

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

ISO New England Inc.)	Docket No. ER11-4336-000
Order No. 745 Compliance Filing)	Docket No. ER11-4336-001
)	Docket No. ER11-4336-002

MOTION TO INTERVENE AND PROTEST OF THE NORTHEAST CLEAN HEAT AND POWER INITIATIVE AND OTHERS (NECHPI PARTIES) TO COMPLIANCE FILING

On August 19, 2011, ISO New England (“ISO-NE”) filed a series of compliance filings in the above-captioned dockets (“ISO-NE Filings”) in response to the Commission’s Order No. 745 and Final Rule issued March 15, 2011.¹ In accordance with Rules 211 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), and the Commission’s August 22, 2011 Notice of Filing, **The Northeast Clean Heat And Power Initiative (NECHPI) joined by four other associations, the Joint Supporters voluntary Association (Joint Supporters), the United States Clean Heat and Power Association (USCHPA), WADE USA, the US affiliate of the World Alliance of Distributed Resources and Maine Solar Energy Association (MESEA) (Collectively NECHPI parties)** hereby protest the portion of the ISO-NE Filings erecting barriers to demand response from customers relying on distributed generation to serve part or all of their load, and move for intervention in this case. As discussed below, the actions taken by ISO-NE fail to comply with Order No. 745 and are otherwise violative of federal law and policy.

I. BACKGROUND

A. A SHORT HISTORY OF DEMAND RESPONSE POLICY

Demand response plays an increasingly important role in our nation’s electric grid. Both Congress and the Commission have recognized the importance of demand response resources. For example, in the Energy Policy Act of 2005, Congress established a national policy of eliminating unnecessary barriers to demand response participation.²

¹ *Demand Response Compensation in Organized Wholesale Energy Markets*, Order No. 745, 76 FR 16658 (March 15, 2011).

² See Energy Policy Act of 2005, Pub. L. No. 109-58, § 1252(f), 119 Stat. 594, 965 (2005) (“It is the policy of the United States that . . . unnecessary barriers to demand response participation in energy, capacity, and ancillary service markets shall be eliminated.”).

The Commission itself understands the value of demand response. The Commission has long held that active participation by customers in structured wholesale energy markets through demand response helps to increase competition in those markets.³

In its landmark Order No. 745, the Commission wisely took action to “ensure the competitiveness of organized wholesale energy markets and remove barriers to the participation of demand response resources, thus ensuring just and reasonable wholesale rates”.⁴ Through Order No. 745, the Commission required structured and organized wholesale energy market operators to pay demand response resources the market price for energy, known as the locational marginal price (“LMP”), under certain circumstances: namely, when those resources have the capability to balance supply and demand as an alternative to a generation resource and when dispatch of those resources is cost-effective.

Order No. 745 thus represents a directive to remove barriers to customers’ load participating in demand response. This directive is universal in its application; Order No. 745 did not authorize discrimination against any subset of customers, such as those who have responded to federal and state policies promoting investment in distributed and customer-sited generation. Approximately 4,000 MW of CHP investment exists at approximately 400 sites within ISO-NE’s footprint. The proposed policy discriminates against them. See Exhibit 1.

Policies⁵ such as net metering, interconnection policies, grants and other incentives have resulted in considerable investment by customers in distributed generation, much of which relies on renewable technologies like solar photovoltaics or highly-efficient cogeneration. Customers ranging from residential homeowners to industrial facilities have invested significantly in on-site generation. According to the Department of Energy, distributed generation plays an important role in the U.S. energy system, as customers across the nation have installed about 12 million distributed generation units, with a total capacity of about 200 GW.⁶

Customers’ investment in customer-sited generation should not be held against them when it comes to load curtailment through demand response. Indeed, loads served by customer-sited generation can and do play a major role in the provision of demand response in organized wholesale markets. When a customer enrolls in an organized wholesale market’s demand response program, the customer is offering to provide a specific service: a reduction in the customer’s consumption of electric energy compared to its expected consumption in

³ See, e.g., *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 73 FR 64100 (Oct. 28, 2008), FERC Stats. & Regs. ¶ 31,281, at P 48 (2008) (Order No. 719).

⁴ Order No. 745 at P2.

⁵ Five of six New England states now embrace incentives and barrier removal for CHP, especially for highly efficient CHP, including residential and small commercial micro-CHP in a wave of actions since 2008, e.g. Massachusetts and Vermont (2008), Maine (2009) and New Hampshire (2011). Maine (660 kW) and New Hampshire (1,000 kW) have raised the size of CHP facilities eligible for net metering with natural gas and other fuels, including renewables such as wood pellets. The 1 kW threshold set by ISO-NE in its Forward Capacity Market (FCM) design was based in part on 1 kW CHP systems with efficiencies exceeding 80 percent. It was assumed to be aggregated. The technology is catching with the market rule, just as ISO-NE proposes to take away the opportunity to paid for energy.

⁶ U.S. Department of Energy, *The Potential Benefits of Distributed Generation and Rate-Related Issues That May Impede Their Expansion: A Study Pursuant to Section 1817 of the Energy Policy Act of 2005* (February 2007) at ii-iii (footnote omitted).

response to an increase in the price of electric energy or to incentive payments designed to induce lower consumption of electric energy.⁷ Whether or not that customer owns and operates own behind-the-meter generation is immaterial to both whether the customer is capable of providing this service, and whether, in response to a demand response event, the customer has actually provided demand response.

B. SUMMARY OF ISO-NE FILING

Since the inception of ISO-NE's demand response programs, all customers have been able to provide demand response support to the grid by curtailing their consumption of electricity relative to their expected consumption. ISO-NE now proposes to draw a new line, allowing some customers to be compensated for providing demand response – i.e. reducing their consumption of electric energy – while excluding from demand response other customers who are separately capable of exporting electricity to the grid from their behind-the-meter generation. This proposal is discriminatory, baseless, and harmful to all ratepayers.

To exclude these customers from being able to provide demand response, ISO-NE now proposes to make changes to its tariff and market rules that can generally be lumped into two categories. First, ISO-NE proposes to reject the Commission's definition of demand response as codified in the Code of Federal Regulations, instead focusing narrowly on a customer's metered retail demand.⁸ Second, for any customer able to supply power to the grid as a net exporter, ISO-NE proposes to set that customer's retail demand at zero. Under ISO-NE's proposal, customers would be paid demand response compensation only for reductions below this metered retail demand, not for their actual reduction in the consumption of electric energy.

The combined effect of these changes is that not only will net exporters receive no compensation even though they provide demand response – i.e. a reduction in the consumption of electricity compared to their expected consumption – but customers who have been providing deep grid support by curtailing their loads will no longer receive full compensation for their load curtailment if they also separately operate behind-the-meter generation.

Now, ISO-NE proposes to discriminate against such customers because they are not full requirements customers of vendors who transact in the ISO-NE settlement system. This discrimination is unjust, unreasonable and illegal.

⁷ Demand response means a reduction in the consumption of electric energy by customers from their expected consumption in response to an increase in the price of electric energy or to incentive payments designed to induce lower consumption of electric energy. 18 CFR 35.28(b)(4) (2010).

⁸ Testimony of Henry Y. Yoshimura at 17:19-23.

C. OVERVIEW OF THE FILING PARTIES

The filing parties are all active proponents of the use of distributed energy resources, such as efficient clean heat and power, district energy systems, renewables, including solar, wind, water, bio-fuels and other resources such as energy storage, including batteries.

Several of the filing parties and/or their members participated in the negotiation of the design of the ISO-New England and its several market forms, including the demand response program and the Forward Capacity Market (FCR). Several also negotiated the design of other ISOs and their generation and demand resource programs.

The instant compliance filing represents a dramatic narrowing of the opportunities for distributed generation in the structured market footprint of ISO-NE and as such should be prevented by direct and constructive action by the Commission.

II. PROTEST

The NECHPI Parties hereby protest the portion of the ISO-NE Filings erecting barriers to demand response supplied by customers who use distributed generation to serve some or all of their load, including, without limitation, the following sections:

8.2 Real-Time Demand Reduction of Assets With Generation

To the extent a generator is located behind the retail delivery point of an individual end-use customer facility that comprises a Real-Time Demand Response Asset, the metered output of the generator in each five-minute interval shall be added to the metered demand measured at the retail delivery point in the same intervals to determine the Real-Time Demand Response Asset's Demand Response Baseline. The Real-Time demand reduction amount achieved by the individual end-use customer facility that comprises a Real-Time Demand Response Asset shall be equal to the asset's adjusted Demand Response Baseline in each five-minute interval minus the sum of the metered demand measured at the retail delivery point and the output of all of the generators located behind the Real-Time Demand Response Asset's retail delivery point in the same time intervals. A Real-Time Demand Response Asset's Real-Time demand reduction amount is negative if the sum of the asset's Real-Time metered demand and the output of all of the generators is greater than its adjusted Demand Response Baseline.

If a Real-Time Demand Response Asset is comprised of a Distributed Generation asset located behind the retail delivery point of an individual end-use customer facility, the interval metered output of the Real-Time Demand Response Asset comprised of the Distributed Generation asset shall be used to determine its Demand Response Baseline. The Real-Time demand reduction amount achieved by the Real-Time Demand Response Asset comprised of the Distributed Generation asset

shall be equal to the asset's incremental output in each five-minute interval relative to its Demand Response Baseline in the same intervals. A Real-Time Demand Response Asset's Real-Time demand reduction amount is negative if the asset's Real-Time metered output is less than its Demand Response Baseline.⁹

8.3 Treatment of Net Supply

If the metered amount measured at the retail delivery point reflects net energy supply during intervals in which Real-Time Demand Response Assets and/or Real-Time Emergency Generation Assets behind the retail delivery point had positive Real-Time demand reductions, then the amount of net energy supplied in an interval with a positive Real-Time demand reduction shall be subtracted from the Real-Time demand reduction amount in the same interval of each Real-Time Demand Response Asset and/or Real-Time Emergency Generation Asset behind that retail delivery point on a pro rata basis. The adjustment for net energy supply shall not result in a negative Real-Time demand reduction amount.¹⁰

ISO-NE's proposed tariff and rule changes discriminate against customers who have invested in customer-sited generation. Moreover, ISO-NE's proposed changes violate the Commission's regulations, Congressional enactments including the Energy Policy Act of 2005, and Order No. 745 itself.

A. ISO-NE'S PROPOSAL DISCRIMINATES AGAINST CUSTOMERS WHO HAVE INVESTED IN CUSTOMER-SITED GENERATION, HARMING ALL RATEPAYERS

Discrimination lies at the heart of the ISO-NE Filings: discrimination against all customers who have invested in customer-sited generation. Though ISO-NE couches this discrimination in the context of changes to how a customer's baseline is calculated, ISO-NE's 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 customers: customers whose load reduction – the provision of demand response service – results in exports of generation previously used to serve those loads.

ISO-NE's Filing is supported primarily by the testimony of Henry Y. Yoshimura. Mr. Yoshimura's testimony demonstrates ISO-NE's discriminatory views toward distributed, customer-sited generation:

A customer who decides to serve its own electrical demand as opposed to placing its demand on the grid has a different impact on the grid to begin with – i.e., the grid does not dispatch resources to serve the customer's demand. For example, a customer consuming 50 MW who also generates 50 MW behind

⁹ ISO-NE Filing, Attachment A at 189-190.

¹⁰ ISO-NE Filing, Attachment A at 190.

the retail delivery point places no demand on the grid... Because the meter at the hypothetical customer's retail delivery point is 0 MW, the grid operator had dispatched no resources to serve the hypothetical customer's energy consumption. Therefore, reducing the demand of this customer does not result in generation elsewhere on the system being made available to serve increased system demand.¹¹

Despite conceding that a customer who normally serves its own energy consumption with distributed generation can provide value to the market by injecting energy into the electric system, Mr. Yoshimura erroneously concludes that "a customer who normally serves its own energy consumption with distributed generation cannot provide demand response to the grid given that the grid did not serve its demand in the first place."¹²

This conclusion is fallacious. Consider the example of a business which has invested in distributed generation such as a rooftop solar array on its commercial building. During typical operating conditions, this business uses its distributed generation to supply part or all of its electricity needs, purchasing the remainder of its electricity supply through ISO-NE's market settlement system. In response to an increase in the price of electric energy or to incentive payments designed to induce lower consumption of electric energy, the customer reduces its consumption of electric energy by taking measures like turning off lights, reducing HVAC loads, or temporarily scaling back business operations.

This is demand response: a reduction in the consumption of electric energy by a customer from its expected consumption in response to an increase in the price of electric energy or to incentive payments designed to induce lower consumption of electric energy.^[2] The result of this customer's curtailment of its load is the same as for any other customer reducing its consumption of electric energy: the generation previously used to serve that load is freed up to serve other interconnected load elsewhere on the grid.

Order No. 745 specifies that when this demand response meets the Commission's capability and cost-effectiveness tests, the customer's reduction in its consumption of electric energy should be compensated at the wholesale energy price. Separately, when that freed-up generation is sold into the wholesale market, the generator should be paid for its wholesale supply.

Indeed, customers who serve part or all of their loads through behind-the-meter generation can and do provide "a reduction in the consumption of electric energy by customers from their expected consumption in response to an increase in the price of electric energy or to incentive payments designed to induce lower consumption of electric energy"¹³ – the Commission's very definition of demand response service. Just because a customer procures

¹¹ Testimony of Henry Y. Yoshimura at 22:7-23:9.

¹² Id. at 24:7-9 (emphasis added).

^[2] See 18 CFR 35.28(b)(4) (2010) (demand response means "a reduction in the consumption of electric energy by customers from their expected consumption in response to an increase in the price of electric energy or to incentive payments designed to induce lower consumption of electric energy").

¹³ 18 CFR 35.28(b)(4) (2010).

some or all of its electric supply through retail arrangements other than the ISO-NE market settlement system does not mean that customer cannot or does not in fact reduce its consumption of electric energy in response to a demand response call. In fact, the Department of Energy has repeatedly pointed to distributed generation (“DG”) as playing an important role in facilitating customers’ participation in demand response through load curtailment.

For example, in the Department’s 2006 report to Congress on demand response pursuant to Section 1252 of the Energy Policy Act of 2005, the Department recommended adopting high-priority demand-response enabling technologies including distributed generation:

There are other key demand-response enabling technologies, including advanced HVAC and lighting controls, “grid friendly” appliances, smart thermostats, and distributed energy devices such as advanced turbines and micro-turbines, high efficiency engines, thermal and electric energy storage, thermally-activated heating and cooling equipment, fuel cells, photovoltaic arrays, and small-scale combined heat and power (CHP) systems.¹⁴

Similarly, in the Department’s 2007 report to Congress on distributed generation pursuant to Section 1817 of the Energy Policy Act of 2005, the Department identified the valuable role distributed generation can play in enabling customer participation in demand response programs:

DG offers potential benefits to electric system planning and operations... In addition, several regions have employed demand response (DR) programs, where financial incentives and/or price signals are provided to customers to reduce their electricity consumption during peak periods. Some customers who participate in these programs use DG to maintain near-normal operations while they reduce their use of grid-connected power.¹⁵

EPACT Section 1252 also generally promotes demand response programs nationwide. These programs have been important mechanisms for establishing financial incentives for consumers to install DG, and to operate them in a manner that provides peak load and reliability benefits for the overall electric system.¹⁶

In light of these findings, ISO-NE has no basis for its adherence to the fallacious conclusion that customers with distributed generation cannot participate in demand response.

Moreover, ISO-NE’s proposal facially discriminates against customers who have responded to these policies promoting distributed generation. In its attempt to explain the “need” for this discrimination, ISO-NE mistakenly conflates its own market settlement system with the overall regional grid. The ISO- market settlement system is designed to collect and

¹⁴ U.S. Department of Energy, Benefits of Demand Response in Electricity Markets and Recommendations for Achieving Them: A Report to the United States Congress Pursuant to Section 1252 of the Energy Policy Act of 2005 (February 2006) at 58-59 (emphasis added).

¹⁵ U.S. Department of Energy, The Potential Benefits of Distributed Generation and Rate-Related Issues That May Impede Their Expansion: A Study Pursuant to Section 1817 of the Energy Policy Act of 2005 (February 2007) at iii.

¹⁶ Id. at 1-15.

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. The manner in which a given party is compensated for providing a particular service is purely a matter of financial settlement; the underlying operation of the grid, balancing supply and demand in real time, is a broader reality.

In reality, customers with customer-sited generation do not receive their electricity for free, nor do they fall completely outside the ISO-NE settlement system. Rather, such customers are simply procuring some or all of their power through bilateral or self-supply arrangements outside the ISO-NE settlement process. Some customers do this by paying directly for the operational costs of the units in question; others entering into a contractual arrangement with a third-party developer. In either case, these customers are not full requirements customers of a vendor clearing at wholesale in ISO-NE’s settlement system. However, these customers’ loads are nevertheless part of ISO-NE’s settlement system, as supplemental, stand-by, and back-up service customers under rates for such services approved by the Commission or state authorities.

ISO-NE offers no legitimate basis for excluding these customers’ loads from its demand response programs. ISO-NE does not propose to exclude customers based on their load resources’ operational capabilities, nor based on the failure of any given load reduction to satisfy the benefits test established by the Commission in Order No. 745. Rather, ISO-NE’s own objections to continuing to allow these customers to participate in demand response boil down to discrimination against customers who rely upon bilateral or self-supply arrangements that are not financially settled by ISO-NE rather than taking full requirement service from vendors who clear at wholesale in the ISO-NE settlement system.

ISO-NE’s proposal thus constitutes discrimination against customers based on the specific retail rate structure or arrangements under which they take service. ISO-NE’s primary line of discrimination is whether ISO-NE approves of the retail rate arrangements under which these customers take service. Nowhere in Order No. 745 does the Commission require customers’ loads to be a utility’s full requirements customer (as opposed to standby, back up or supplemental service customers) before they may be compensated for load reductions that balance supply and demand. Such discrimination has no basis in Order No. 745 and in fact violates the Commission’s regulations, federal law, and Order No. 745 itself. Moreover, not only is the discrimination illegal and unnecessary, it leads to higher costs for all ratepayers when cost-effective demand resources are artificially excluded from the market.

B. ISO-NE FILINGS VIOLATES EPACT 2005 BY MAKING NEW BARRIERS TO DEMAND RESPONSE

As noted above, both Congress and the Commission have called for the elimination of barriers to demand response. In recognition of the important role demand response can and does play in ensuring competitive markets and reliable service, Congress specifically mandated

that unnecessary barriers to demand response participation in energy, capacity and ancillary service markets be eliminated:

(f) Federal Encouragement of Demand Response Devices.--It is the policy of the United States that time-based pricing and other forms of demand response, whereby electricity customers are provided with electricity price signals and the ability to benefit by responding to them, shall be encouraged, the deployment of such technology and devices that enable electricity customers to participate in such pricing and demand response systems shall be facilitated, and unnecessary barriers to demand response participation in energy, capacity and ancillary service markets shall be eliminated.¹⁷

ISO-NE's instant proposal to artificially limit the demand response market by excluding certain customers' load reductions is an unnecessary barrier to customers' participation in these markets through demand response. Indeed, ISO-NE's proposed new barrier is no shorter a barrier because it only excludes some kinds of demand resources; at heart, its effect is to erect an unnecessary barrier to demand response participation in organized wholesale markets. Accordingly, ISO-NE's proposal violates the federal policy clearly articulated by Congress in the Energy Policy Act of 2005.

C. ISO-NE FILINGS VIOLATE ORDER NO. 745

ISO-NE's proposal fundamentally violates Order No. 745 itself because the ISO-NE Filings erect new barriers to customers' participation in demand response. In issuing Order No. 745, the Commission clearly sought to implement the Congressional mandate to remove unnecessary barriers to demand response:

We acknowledge that many barriers to demand response participation exist and that our ability to address such barriers is limited to the confines of our statutory authority...¹⁸

the Commission's actions in this proceeding are consistent with Congressional policy requiring federal level facilitation of demand response, because this Final Rule is designed to remove barriers to demand response participation in the organized wholesale energy markets.¹⁹

The Commission has repeatedly recognized that barriers remain to demand response participation in organized wholesale energy markets. For example, in Order No. 719, the Commission stated:

[D]espite previous Commission and RTO and ISO efforts to facilitate demand response, regulatory and technological barriers to demand response participation persist, thereby limiting the benefits that would otherwise result. A market functions effectively

¹⁷ See Energy Policy Act of 2005, Pub. L. No. 109-58, § 1252(f), 119 Stat. 594, 965 (2005) (emphasis added).

¹⁸ Order No. 745 at ¶1115.

¹⁹ Order No. 745 at ¶1113.

only when both supply and demand can meaningfully participate, and barriers to demand response limit the meaningful participation of demand in electricity markets.²⁰

In Order No. 745, the Commission expanded on its identification of some of the unnecessary barriers to demand response participation that, pursuant to the Energy Policy Act of 2005, must be eliminated:

Barriers to demand response participation at the wholesale level identified by commenters include the lack of a direct connection between wholesale and retail prices, lack of dynamic retail prices (retail prices that vary with changes in marginal wholesale costs), the lack of real-time information sharing, and the lack of market incentives to invest in enabling technologies that would allow electric customers and aggregators of retail customers to see and respond to changes in marginal costs of providing electric service as those costs change.²¹

The Commission clearly articulated the positive effects of removing barriers to demand response:

Removing barriers to demand response will lead to increased levels of investment in and thereby participation of demand response resources (and help limit potential generator market power), moving prices closer to the levels that would result if all demand could respond to the marginal cost of energy.²²

Likewise, in Order No. 719, the Commission found that allowing demand response to bid into organized wholesale energy markets “expands the amount of resources available to the market, increases competition, helps reduce prices to consumers and enhances reliability.”²³

Order No. 745 was designed to implement the intent of Congress and the Commission to eliminate unnecessary barriers to customers’ participation in demand response programs in organized wholesale markets. If the Commission accepts ISO-NE’s proposal, ISO-NE will erect a new and discriminatory barrier to customers’ access to demand response programs. For a supposed compliance filing to seek to erect such a new barrier is entirely inappropriate.

D. ISO-NE FILINGS VIOLATE THE COMMISSION’S REGULATIONS

Indeed, while ISO-NE styled the ISO-NE Filings as “compliance filings”, this term has a specific and significant meaning in context of the Commission’s jurisdiction. Indeed, the

²⁰ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 83 (citing Federal Energy Regulatory Commission Staff, A National Assessment of Demand Response Potential (June 2009), found at <http://www.ferc.gov/legal/staff-reports/06-09-demand-response.pdf>; Barriers to Demand Side Response in PJM (2009)). As the Commission noted in footnote 122 to Order No. 745, in compliance filings submitted by RTOs and ISOs and their market monitors pursuant to Order No. 719, as well as in responsive pleadings, parties have mentioned additional barriers, such as the inability of demand response resources to set LMP, minimum size requirements, and others.

²¹ Order No. 745 at p. 46.

²² Order No. 745 at p. 46-47.

²³ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 154.

Commission's own regulations limit compliance filing to only material requested in the original order.

18 C.F.R. 154.203(b) states in relevant part:

Filings made to comply with Commission orders must include only those changes required to comply with the order... A compliance filing that includes other changes or that does not comply with the applicable order in every respect may be rejected.²⁴

In this case, the ISO-NE Filings go far beyond the changes required to comply with Order No. 745, and as noted above violate Order No. 745 by erecting new barriers to load's participation in demand response programs. Order No. 745 did require ISO-NE to amend its tariffs and market rules to pay qualified demand response resources the market price for energy for their reductions when these demand response resources have the capability to balance supply and demand and when payment of the market price for energy to these resources is cost-effective as determined by a net benefits test. To the extent that the ISO-NE Filing achieves this result, it may be in partial compliance with Order No. 745.

However nowhere in Order No. 745 can be found any basis for discriminating against customers based on the type of retail arrangement under which they receive service. In its filing, the ISO proposes discriminatory treatment of customers who rely upon behind the meter generation to serve part or all of their load. Further, there is nothing in the plain text of the regulation, or any portion of the Commission's Order, that requires or contemplates that in order to provide load reductions that balance supply and demand, assets who provide such services must be aggregated to the "resource" level in order to qualify. The ISO's proposed discrimination against customers with behind the meter generation, and the ISO's proposal to limit participation of individual assets both go beyond the scope of those changes required to comply with Order No. 745, and should be rejected.

III. MOTION TO INTERVENE

A. Pleadings and Other Communications

Service of all documents filed in this proceeding should be addressed to the following persons whose names and addresses should be placed on the official service list compiled by the Secretary for this proceeding:

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²⁴ 18 C.F.R. 154.203(b). See, e.g., *Monroe Gas Storage Company, LLC*, 131 FERC ¶ 61,206 (2010) (rejecting tariff sheets that failed to comply with the FERC order and refusing to grant a waiver because no justification is provided); *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,251 (2009) (rejecting tariff provisions not included in FERC's original order); see also *Equitrans, L.P.*, 87 F.E.R.C. ¶ 61,248 (1999) (rejecting proposal in tariff that exceeded FERC order).

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B. Description of NECHPI Parties

The **Northeast Combined Heat and Power Initiative** is a volunteer organization dedicated to accelerating the deployment of clean, efficient local generation including combined heat and power in the Northeastern United States, especially in New York. NECHPI leads the Northeast Region in encouraging the implementation of CHP technologies and drives CHP roadmap action items in support of the U.S. Department of Energy's (DOE) programs. NECHPI is an alliance that includes the DOE Northeast Clean Energy Application Center, The U.S. Environmental Protection Agency CHP Partnership, CHP developers and equipment

manufacturers, State and local governmental organizations and others involved with energy and the environment. NECHPI provides for coordination and communications among the various stakeholders in the region, including but not limited to CHP users, project developers & constructors, equipment manufacturers, federal agencies, state agencies, utilities, universities, research institutions, and public interest groups. <<http://www.nechpi.org>>

The Joint Supporters voluntary association which is managed by The E Cubed Company, LLC has participated in policy and market rule negotiations and proceedings in New England and the Mid-Atlantic States, including market design negotiations for the RTO/ISOs and the negotiations in 2001 to explore a regionalization across New England, New York and PJM. It has actively pursued the development of incentives and barrier removal for CHP and other distributed resources, including energy storage, smart grid, microgrids and demand response in all six states in New England, including legislation that promotes the spread of micro-CHP and high efficiency CHP to 1 MW and more in five of the six New England States and served on the Governor's CHP task force in the sixth, i.e. Rhode Island. <<http://www.ecubedllc.com>>

WADE USA, the U.S. affiliate of the **World Alliance for Decentralized Energy**, is a non-profit trade association representing the interests of companies and organizations seeking to advance clean and efficient distributed generation and decentralized power systems and technologies. WADE's members include companies that offer ancillary services. <<http://www.localpower.org/>>

The **U.S. Clean Heat & Power Association (USCHPA)** has provided superior advocacy, networking, education, and market information to companies in the business of clean, local energy generation. Indeed, more than 60 organizations and their affiliates (including several Fortune 500 companies), 300 individuals, and allied industry groups recognize that USCHPA membership delivers benefits in the form of sound clean energy policy and marketplace solutions necessary to survive in today's energy environment. <<http://www.uschpa.org/>>

The **Maine Solar Energy Association (MESEA)** is dedicated to promoting public awareness and use of solar energy and other renewable and nonpolluting energy sources, energy conservation, and green building practices. It has about 100 members. To these ends, MESEA sponsors hands-on workshops, publishes a quarterly newsletter, The Maine Sun, and maintains a website at www.mainesolar.org.

C. Motion to Intervene

The NECHNPI Parties move to intervene collectively and separately in the above captioned proceeding. The NECHPI Parties and their members have significant and unique interests that will be directly affected by the outcome of the above-captioned proceeding that cannot be protected by any other party. NECHPI Parties's participation in this docket is clearly in the public interest.

For these reasons, the Commission should grant this motion to intervene and grant the Northeast Clean Heat and Power Initiative (NECHPI) and allied parties status as full parties to this proceeding.

IV. CONCLUSION

Wherefore, for the foregoing reasons, the NECHPI Parties respectfully protest and move to intervene in this case.

Very truly yours,

/S/

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**NECHPI - Exhibit 1
Existing Combined Heat and Power Facilities
In Northeastern Seven States***

CT	153	689,019
MA	145	1,921,863
ME	30	1,130,880
NH	22	98,358
RI	24	104,168
VT	<u>28</u>	<u>42,644</u>
Sub-total NE	402	3,986,932
NY	436	5,882,028
Total	<u>838</u>	<u>9,868,960</u>

* <http://www.eea-inc.com/chpdata/index.html>

Benefits of Distributed Energy*

Reliability

- 1. Improved power quality****
- 2. Business continuity****
3. Reduced grid congestion
4. End-of-the-wire supply
5. Short lead-time, off-the-shelf, modular technology
6. Reduced system vulnerability
7. Disaster Mitigation
8. Disaster Recovery

Energy Efficiency

- 9. Improved fuel efficiency (fuel economy)****
10. Optimized use of scarce natural gas resources
11. Eliminates line losses

Economic Development

12. Lower cost for new electricity than new central generation & T&D
- 13. Improved energy cost predictability****
14. Reduces ratepayer investment required for central generation or T&D
15. Creates new high tech manufacturing sector domestic and export employment
16. Creates local jobs for installation, operation and maintenance

Energy Security

17. Supports competitive electricity market structure

Environmental Stewardship

18. Reduced emissions per unit of useful output
19. Reduces land use impacts and NIMBY objections
20. Reduces fresh water usage

* ***Only FOUR of the Twenty Benefits (*italics & underlined*) accrue to the User.*** The OTHERS are PUBLIC Benefits...

Source: Congressional Briefing, March 9, 2006. Richard Brent, Solar Turbines, Inc., John Jimison, Executive Director, U.S. Combined Heat and Power Association, Dr. Thomas Rojsford, Distributed Energy Development UTC Power, Cathy Van Way, Director, Legislative and Regulatory Affairs Cummins Inc.