind-the-meter generator. Similarly, CEDRI demonstrates that when a demand responder with behind-the-meter generation reduces load, its “freed up” exported generation “either displaces higher cost generation already running or defers dispatch of generation that would otherwise be needed.” CEDRI Protest at 22. As CEDRI states, “[t]he generation made available by that load reduction serves other customers and displaces higher cost generation they would have otherwise had to pay for. Not only does this *displacement* mean there are no

additional MW of generation being paid for by customers than they otherwise would have paid for, but all of the generation they purchase is cheaper.” *Id.* at 23 (emphasis in original). Finally, Verso demonstrated that industrial providers that typically supply their own generation by curtailing load when the system is stressed has made a major contribution to keeping the overall system in balance. ISO-NE does not rebut any of the factual assertions in the Poole Affidavit, nor does it challenge any of the Maine Public Parties or CEDRI’s calculations.² It simply reverts to its erroneous “double-counting” claim to avoid conceding that the calculations are correct. As shown by the Maine Public Parties and others, however, the demand response participation of customers that rely on behind-the-meter generation has value to the system in balancing supply and demand as well as value to other customers in the LMP price discipline effects of the generation export made possible by the demand reduction and the continued operation of that generation.

3. The ISO Parties Repeat Their Mistaken Construct of a Grid that Ends at the Retail Meter.

The foundation of ISO-NE and the IMM’s rationale for eliminating demand response compensation for a class of demand response provider that self-supplies its generation is the concept of a grid that ends at the retail meter. As shown in the Maine Public Parties, CEDRI, and NECHPI protests, there is no basis for this artificial distinction. The ISO Parties simply repeat the construct. For example, ISO-NE refers to demand served from “the wholesale grid.” ISO-NE Answer at 15. As explained in the Maine Public Parties pleading, however, the activity and actions that take place behind the retail meter *are* part of the relevant system and grid. Similarly, CEDRI explains in its

² ISO-NE’s erroneous claim that the same value could be provided by a generator if it were allowed to “double count” its megawatts is discussed in section II(I) below.

protest that

The loads of customers who rely upon behind the meter generation for retail service are not isolated from the New England “grid.” The generation in question is interconnected with and synchronous to the grid. Interconnection studies conducted for both load and generation on the system, establish the requirements for operations and dispatch in accordance with the expected operation and consumption at these sites.

CEDRI Protest at 12. As CEDRI explains, whether a customer is served by vendors who use the ISO-NE settlement system does not determine whether a customer’s actions affect “the grid.” Similarly, NECHPII states:

ISO-NE mistakenly conflates its own market settlement system with the overall regional grid. The ISO-market settlement system is designed to collect and remit payment from customers to generators and transmission utilities based on measurements of electricity flow at particular points on the system. As complex as that settlement system may be, it is not synonymous with the “grid”: the actual electrical reality of interconnected transmission lines, distribution lines, loads and generation sources that must be balanced at all times.

NECHPII Protest at 8. These statements demonstrate the fallacy of ISO-NE’s concept of a grid that ends at the retail meter, and the ISO answers nowhere contest these claims. Instead, they simply continue the assertion that the grid that should be defined by the ISO-NE settlement system.

C. Even if the Impact of the ISO-NE Proposal Were Limited in Scope, the Discrimination Inherent in that Proposal Should not be Permitted.

ISO-NE’s answer suggests that the “disagreement” regarding its compensation proposal is only over a “rather unique set of circumstances.” It further characterizes the situation in which a customer self supplies its power from its own behind-the-meter generation as the “extreme situation.” While the Maine Public Parties agree that under either the CEDRI or the ISO-NE proposal the outcome would be the same for the first three bullets on page 7 of the ISO-NE answer, that does not mean that

ISO-NE's proposal to eliminate demand response compensation for a set of customers that provide their own generation from a behind-the-meter generator is not discriminatory and counter to the Commission's effort to increase opportunities for demand response. In fact, as discussed below, the fact that ISO-NE has singled out one class of existing demand response provider for reduction in compensation is unquestionably discriminatory.

i. No Undue Discrimination is Permissible

ISO-NE tries to minimize the "dispute" by stating that it is the "extreme situation in which the customer is served entirely by its BTMG," ISO-NE Answer at 17 and that the compensation reduction or elimination results in a "rather unique set of circumstances." *Id* at 6. However, that the compensation reduction or elimination may affect a small number of providers supports rather than undermines claims of discrimination. ISO-NE treats two customers-- both with behind-the-meter generation and both willing to reduce demand and export generation differently-- depending on whether the customer self supplies its generation. It would compensate the demand response activity of the one that essentially does not use or rarely uses its behind-the-meter generator,³ while eliminating or reducing compensation to the entity that procures its electric supply through retail arrangements other than the ISO-NE market settlement system. This is the very essence of discrimination, and such discriminatory treatment is not permitted under the Federal Power Act.⁴

³ ISO-NE implies that customers owning but never or rarely using behind-the-meter generation is more common than customers that invest in generation to supply their own power, but has provided no support for this implication.

⁴ See 16 U.S.C. § 824d(b); *Elec. Consumers Council*, 747 F.2d 1511, 1513-14 (D.C. Cir. 1984).

ii. The Effect of the Proposed Discrimination Would be Substantial

ISO-NE nowhere supports its claim that customers taking all of their supply from behind-the-meter generators represent extreme situations, and in fact the record shows that many businesses rely on behind-the-meter generation. For example, the affidavit of William J. Frederick, Ph.D., indicates that:

- Cogeneration plants in manufacturing are always behind-the-meter;
- Behind-the-meter generation is used in a wide variety of settings including rooftop solar arrays and other renewable installations;
- There are 402 combined heat and power sites in New England with a capability to produce a total of 3,987MW.⁵

It is clear that combined heat and power facilities would be in the class of customers that rely on behind-the-meter generation for their source of power supply. Moreover, the affidavit of Glenn Poole indicates that Verso's participation in demand response will be either eliminated or drastically reduced and thus demonstrates that the effect of eliminating even one Demand Response provider can have negative effects in both maintaining system reliability and accomplishing price discipline during peak or near peak conditions. For example, Verso provided over 225 MW of demand response in 2010 and is currently the largest demand response provider in New England. Poole Affidavit at ¶ 10. Most recently, Verso, which is currently a participant in the ISO-NE Day Ahead Demand Response Program ("DALRP"), responded when called to reduce load on July 22, 2011. It immediately met its commitment helping ISO-NE to avoid entering emergency conditions. *Id.* at ¶ 12. However, ISO-NE's proposed rule would "eliminate or drastically reduce" Verso's participation in demand response in New

⁵ Affidavit of William J. Frederick, Ph.D., appended to the Joint Parties' Protest.

England *Id.* at ¶14.

D. ISO-NE Fails to Refute Demonstrations that its Double Count Claim Relies on the Mistaken Construct of Separate Retail and Wholesale Grids.

In its answer, ISO-NE continues to rely on its “double-count” claim even though the Maine Public Parties and others have demonstrated that (1) a claim of double counting fails if the false construct of a grid that ends at the retail meter is rejected and (2) the claim of double counting is no more compelling here than it was in ISO-NE’s ardent support of LMP-G.

As the Maine Public Parties and other parties demonstrated, ISO-NE’s “double counting” assertion fails when the mistaken concept of a grid that ends at the retail meter is discarded. The Maine Public Parties protest demonstrated that there are two linked actions and that the generation export would not occur without the demand response. Verso and the Joint Parties made similar demonstrations. The Maine Public Parties and others also demonstrated that the so-called “double payment” is essentially the same compensation identified by ISO-NE as a double payment in trying to make a case for LMP-G. ISO-NE tries to brush off this argument without addressing it by saying that the issue “has nothing to do with the ‘LMP-G’ issue.” ISO-NE Answer at 9.

However, the Maine Public Parties demonstrated, and ISO-NE has failed to refute, that by paying only for the generation output and not for the demand response that is needed in order for the output to occur, ISO-NE’s proposal will have exactly the same effect on these demand responders as LMP-G. As explained by the Maine Public Parties and others, there are “two payments” under the CEDRI approach only when there are both *two* actions—reducing the customer’s process activities *and* fueling the generator—as

well as *two* separate and cumulative LMP impacts on the system as a whole.

E. ISO-NE's New Jurisdictional Argument Is Without Merit.

In its answer, ISO-NE suggests for the first time that there is jurisdictional basis for ISO-NE's proposal to eliminate demand response compensation for demand responders (including those who are currently enrolled in the DALRP) who primarily rely on behind-the-meter generation for their source of power. ISO-NE suggests that because the Commission has jurisdiction over wholesale markets "it is consistent with the Commission's jurisdiction, in implementing the mechanisms of Order No. 745, to choose a point which represents a customer's interface with those wholesale markets, so that the cumulative impact of that customer's actions (including demand-related activities) on the wholesale market can be accurately and consistently measured." *Id.* at 11. It is not clear what the Commission should take from this argument. ISO-NE does not go so far as to say that the Commission is jurisdictionally barred from examining any actions that take place behind the retail meter, an argument which it could not support. However, if there is no jurisdictional bar, the assertion that ISO-NE's approach is "consistent" with the Commission's jurisdiction does not demonstrate that the CEDRI approach is not.

In Order 745, the Commission made clear that it has jurisdiction over demand response in organized wholesale energy markets, because demand response affects wholesale rates. Order 745 at P 112. The Commission clearly had the authority to approve the load response programs currently in effect, including the DALRP which pays customers which rely on behind-the-meter generators to supply power, to curtail load because that will allow their behind-the-meter generator to provide both reliability benefits to the grid and price discipline to the wholesale markets. There can be no

serious argument that there is a jurisdictional bar to continuing the compensation for demand response by customers that rely primarily on behind-the-meter generation.

F. ISO-NE’s Capacity Market Argument Has No Relevance Here.

As the Commission made clear, Order 745 is about demand response compensation in the wholesale energy markets. Thus the compliance filing is also limited to compensation for demand response in the wholesale energy markets. Therefore, ISO-NE’s claim that the CEDRI approach “would have the unintended consequence of under-procuring capacity resources, which would jeopardize the reliability of the grid,” ISO-NE Answer at 8, is irrelevant to the issues before the Commission. In any case, the argument is also incorrect. As discussed earlier, the current rules allow for the demand response compensation that ISO-NE now seeks to eliminate, while the current FCM rules *do not allow for the FCM hypothetical that ISO-NE poses as a threat to reliability*. See ISO-NE OATT III.13.7.5.3.

G. ISO-NE’s Forecast and Bidding Argument Suffers From its Limited View of the Electric Grid.

Starting from its mistaken view that the grid ends at the point of retail delivery, ISO-NE posits that demand response from a customer that primarily supplies energy from its behind-the-meter generation cannot provide the balancing benefit sought by Order 745, because that customer’s load was never included in a Load Serving Entity (“LSE”) forecast used in the wholesale market clearing process. ISO-NE then concludes that “a customer with 50 MW of demand that is served entirely by BTMG cannot dispatch any demand relief to the wholesale market because this customer does not participate as a demand in the wholesale market (*i.e.* is not included in the LSE’s demand forecast or the market clearing process).” ISO-NE Answer at 15. An examination of

the current DALRP as it concerns demand response participants that are served primarily by a behind-the meter-generator shows the error of this argument. As the Verso protest stated, “Verso still provides demand response regardless of the original dispatch because its demand response and the generation that flows from that demand reduction has (i) reduced, and will continue to reduce, the dispatch of higher priced generation that would have been dispatched by ISO-NE and (ii) kept the system in balance.” Verso Protest at 9.

H. ISO and EPSA Answers Demonstrate Their Discomfort With the Retail Arrangements of Entities that Self Supply Power.

i. ISO-NE and IMM concerns

The ISO answers pervasively reflect discomfort with the retail arrangements of customers that primarily self supply their energy. That the ISO-NE proposal may be a manifestation of this discomfort is suggested in the IMM’s answer:

BTMG-Reliant Entities have effectively left the wholesale markets by self-supplying their demand and not using energy produced in the wholesale markets. Apparently, the existing wholesale market price signals were sufficient to induce these customers to invest in BTMG and leave the wholesale market, indicating that there is no pertinent “barrier” to their reducing their consumption of electricity from the wholesale market. Therefore, the incentives to reduce consumption provided by Order No. 745 are not necessary. Paying LMP to such resources will decrease market competitiveness by unnecessarily decreasing the price.

IMM Answer at 9. The IMM further complains that the CEDRI proposal would allow units that self supply their power from behind-the-meter generation “to straddle the wholesale and retail markets by receiving wholesale payments for demand response *while avoiding the wholesale costs imposed on other customers.*” *Id.* at 13 (emphasis added). According to the IMM, the ISO-NE proposal, by contrast, “requires the use of a single retail delivery point and prevents this straddling.” *Id.* In other words, the IMM sees the ISO-NE proposal as a way to address his concerns about the fact that these customers are

not within the ISO-NE settlement system and therefore are not subject to some of the charges paid by customers that do not self supply from behind-the-meter generation.⁶ The Maine Public Parties express no opinion here on this question, because the issue is clearly outside of the scope of Order No. 745 compliance. ISO-NE and its IMM may address these concerns in other proceedings before the Commission, but addressing concerns with these customers' retail rate arrangement by singling them out for lower or eliminated demand response payments as part of compliance with Order 745 is clearly inappropriate, unjustified and discriminatory.

Moreover, the IMM appears to misunderstand the purpose of the payment for the demand response action. The payment regime proposed by CEDRI is needed because the customer if compensated at a level payment that covers its full opportunity costs (both lost production and generation cost) will make a valuable service available *to* the system. When the price at which the service is offered meets the Net Benefits Test, everyone benefits. The fact that the customer has chosen not to consume from the "system" on the other side of the retail meter has no relevance here. Finally, the IMM repeats its concern that paying LMP for these resources will harm market competitiveness and "unnecessarily" decrease market price. Under the ISO-NE proposal, customers with behind-the-meter generation will either not bid at all, in which case benefits from their load reductions are lost to the system, or they will bid high enough to recover both the generation costs and the load reduction costs for which ISO-NE seeks to

⁶ See also, ISO-NE Answer, n. 27, "Because this customer [who is normally served by behind-the-meter generation] takes no load from the grid, it would also not be subject to wholesale market charges for items such as capacity, energy, ancillary services, and NCPC, which are imposed on loads that do take supply service from the grid."

eliminate compensation.. In the latter case, Maine Public Parties have demonstrated that it is the ISO-NE approach that does greater harm to market competitiveness.⁷

ii. EPSA Concerns

The EPSA comments also demonstrate that their concern is not whether demand responders that rely on behind-the-meter generation provide value to customers and the system, but that these demand responders rely on a power supply outside of the ISO/RTO market. EPSA is apparently concerned that such demand responders could compete with generation by aggregating into a large block of demand response “without being subject to comparable requirements, mitigation, or energy market settlement.” EPSA Answer at 26. EPSA also believes that continuing to compensate such demand responders “creates the economically perverse incentive for generation to move behind the meter when possible, even where it is less efficient.” *Id.* at 16. Even if these concerns were warranted, and there is no evidence in this proceeding that anyone would act on any such incentives, the remedy lies outside of the scope of compliance with Order 745. Indeed, as the IMM has on at least one occasion suggested, the concern with existing generators moving behind the meter can be addressed by rule. See Maine Public Parties Protest at 31.

I. ISO-NE’s Argument that the CEDRI Proposal Discriminates Against Generation Is Erroneous Because Its Premise—That There Is a Double Count—Is Wrong.

ISO-NE claims that the CEDRI proposal discriminates against existing generation because it will result in the displacement of more expensive generation. However, ISO-NE posits that it can displace this generation only because it is “double counting.” It suggests that a generator could do the same thing if it could “double count”

⁷ See Maine Public Parties demonstration “Illustration 6” at page 23.

its megawatts. ISO-NE concludes that since generators cannot “double count” their megawatts, the CEDRI proposal is discriminatory against generators. This argument starts from an incorrect premise—that there is double counting. As discussed in the Maine Public Parties protest, the CEDRI proposal, like the current program, pays for the demand response of the customer with behind-the meter-generation. This payment is for the opportunity costs of stopping production. The payment for generation exported will cover the fuel costs of running the generation. Therefore, there are two separate actions with costs associated with them and two separate payments to cover these costs. Thus, there is no double counting and no basis for suggesting any analogy to providing generators with double compensation for the megawatts they provide.

J. IMM Gaming Concerns are Unrealistic.

Conceding that IMM’s own proposals to prevent gaming would work in circumstances outlined in the IMM’s earlier statements made before the NEPOOL markets committee, the IMM in its answer concocts new possibilities for gaming and suggests that concerns based on these concoctions “are real because the IMM and the ISO have no way of verifying what occurs behind a retail delivery point absent physical inspection.” IMM answer n. 22. While the IMM’s scenarios are inventive, they are implausible and should not form the basis for eliminating compensation to a class of demand response provider that has provided value to the system in times of system stress.

For example, the “round trip” opportunity illustrated in figure 3⁸ of the IMM’s answer only arises in two ways; either the power furnished for the round trip comes from an additional behind-the-meter generator or from an energy service provider. In the case where the energy is furnished from an energy service provider, the IMM does

⁸ See IMM Answer at 16.

not bother to explain where this mystery power comes from – any exchange traded in the market is metered and accounted for. IMM's example seems to assume the power arises without any purchase from the market or any production facility. The second case assumes that a participant would hide an additional generator on its premises to receive payment for the load reduction. If so, the resulting payment would be only for the net flow across the retail delivery point – which is what ISO-NE holds to be the correct result (see bullet one on page 7 of ISO-NE answer). Both cases are implausible in that they assume the second source of power is free.

In effect, and despite numerous unrefuted demonstrations that resources with behind-the-meter generation accomplish precisely the objectives of the Commission Order, namely that they meet the net benefits test, introduce price discipline, and help balance the system, IMM would risk eliminating these benefits based on unrealistic gaming scenarios and his concern that these participants are not making the same monetary contributions in the settlements system as customers that do not self supply from a behind-the-meter generator. Neither of these concerns provides a valid basis for eliminating demand response compensation to these demand response participants.

III. CONCLUSION

For the reasons stated above, the Maine Public Parties respectfully request that the Commission consider this Answer and, as requested in the Maine Public Parties' Protest, require ISO-NE to revise its proposal to provide full compensation to demand response providers who supply their power from behind-the-meter generation.

Dated: October 11, 2011

Respectfully submitted,

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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 service list compiled by the Secretary in this proceeding either by U.S. Mail or electronic service, as appropriate. Dated at Hallowell, Maine, this 11th day of October, 2011.

/s/

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