

139 FERC ¶ 61,116
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

ISO New England Inc.

Docket No. ER11-4336-004

ORDER DENYING REHEARING

(Issued May 17, 2012)

1. In this order, the Commission denies rehearing of its January 19, 2012 order¹ accepting, with conditions, ISO New England Inc.'s (ISO-NE) August 19, 2011 compliance filing and tariff changes submitted in accordance with Order No. 745.²

I. Introduction

2. On August 19, 2011, pursuant to section 205 of the Federal Power Act (FPA),³ ISO-NE submitted proposed revisions to its Transmission, Markets and Services Tariff (Tariff) in order to comply with the demand response compensation requirements established in Order No. 745. ISO-NE proposed a two-stage implementation process, including an interim set of demand response compensation rules to become effective June 1, 2012 (Transition Period rules), which would be replaced by a second set of rules that would fully integrate demand response resources into the energy market, effective June 1, 2016 (Fully Integrated solution).

¹ *ISO New England Inc.*, 138 FERC ¶ 61,042 (2012) (Compliance Order).

² *Demand Response Compensation in Organized Wholesale Energy Markets*, Order No. 745, 76 Fed. Reg. 16,658 (Mar. 24, 2011), FERC Stats. & Regs. ¶ 31,322, *order on reh'g*, Order No. 745-A, 137 FERC ¶ 61,215 (2011).

³ 16 U.S.C. § 824d (2006).

3. In the Compliance Order, the Commission accepted ISO-NE's proposed Tariff revisions, subject to conditions, and required ISO-NE to make an additional compliance filing within 90 days of the date of the order.⁴

II. Requests for Rehearing

4. The following entities filed timely requests for rehearing of the Compliance Order: Electric Power Supply Association and New England Power Generators Association, Inc. (collectively, Competitive Supplier Associations or CSA); Maine Public Utilities Commission, Maine Office of Public Advocate, Industrial Energy Consumer Group (IECG), EnerNOC, Inc. and Verso Paper Corp. (collectively, Demand Response Supporters or DRS); and IECG individually.

5. Pursuant to section 313 of the Federal Power Act,⁵ as well as the Commission's regulations,⁶ only a party to a proceeding may file a request for rehearing within 30 days of the date of the order in question. IECG has not intervened in this proceeding and, therefore, is not a party.⁷ Accordingly, we reject IECG's individual request for rehearing.⁸

III. Discussion

A. Discrimination Based on Location of Generation

6. In the Compliance Order, the Commission rejected arguments that demand response facilitated by use of behind-the-meter generation is wholly ineligible for demand response compensation. The Commission noted that Order No. 745 did not require an RTO or ISO to differentiate between demand response resources using behind-the-meter generation to facilitate their participation and other demand response resources.⁹ The Commission also accepted ISO-NE's proposal to measure demand

⁴ Compliance Order, 138 FERC ¶ 61,042.

⁵ 16 U.S.C. § 8251(a) (2006).

⁶ 18 C.F.R. § 385.713(b) (2011).

⁷ The appendix to the Compliance Order listing the intervenors and commenters noted that IECG did not intervene.

⁸ See, e.g., *Appalachian Power Co.*, 137 FERC ¶ 61,065 (2011); *Puget Sound Energy, Inc.*, 112 FERC ¶ 61,244 (2005).

⁹ *ISO New England Inc.*, 138 FERC ¶ 61,042 at P 76.

reductions at the retail delivery point, which delineates the customer's demand normally served by the grid from demand served by the customer's behind-the-meter generator. The Commission found this aspect of ISO-NE's proposal as establishing a focus on demand response that is reflected as a load reduction on the New England transmission system. The Commission further found the delineation point to be consistent with Order No. 745, which, as explained further in Order No. 745-A, views from the perspective of the grid a load reduction in the wholesale market relative to a validly established baseline.¹⁰ The Commission noted that measuring demand reductions at the retail delivery point will better enable ISO-NE to anticipate the customer's impact on the grid so that it may more effectively dispatch resources to balance supply and demand.

1. Requests for Rehearing

7. CSA argues that the Commission has mandated preferential treatment and subsidization of behind-the-meter generation and that the Commission has offered no rationale that would support unduly preferential treatment based solely on whether a generator is located behind or in front of the meter. CSA further argues that ISO-NE's demand response program results in unduly discriminatory treatment of wholesale generation because behind-the-meter generation can use the unit's output to serve its own load and at the same time sell the output as demand response, while a wholesale generator must do one or the other. According to CSA, this inappropriately subsidizes behind-the-meter-based demand response. CSA states that due to this alleged subsidy, behind-the-meter generation will run more frequently, because it will appear cost-effective whenever the costs are less than or equal to LMP plus the retail rate, while the generator will be dispatched only when its costs are less than or equal to LMP.

8. CSA states that ISO and RTO rules and requirements must apply equally to all generators, regardless of where they sit relative to the wholesale meter, and that the Commission has failed to treat similarly situated wholesale market participants fairly and equitably. CSA further claims that the Commission failed to substantively respond to objections to allowing behind-the-meter generation to qualify as demand response and that paying such assets full LMP would be unduly preferential and discriminatory.

9. DRS reiterates the argument previously asserted by the Maine Public Utilities Commission that placement of the retail meter makes no difference for purposes of providing benefits to other customers on the system and incentives to load and generation to behave in a way that promotes market efficiency.¹¹ DRS claims that the

¹⁰ *Id.* P 78.

¹¹ DRS Rehearing Request at 9.

Commission's explanation failed to address the argument that not paying LMP for the demand reduction of customers supplying their own electricity is unduly discriminatory because they would be paid for their demand reduction if they had not been self-supplying.¹²

2. Commission Determination

10. As an initial matter, the Commission in Order No. 745-A addressed arguments concerning the propriety (or impropriety) of allowing resources with behind-the-meter generation to be compensated for demand response.¹³ Such arguments are beyond the scope of this proceeding, and we will not entertain them here.

11. Moreover, CSA's contention that allowing demand response resources to utilize behind-the-meter generation is discriminatory, because, according to CSA, these resources may provide demand response and also serve their own load, is without merit. CSA appears to believe that these resources will be compensated for both demand reduction and energy injections without first measuring the net changes in output at the retail delivery point. However, under ISO-NE's proposal, demand response resources will not be able to utilize behind-the-meter-generation to reduce load and sell that same energy into the ISO's energy market. The Commission explicitly clarified in the Compliance Order that ISO-NE's program, by measuring the net change at the retail meter, does not allow such a scenario to occur. Indeed, the Commission provided an example of how, under ISO-NE's program, a demand response provider that uses its behind-the-meter generation to facilitate load reduction or provide energy injection, as measured at the retail meter, would be compensated.¹⁴

¹² DRS states that, if the Commission means to say that there is no undue discrimination because payment will be made to those who have behind-the-meter generation that is used only when the resource is called for demand response, these were not the entities for whom claims of discrimination were made in the protests.

¹³ In Order No. 745-A the Commission explained that Order No. 745 is indifferent with respect to how a demand response resource reduces its load. As the Commission stated, "[f]rom the perspective of the grid, the manner in which a customer is able to produce such a load reduction from its validly established baseline ... does not change the effect or value of the reduction to the wholesale grid." Order No. 745-A, 137 FERC ¶ 61,215 at P 66.

¹⁴ Compliance Order, 138 FERC ¶ 61,042 at P 79.

12. We also reject DRS's contention that it does not matter where the "retail meter" is placed for purposes of benefitting other customers on the system and providing incentives to load and generation to behave in a way that promotes market efficiency. A primary purpose of the Tariff revisions accepted in the Compliance Order is to allow ISO-NE to improve the functioning and competitiveness of its markets.¹⁵ The Commission explained in the Compliance Order that, in the context of discussing ISO-NE's settlement system as it relates to demand response, the impact a customer has on the grid is what determines how the ISO will operate the grid.¹⁶ Measuring demand response at the retail delivery point allows ISO-NE to effectively manage the grid because this point accurately reflects the load's impact on the New England transmission system. As we stated in Order No. 745-A, from the perspective of the grid, the manner in which a customer is able to produce a load reduction in the wholesale market from its validly established baseline (whether by shifting production, using internal generation, consuming less electricity, or other means) does not change the effect or value of the reduction to the wholesale grid.¹⁷

B. Compensation

13. The Compliance Order accepted ISO-NE's proposal to allow a resource that uses behind-the-meter generation to facilitate demand response to receive full LMP compensation as a demand response resource. The Compliance Order also noted that the Tariff revisions do not change the rules by which market participants with behind-the-meter generation receive payments for electricity injected into the grid.¹⁸ The Commission rejected arguments that ISO-NE's proposal either over-compensates or under-compensates demand response resources that use behind-the-meter generation to facilitate demand response, finding that ISO-NE's proposal reasonably accounts for the benefits of both demand response facilitated by behind-the-meter generation and energy injected into the grid by behind-the-meter generation.¹⁹

¹⁵ See Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 10.

¹⁶ Compliance Order, 138 FERC ¶ 61,042 at P 83.

¹⁷ *Id.* P 76 (citing Order No. 745-A, 137 FERC ¶ 61,215 at P 66).

¹⁸ Compliance Order, 138 FERC ¶ 61,042 at P 77.

¹⁹ *Id.* P 80.

1. Requests for Rehearing

14. CSA argues that behind-the-meter generation will receive comparatively higher compensation because behind-the-meter generation will receive full LMP plus the savings from foregone retail or wholesale purchases than generation in front of the meter, which will encourage generation to move behind the meter, lead to inefficient dispatch and market manipulation, harm reliability and competition, and have adverse environmental effects. CSA states that an LMP-based energy market design presumes all resources supplying energy receive the same price, which presupposes that no participant is consuming and selling the same MW. CSA further states that paying LMP to loads for “phantom load reductions” or paying behind-the-meter generation full LMP while also allowing it to sell that energy to the behind-the-meter load disrupts efficiencies.²⁰

15. DRS argues that ISO-NE’s expiring Day-Ahead Load Reduction Program (DALRP) pays behind-the-meter generation for both load reduction and generation. DRS states that under the DALRP, load reductions from customers that primarily self-supply using behind-the-meter generation qualify as demand response and are compensated for both their reduction in consumption and the energy supplied to the system. DRS objects to ISO-NE’s new demand response program because it pays LMP only for the “net flow over the retail meter.” DRS argues that this is “fundamentally a change to the current eligibility requirements for participation in demand response ... designed to exclude a defined subset of customers. ...”²¹ DRS states that, while ISO-NE did state in its proposal that behind-the-meter generation would receive payment for electricity injected into the grid, ISO-NE’s statements may have given the misimpression that the proposal did not change the levels of compensation available to demand responders who primarily rely on behind-the-meter generation for their electricity supply.

16. DRS further argues that the Compliance Order fails to acknowledge that ISO-NE’s proposal changes and reduces compensation available under the DALRP for one class of participants – those primarily self-supplying with behind-the-meter generation. DRS states that the Commission may not have believed or understood, and never addressed, the merits of Maine Public Parties’ assertion regarding the changes in compensation between the DALRP and ISO-NE’s accepted proposal. DRS contends that there was evidence in the record that would have led the Commission to find that ISO-NE’s proposal reduces compensation for demand response providers that primarily rely on behind-the-meter generation, reduce their consumption, and export generation onto the

²⁰ CSA Rehearing Request at 9-11.

²¹ DRS Rehearing Request at 5-6.

grid.²² According to DRS, if reducing load behind the meter is not “demand response from the perspective of the grid,” there is no way to reconcile this with the fact that the current DALRP compensates these actions.

2. Commission Determination

17. We reject CSA’s argument that behind-the-meter generation will receive comparably higher compensation than generation “in front of the meter” resulting from payment of full LMP plus the savings from foregone retail or wholesale purchases. The argument that payment of LMP for demand response fails to account for the cost savings associated with a reduction in load (regardless of where located) was specifically addressed – and rejected – in Order No. 745; CSA’s argument to the contrary is beyond the scope of this proceeding. We reiterate that in the circumstances to which Order No. 745 applies, payment of LMP is the marginal value of a load reduction to the grid, regardless of where the demand response originates, and therefore LMP is a just and reasonable payment for such reduction. From the perspective of the grid, the manner in which a customer is able to produce such a load reduction from its validly established baseline (whether by shifting production, using internal generation, consuming less electricity or other means) does not change the effect or value of the reduction to the wholesale grid.²³

18. We also disagree with DRS’s argument that ISO-NE’s program will exclude a defined subset of customers because ISO-NE will pay LMP only for the “net flow over the retail meter,” rather than for both a resource’s total reduction in consumption (regardless of whether that consumption was met with behind-the-meter generation) and energy supplied to the system. To the extent a demand response resource’s behind-the-meter generation facilitates reduced withdrawals from the grid relative to its validly established baseline, that demand response resource will be compensated at full LMP. Beyond that, if the use of behind-the-meter generation results in injections onto the grid, then it will be compensated as generation, also at LMP. We reaffirm our finding that ISO-NE’s treatment of demand response facilitated by behind-the-meter generation

²² *Id.* at 6, 11-12. DRS asserts that the Commission’s discussion of a hypothetical customer conveys the impression that compensation for demand reductions normally served by behind-the-meter generation does not currently receive compensation and that the Commission discusses the arguments of the Maine Public Utilities Commission and others as if they are proposing new ideas. *Id.* at 12.

²³ Order No. 745-A, 137 FERC ¶ 61,215 at P 66.

results in the payment of full LMP for legitimate reductions of load from the grid, and thus complies with Order No. 745.

19. We further reject DRS's argument that the Commission was under an obligation to compare and contrast the DALRP with ISO-NE's newly accepted demand response program. Aside from the fact that the DALRP expires on its own terms on May 31, 2012, the Commission properly evaluated ISO-NE's proposed Tariff revisions as either in compliance with Order No. 745 or just and reasonable under FPA section 205.²⁴ ISO-NE submitted certain proposed Tariff revisions pursuant to Order No. 745, in which the Commission had made the finding that then-existing RTO and ISO tariff provisions relevant to demand response compensation, including those of ISO-NE, required revision. As to the remainder of ISO-NE's Tariff revisions, when an entity seeks to modify its own tariff, it may submit proposed tariff revisions under FPA section 205, as ISO-NE did here, and the Commission can accept those revisions upon a finding that the revisions are just and reasonable.²⁵ ISO-NE demonstrated that the Tariff changes it proposed were consistent with Order No. 745 or otherwise just and reasonable, and the Commission accepted them, subject to condition, on that basis.

20. We also disagree with CSA that ISO-NE's proposal will result in LMP payments to loads with "phantom load reductions." As previously explained, ISO-NE's proposal measures legitimate demand reductions, as measured against a validly-established baseline, from the perspective of the grid, and, thus, CSA's assertion that ISO-NE's proposal allows compensation for phantom load reductions is incorrect; either the customer reduces its demand on the grid or it injects energy into the grid.²⁶

C. Defining Demand Response

21. The Commission's regulations define demand response as follows:

Demand response means a reduction in the consumption of electric energy by customers from their expected consumption

²⁴ Compliance Order, 138 FERC ¶ 61,042 at P 2 and n.6.

²⁵ *ISO New England Inc. and New England Power Pool Participants Committee*, 138 FERC ¶ 61,238, at P 19 (2012).

²⁶ Good faith participation in load reduction programs is encouraged by the Commission. However, our approval of ISO-NE's demand response program here does not exempt from challenge conduct prohibited under section 1c.2 of the Commission's regulations. 18 C.F.R. § 1c.2 (2011).

in response to an increase in the price of electric energy or to incentive payments designed to induce lower consumption of electric energy.²⁷

22. The Compliance Order rejected arguments that demand response facilitated by the use of behind-the-meter generation is wholly ineligible for demand response compensation under Order No. 745. In Order No. 745, the Commission did not require an RTO or ISO to differentiate between demand response resources for which demand response is facilitated by behind-the-meter generation and other demand response resources. Moreover, in Order No. 745-A, the Commission stated that, from the perspective of the grid, the manner in which a customer is able to produce a load reduction in the wholesale market from its validly established baseline (whether by shifting production, using internal generation, consuming less electricity, or other means) does not change the effect or value of the reduction to the wholesale grid.

1. Requests for Rehearing

23. CSA requests rehearing, arguing that ISO-NE's program conflicts with the Order No. 745 definition of demand response by paying behind-the-meter generation, because behind-the-meter generation does not provide demand response through load reduction but instead is an increase in energy supply and therefore should not be paid full LMP. CSA states that it would be appropriate to pay full LMP to any generator, including a behind-the-meter generator, that produces energy that is not simultaneously used to self-supply a customer's load but that ISO-NE's proposal allows a customer to receive full LMP payment for the energy generated by the behind-the-meter generator, while the customer avoids wholesale energy market charges for its continued consumption.²⁸

24. Conversely, DRS argues that the Compliance Order's definition of demand response is more restrictive than the definition in the Commission's regulations, is inconsistent with Order No. 745's purpose, and impermissibly changes policy without acknowledgement or explanation. According to DRS, approving ISO-NE's "exclusion" from demand response payment for behind-the-meter demand reductions "on the theory that 'the reduction of load does not constitute demand response from the perspective of the grid,'" arbitrarily and capriciously shrinks the demand response definition relative to what was established in Order No. 745 and is counter to that order's purpose, which seeks to expand rather than reduce demand response. DRS states that Order No. 745 did not change the definition of demand response contained in the Commission's

²⁷ 18 C.F.R. § 35.28(b)(4)(2011).

²⁸ CSA Rehearing Request at 6-7.

regulations.²⁹ Further, DRS states, Order No. 745 mentioned the DALRP as a program that pays LMP to demand response resources when the prices exceed a certain threshold.³⁰ However, DRS argues, the Compliance Order determined that ISO-NE's "new exclusion" from demand response compensation for load reductions from customers relying on behind-the-meter generation is consistent with Order No. 745 on the grounds that "the reduction of that load does not constitute demand response *from the perspective of the grid.*"³¹

25. DRS argues that this arbitrary limitation is inconsistent with the Commission's order addressing the Midwest Independent Transmission System Operator, Inc.'s (MISO) Order No. 745 compliance filing, where the Commission rejected "as beyond what is required to comply with Order No. 745," MISO's proposal to exclude from compensation demand response resources facilitated by behind-the-meter generation.³² DRS asserts that the facts in the ISO-NE and MISO compliance proceedings are similar in that both RTOs have existing tariff provisions allowing for demand response providers that rely on behind-the-meter generation to be paid for load reductions and that both ISO-NE and MISO restricted the class of entity eligible for such compensation in their compliance proposals. DRS states that the Commission must explain its departure from precedent in taking opposite approaches in the ISO-NE and MISO compliance orders.³³

2. Commission Determination

26. As an initial matter, we reject as beyond the scope of this proceeding general arguments concerning whether Order No. 745 reflects any inconsistencies with the regulatory definition of demand response. Those arguments should have been raised, and in fact were addressed, in that proceeding.

27. By extension, we also reject arguments that ISO-NE's filing was inconsistent with the regulatory definition of demand response. ISO-NE's filing addressed payment of demand response. As the Commission explained in Order No. 745-A and the

²⁹ DRS Rehearing Request at 6 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,212, at P 72 (2011) (MISO Compliance Order)).

³⁰ Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 14 n.30.

³¹ DRS Rehearing Request at 7 (citing *ISO New England Inc.*, 138 FERC ¶ 61,042 at n.96 (emphasis added by DRS)).

³² DRS Rehearing Request at 7-8.

³³ *Id.* at 8-9.

Compliance Order, and has reiterated here, the relevant reduction is from the standpoint of the grid. As determined in the Compliance Order, under ISO-NE's compliance filing, any reduction in usage as measured at the retail meter is a load reduction for ISO-NE's purposes in managing and balancing supply and demand on the grid; ISO-NE will compensate behind-the-meter generators providing injections of energy onto the grid as generation, also at LMP. We also note that in order to facilitate accurate accounting of demand reductions and energy injections, ISO-NE's accepted Tariff provisions provide that each individual end-use customer facility that comprises a demand response asset must be measured using interval meters located at the retail delivery point, and each generator located behind the retail delivery point must be separately measured.³⁴ These telemetry requirements ensure that demand reductions and energy injections are accurately measured.

28. DRS's argument that measuring demand response at the retail meter restricts demand response resources' ability to participate is misplaced. The Compliance Order explained that the retail meter delineates the customer's normal demand from the grid, which, in turn, goes into the calculations of supply and demand on the RTO/ISO-administered grid.³⁵ This forms the basis from which ISO-NE must balance the system. Using the retail meter as the point of measurement for demand response does not prohibit demand response resources from participating, nor is there any evidence that it will encourage generators to move behind the meter. Deciding whether to invest in and operate behind-the-meter generation is a business decision specific to each customer and is outside the scope of this proceeding.

29. We also reject DRS's contention that accepting ISO-NE's new program changed policy without acknowledgement or explanation. The Order No. 745 proceeding announced the Commission's new requirements for demand response compensation in organized wholesale energy markets, and ISO-NE's compliance filing detailed a new demand response program in compliance with that policy, which the Commission accepted in the Compliance Order.

30. DRS's suggestion that Order No. 745's mention of the DALRP as a program that pays LMP to demand response resources when the prices exceed a certain threshold somehow legitimizes DRS's claim that the Commission's actions in this proceeding are inconsistent with Order No. 745 is without merit. The paragraph DRS cites includes a simple recitation of how the demand response programs existing at the time the Commission issued Order No. 745 compensated participants and did not endorse those

³⁴ Section 2.1 of Appendix E to the Tariff.

³⁵ *ISO New England Inc.*, 138 FERC ¶ 61,042 at P 78.

programs as being in compliance with the directives contained in that order. Indeed, the cited paragraph is part of a background discussion detailing the divergent ways the demand response programs have developed to date, and detailing the need for greater uniformity in compensating demand response in organized wholesale markets.³⁶

31. We also disagree with DRS's characterization of the Compliance Order as inconsistent with the MISO Compliance Order, where the Commission rejected as beyond what is required to comply with Order No. 745 MISO's proposal to exclude from compensation demand response resources facilitated by behind-the-meter generation. Contrary to DRS's position, there were numerous differences between the MISO and ISO-NE compliance proposals. As explained above, ISO-NE's proposal was for a new demand response program, as the DALRP is expiring. MISO's compliance filing was a modification to an existing and continuing program. However, the most relevant difference here is the fact that ISO-NE's proposal pays demand response providers regardless of whether the load reduction as measured at the retail delivery point results from utilizing behind-the-meter generation or another means; MISO proposed to deny compensation to demand response facilitated by behind-the-meter generation. The Commission rejected this aspect of MISO's proposal as beyond the scope of what is required to comply with Order No. 745,³⁷ noting that Order No. 745 did not require an RTO or ISO to differentiate between demand response resources for which demand response is facilitated by behind-the-meter generation and other demand response resources.³⁸ Contrary to DRS's assertion, the Commission's actions were not arbitrary or a departure from precedent. The decisions in the two proceedings are in harmony: both stand for the proposition that demand response compensation programs should be indifferent with respect to the manner in which a customer is able to produce actual load reduction from its validly established baseline, as measured from the perspective of the grid.³⁹

³⁶ Order No. 745, FERC Stats. & Regs. ¶ 31,322 at PP 12-14, 17.

³⁷ Unlike ISO-NE's compliance filing, MISO's proposal was only considered under FPA section 206.

³⁸ *Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,212 at P 72.

³⁹ See Order No. 745-A, 137 FERC ¶ 61,215 at P 66.

D. Effects of ISO-NE's Demand Response Program

1. Requests for Rehearing

32. CSA argues that the Commission ignored concerns that allowing use of behind-the-meter generation will have adverse environmental effects because it will promote less efficient/more polluting behind-the-meter generation, which CSA states is not subject to the same environmental laws and emissions controls as wholesale generation. According to CSA, ISO-NE's demand response compensation program will discourage development of cleaner and more efficient wholesale generation. CSA argues that its concerns are borne out by the efforts of demand response providers to loosen U.S. Environmental Protection Agency regulations for operating behind-the-meter generation.

33. DRS argues that ISO-NE's program will reduce rather than increase demand response, and the Commission failed to acknowledge the benefits currently provided by DALRP participants that primarily rely on behind-the-meter generation. They state that when a customer with behind-the-meter generation "is not compensated" for the cost of load-shedding and foregone production, these costs would have to be recovered through the LMP payment. DRS states that Maine Public Parties, in their protest to the compliance filing, explained that "paying LMP for both the load reduction and the generation 'left on' to customers bidding demand response that includes behind-the-meter generation is exactly comparable to generation and demand response acting independently "outside of the meter."⁴⁰ Further, DRS states, ISO-NE did not contest the Maine Public Parties' analysis, nor did it challenge any statements in the Poole Affidavit submitted with Verso Paper's protest describing the reliability benefits that Verso has provided to the system under the DALRP. Finally, DRS states that the Compliance Order failed to explain whether the Commission believed that such benefits would still be available under the ISO-NE proposal, yet the Poole Affidavit and Maine Public Parties demonstrated through analyses that, when a customer with behind-the-meter generation is not compensated for the cost of load-shedding and foregone production, these costs, as well as fuel costs to run the generation, would have to be recovered through the LMP payment if the customer's energy bid clears.⁴¹ DRS concludes by requesting that the Commission require ISO-NE to reinstate the opportunity to receive demand response compensation for demand response by customers that primarily rely on behind-the-meter generation for their electricity supply.

⁴⁰ DRS Rehearing Request at 14 (citing Maine Public Parties Protest at 32).

⁴¹ *Id.* at 15 (citing Maine Public Parties Protest at 21).

2. Commission Determination

34. In the Compliance Order, the Commission held that protestors' arguments regarding environmental externalities were beyond the scope of the compliance proceeding, and reiterated Order No. 745's conclusion that neither an Environmental Assessment nor an Environmental Impact Statement was required in that context. With respect to CSA's concern that behind-the-meter generation is not subject to the same emissions regulations as wholesale generation, and behind-the-meter generation is seeking exemptions from such regulations, that also is beyond the scope of this proceeding, as well as our jurisdiction.

35. DRS argues that ISO-NE's program will not adequately compensate customers with behind-the-meter generation for the cost of load-shedding and foregone production, stating that these costs would have to be recovered through the LMP payment. These costs *should* be recovered through the LMP payment. The demand response providers' have the opportunity to bid to reflect *all* of the costs associated with an offer to provide demand response, which will enable ISO-NE to dispatch the most cost-effective means to balance the system – whether that solution is demand response or additional generation. Similarly, DRS's argument that ISO-NE's program will reduce rather than increase demand response misses the point. The goal of the program is not to reach a certain number of MWs in demand response, but rather is to ensure that ISO-NE considers both supply and demand options for balancing the system, and dispatches the most economical solution, while ensuring that cost-effective demand response, when dispatched, is paid the just and reasonable rate.⁴²

36. The Commission does not contest the reliability benefits demand response may provide and, indeed, recognized demand response's potential to support system reliability as one of many ways demand response can help improve the functioning and competitiveness of the wholesale energy market.⁴³ Nothing in ISO-NE's proposal compromises these market and reliability benefits.

⁴² See Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 2 (“[W]hen a demand response resource participating in an organized wholesale energy market administered by an RTO or ISO has the capability to balance supply and demand as an alternative to a generation resource and when dispatch of that demand response resource is cost-effective as determined by the net benefits test described herein, that demand response resource must be compensated for the service it provides to the energy market at the market price for energy.”).

⁴³ *Id.* P 10. See also *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 154 (2008), *order on reh'g*,

37. Finally, we note that DRS urges the Commission require ISO-NE to “reinstate” the opportunity to receive demand response compensation for demand response by customers that primarily rely on behind-the-meter generation for their electricity supply. As thoroughly discussed above, ISO-NE’s Tariff revisions accepted in the Compliance Order reflect appropriate compensation for demand response resources that use behind-the-meter generation.

The Commission orders:

The requests for rehearing are hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.