

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

California Independent System Operator Corporation	Docket No. ER09-1048-000
Midwest Independent Transmission System Operator, Inc.	Docket No. ER09-1049-000
Southwest Power Pool, Inc.	Docket No. ER09-1050-000
ISO New England, Inc.	Docket No. ER09-1051-000
PJM Interconnection, L.L.C.	Docket No. ER09-1063-000
New York Independent System Operator, Inc.	Docket No. ER09-1142-000

**MOTION TO INTERVENE AND COMMENTS OF
ELECTRICITY CONSUMERS RESOURCE COUNCIL (“ELCON”)**

Pursuant to Rule 214 of the Federal Energy Regulatory Commission’s (“FERC’s”) Rules of Practice and Procedure, 18 C.F.R. § 385.214, the Electricity Consumers Resource Council (“ELCON”) hereby moves to intervene in the above-captioned proceedings. ELCON offers general comments on the Order 719¹ compliance filings submitted in April and May 2009 by the six regional transmission organizations (“RTOs”) and independent system operators (“ISOs”), focusing in particular on demand response issues. ELCON believes that the compliance filings fail to implement Order 719’s directives to promote full access by demand response providers on a “comparable” basis to generation. ELCON urges FERC to conduct an independent and

¹ Wholesale Competition in Regions with Organized Electric Markets, Order 719, 73 Fed. Reg. 64,100 (2008).

thorough examination of the ISOs' and RTOs' compliance with Order 719 and to take appropriate action to ensure that each of the demand response programs fully and consistently implement the directives of Order 719.

Description and Standing of ELCON

ELCON is a national trade association of industrial consumers of electricity organized to promote the development of coordinated and rational federal and state policies that will assure an adequate, reliable, and efficient electricity supply for all users at competitive rates. ELCON member companies produce a wide range of products from virtually every segment of the manufacturing community. ELCON's members, in the aggregate, have interests in every ISO or RTO. Further, many ELCON members are customer generators or provide and/or wish to provide demand response services. Accordingly, ELCON has interests that may be directly affected by the outcome of this proceeding and cannot adequately be represented by any other party. Moreover, ELCON's participation in this proceeding is in the public interest.

ELCON's Motion to Intervene and Comments

Order 719 directed each ISO or RTO to submit a filing by April 29, 2009 detailing the steps taken in compliance with the Order. The compliance filings submitted by the RTOs and ISOs focus on four areas: (1) demand response and market pricing during periods of operating reserve shortage; (2) long-term power contracting; (3) market-monitoring policies; and (4) the responsiveness of RTOs and ISOs to their customers and other stakeholders, and ultimately to the consumers who benefit from and pay for electricity services.

In these comments, ELCON sets out the conceptual framework that FERC should adopt in reviewing the Order 719 compliance filings. ELCON anticipates that individual industrial

consumers, regional associations and other parties will be submitting comments on some of the more detailed and technical aspects of the compliance filings.

The Order 719 compliance filings, on the whole, treat demand response providers as if they were generators, imposing onerous technical requirements that will inhibit demand response rather than promote it. This treatment misapprehends Order 719's directive that demand response providers should be accorded "comparable" treatment. Further, the compliance filings do not reflect any meaningful attempt to establish uniformity among the ISOs and RTOs. Indeed, considering the criticism of ISO and RTO accountability leveled by the General Accounting Office in its recent report, FERC should conduct an independent and detailed review of the compliance filings and take appropriate steps to ensure that the ISOs and RTOs promptly come into compliance with Order 719.

I. THE DEMAND RESPONSE PRINCIPLES OF ORDER 719 SHOULD BE FULLY AND PROMPTLY IMPLEMENTED

Order 719 announces two main objectives for demand response related reforms: (1) "to further eliminate barriers to demand response participation in organized energy markets" and (2) "to ensure that demand response is treated comparably to other resources."² In this vein, Order 719 states that "the Commission will require RTOs and ISOs to . . . accept bids from demand response resources in their markets for certain ancillary services, on a basis comparable to other resources," and specifies that those requirements as applied to size, telemetry, metering and bidding must be "reasonable."³

² Order 719 ¶ 15 (emphasis added).

³ Order 719 ¶ 15 (emphasis added); ¶ 49

In setting these objectives, the Commission recognized the value and potential of demand response, stating:

Demand response can provide competitive pressure to reduce wholesale power prices; increases awareness of energy usage; provides for more efficient operation of markets; mitigates market power; enhances reliability; and in combination with certain new technologies, can support the use of renewable energy resources, distributed generation, and advanced metering. Thus, enabling demand-side resources, as well as supply-side resources, improves the economic operation of electric power markets by aligning prices more closely with the value customers place on electric power.⁴

Yet, despite Order 719's clear mandate to improve demand response access to markets, the compliance filings by the ISOs and RTOs do not implement either the directives or the overarching principles enumerated in Order 719. In this section, ELCON addresses two shortcomings of the approach taken by the majority of ISO and RTOs – their failure to properly implement the “comparability” and “reasonableness” criteria and their failure to pursue uniform demand response standards.

A. The ISOs and RTOs Have Not Properly Implemented “Comparability” and “Reasonableness”

Order 719 establishes the criteria of “comparable treatment” and “reasonable” terms to describe the treatment due to demand response providers. Although the Commission declined to dictate a uniform definition of “comparable treatment,” Order 719 states:

Each RTO and ISO therefore should establish policies and procedures in cooperation with its customers and other stakeholders that ensure that demand response resources are treated comparably to supply-side resources. The Commission will have

⁴ Order 719 ¶ 16; see also Order 719 ¶ 47.

ample opportunity to evaluate concerns that may arise when it reviews the compliance filings required by this Final Rule.⁵

The Commission must now carefully scrutinize the compliance filings as was promised in Order 719. ELCON believes that the Commission's review will result in a determination that the ISOs and RTOs have not granted comparable treatment and have not established reasonable terms for demand response.

The primary shortcoming of the demand response proposals, as described in the compliance filings, is that the ISOs and RTOs appear to have incorrectly equated "comparable treatment" to "identical treatment." The ISOs and RTOs have, for the most part, proposed to place conditions and requirements on demand response providers identical to those for generators based on systems and practices originally established to meet the specific needs of generators. Simply put, demand response providers should not be penalized because the computer and control systems of ISOs and RTOs originally were designed to operate generation resources. Applying such one-size-fits-all standards, in contravention of Order 719, will only inhibit, not promote, demand response.

For example, Midwest ISO's recently submitted proposed tariff revisions would impose the significant and unnecessary burden of a specified real time communications protocol on all participants.⁶ Although the proposed requirement would naturally integrate into a traditional utility process where continuous system operations personnel are monitoring grid reliability and responding to ongoing dispatch instructions, monitoring communications from the regional balancing authority is not the core business of an industrial production facility. A sensible

⁵ Order 719 ¶ 50 (emphasis added).

⁶ Midwest ISO, Docket No. ER09-991 (filed April 14, 2009).

investment for a generator may be a large and unwarranted investment for a demand response provider. What is more, there are significantly less burdensome and more effective alternatives.

In a similar vein, in summarizing the requirements that PJM has imposed on demand response providers, Potomac Economics has observed “the one-minute interval metering requirement in PJM’s synchronized reserves market would exclude most loads since most advanced meters are hourly or quarter-hourly.”⁷ Although some requirements are “needed to verify that the demand resource[] is actually providing the service the ISO is procuring,” Potomac Economics noted that “[a]s an alternative to metering, statistical methods can be used to measure the performance of demand response resources that are under direct load control by the ISO.” Likewise, the CAISO tariff currently does not permit demand response resources to provide regulation and spinning reserve services because “of their inability to meet the technical requirements of the CAISO Tariff” such as the requirement to respond immediately to system frequency.⁸ The technical requirements were crafted specifically for generation resources, hence it is unsurprising that demand response resources would have difficulty complying with them.

Instead of blindly applying standards designed for generation resources, ISOs and RTOs should recognize that a policy of identical conditions does not result in equivalent opportunities because demand response resources and generation resources have fundamentally different attributes. In fact, the demand response capabilities of industrial loads can often provide grid operators with greater value compared to the typical generator. Accordingly, when implementing “comparable treatment,” the protocols for demand response providers should not be based on the limitations of generators but instead on a source neutral basis that also reflects

⁷ Report on Demand Response of Potomac Economics, LTD. Independent Market Advisor for the New York ISO; Docket No. ER09-1142 (filed May 15, 2009) at 7.

⁸ California ISO, Docket No. ER09-1048 (filed April 18, 2009) at 29.

system reliability. And, as specified in Order 719, the size, telemetry, metering and bidding requirements must be “reasonable” when viewed in the context of demand response, not generation. In its comments on the NOPR, ELCON raised this issue and expressed concern that the ISOs and RTOs would inhibit demand response by imposing onerous conditions that did not reflect “source neutrality” between demand response providers and generators.⁹ Unfortunately but predictability, that has come to pass. ELCON reiterates that the full value of demand response and the resulting “improved market and operational efficiencies [cannot be] realized, if grid operators’ expectations are limited to generation-like resources” and the objective “should be to ensure that all viable resources can be offered into the market on a competitive basis in a way that maximizes their value to both buyer and seller.”¹⁰ On review of the compliance filings, the Commission must step in to assure that demand response providers have access on a source neutral basis.

In this regard, ELCON also wishes to reiterate and highlight the point made in its comments on the ANOPR respecting ERCOT’s ancillary services market.¹¹ ERCOT’s requirements for demand response providers are not identical to those for generators, are generally reasonable, and have facilitated demand response. ERCOT qualifies “Load Acting as a Resource” (LaaR) to provide ancillary services based on the load’s available technology for: (1) balancing energy service, (2) non-spinning reserve service, and (3) responsive reserve service.¹² In addition, ERCOT has approved procedures whereby certain controllable loads (CLR) may

⁹ NOPR Comments of ELCON, AISI, ACC, CIBO, ABATE, and Wisconsin Industrial Energy Group, Docket No. RM07-19, April 21, 2008, at pp. 12-13, 15.

¹⁰ *Id.*

¹¹ ANOPR Comments of ELCON, AISI and ACC, Docket No. RM07-19, Sept. 14, 2007, at p. 12.

¹² See “Load Participation in the ERCOT Market,” Electric Reliability Council of Texas, Revised, May 2006.

qualify to provide regulation services.¹³ Many ELCON members that participate in the ERCOT markets for LaaR give the market high marks, on the whole. Factors leading to the success of the ERCOT market include:

- Providers can bid daily; the mounts and hours of the day are at the load's discretion.
- Certified metering is affordable.
- Flexibility to either bid in all or a portion of the load in the day-ahead market and receive the market price and/or take fixed firm price for 100% firm take of load through a bilateral arrangement with a third party.
- There are clear and concise rules for LaaR.
- Flexibility to choose among several qualified ancillary services to provide.
- Easy and quick access to market price that guide decisions on whether to stay in market.¹⁴

LaaR has been very successful and is often oversubscribed. An approach similar to that of ERCOT should have been adopted in the ISO and RTO Order 719 compliance filings.¹⁵

Accordingly, ELCON urges FERC to scrutinize the provisions relating to demand response in each of the compliance filings to ensure they meet Order 719's "comparable terms" and "reasonableness" criteria. In particular, FERC should carefully examine, and request justification from the ISOs or RTOs for, any rules that restrict participation by demand response providers. Any restrictions should be accompanied by a showing, as detailed in Order 719, that they are necessary for a valid technical reason. The starting point should be what is needed to

¹³ See "ERCOT Process for Qualification Testing of Controllable Loads in Accordance with ERCOT Protocols and Guides, Updated May 9, 2007.

¹⁴ Note that the current ERCOT market is not nodal.

¹⁵ As a result, LaaR application to Responsive Reserve Service (RRS) has been capped at 50%.

reliably operate the bulk power system, not what is needed to interface with infrastructure designed for generator needs.

B. The ISOs and RTOs Should Be Compelled to Actively Pursue Nationwide Uniformity

Although Order 719 does not require word-for-word nationwide uniformity of demand response standards, it does recognize that uniformity was an important objective that should be pursued via a specified process:

the Commission will require RTOs and ISOs to coordinate with each other in the development of such technical requirements, and provide the Commission with a technical and factual basis for any necessary regional variations. In addition, having RTOs and ISOs work in conjunction with stakeholders as well as with each other should ensure that any developed requirement is not so full of technical detail or so burdensome that it discourages demand response resource participation.¹⁶

Notwithstanding Order 719's instructions, the six ISOs and RTOs have not sought to coordinate their responses in any meaningful manner. The outcome, thus far, has been a collection of complex and disparate requirements specific to each ISO or RTO.

The lack of standardization among the ISOs and RTOs of demand response protocols imposes significant costs on the large industrial consumers who will likely provide the bulk of demand response resources in the near term. Large industrial consumers typically have many facilities throughout the country and therefore often have major loads within the footprints of more than one ISO or RTO. It is a tremendous burden for demand response capable loads to respond to the different, often conflicting, rules and procedures. The complexity and burden of addressing regionally-disparate demand response programs on a case-by-case basis inhibits demand response. If standardization were achieved, delays, inefficiencies, and transaction costs

¹⁶ Order 719 ¶ 59; see also Order 719 ¶ 86.

for demand response providers would be reduced, and similarly situated resources would be accorded the same potential value in any market.

More generally, the compliance filings show that Order 719's approach to allow each ISO and RTO to revise its tariffs separately has failed. In its rulemaking comments, ELCON advocated the development of a pro forma tariff to be adopted by each of the ISOs and RTOs, with any deviations requiring specific justification. ELCON argued that such an approach would be consistent with the OATT and other Commission precedent and would avoid inefficiency, inconsistency and delay. ELCON's prediction has come to pass. ELCON suggests that it is not too late for the Commission to revisit this issue and to adopt pro forma tariff language that would consistently promote demand response on a nationwide basis.

II. THE ISO/RTO STAKEHOLDER PROCESSES SHOULD NOT DISPLACE FERC'S INDEPENDENT REVIEW

FERC's careful review of the ISO and RTO compliance filings is particularly important in view of the comments on the stakeholder process made by the General Accountability Office in its September 2008 report on the RTOs and FERC's oversight.¹⁷ The GAO Report identifies significant shortcomings in the stakeholder process; two key points are that (1) participation in the RTO processes are burdensome, and resource constraints limit the ability of stakeholders to fully participate; and (2) "RTOs do not place adequate emphasis on assessing the implications on consumer electricity prices of [their] decisions."¹⁸ Nonetheless, GAO found that "FERC relies

¹⁷ U.S. Government Accountability Office, Electricity Restructuring – FERC Could Take Additional Steps to Analyze Regional Transmission Organizations' Benefits and Performance (Sept. 2008) ("GAO Report").

¹⁸ GAO Report at 34.

heavily” on the stakeholder processes to raise concerns and guide RTO decisionmaking and that FERC does not always conduct an independent analysis.¹⁹

Here, the ISO/RTO stakeholder processes have failed again, yielding outcomes that will inhibit rather than promote demand response in direct contravention of the principles and directive of Order 719. Under these circumstances, it is particularly important that FERC take heed of GAO’s comments and conduct a thorough, independent analysis of the Order 719 compliance filings.

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In consideration of the foregoing, ELCON respectfully requests that the Commission conduct an independent and detailed review of the compliance filings and take the steps necessary to ensure that the ISOs and RTOs come into compliance with the requirements of Order 719, particularly respecting the comparability of access for demand response providers and the need for national uniformity. Because the ISO/RTO stakeholder processes are flawed, FERC should conduct its review on a *de novo* basis and should promptly implement such new initiatives, including adoption of a pro forma tariff and/or a FERC-headed national conference among the six ISOs and RTOs, as are necessary to promote demand response and to bring the ISOs and RTOs into compliance with Order 719.

¹⁹ GAO Report at 41.

Notices and Communications

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Dated: May 26, 2009

Certificate of Service

I hereby certify that I have this day served the foregoing document upon each person designated on the official service lists compiled by the Secretary of these proceedings.

Dated at Washington, D.C.: May 26, 2009

/s/ W. Richard Bidstrup
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