

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

ISO New England Inc. and New England
Power Pool

Docket No. ER09-1051-000

**MOTION FOR LEAVE TO INTERVENE AND
LIMITED PROTEST OF CONNECTICUT
MUNICIPAL ELECTRIC ENERGY COOPERATIVE,
MASSACHUSETTS MUNICIPAL WHOLESALE
ELECTRIC COMPANY, AND NEW HAMPSHIRE
ELECTRIC COOPERATIVE, INC.**

Pursuant to Rules 211, 212 and 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.211, 385.212, 385.214, and the Commission’s May 1, 2009, “Combined Notice of Filings #1,” the Connecticut Municipal Electric Energy Cooperative (“CMEEC”), Massachusetts Municipal Wholesale Electric Company (“MMWEC”) and New Hampshire Electric Cooperative, Inc. (“NHEC”) (collectively, “Public Systems”): (1) request leave to intervene in the above-captioned proceeding, jointly and individually, with full rights as parties, and (2) protest limited portions of the April 28, 2009, “Compliance Filing,” submitted initiating the captioned docket by Independent System Operator New England Inc. (“ISO-NE”) in response to *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 73 *Fed. Reg.* 64100 (October 28, 2008), FERC Stats. & Regs. ¶ 31,281 (2008) (“Order No. 719”), *reh’g pending*.

Public Systems are generally supportive of the changes proposed by the ISO in its Compliance Filing to address the concerns raised in Order 719. However, Public Systems protest certain of the ISO’s proposed changes with regard to RTO “responsiveness” and ISO-NE’s failure to modify its load-response asset registration

procedures to ensure compliance with the laws and regulations of relevant electric retail regulatory authorities, as contemplated by Order No. 719. For the reasons expressed below, Public Systems request that the Commission direct the ISO to make certain changes to the protocols set forth in its Compliance Filing.

I. MOTION TO INTERVENE

CMEEC, MMWEC, and NHEC seek leave to intervene, jointly and individually, with full rights as parties because they have direct and substantial interests in the outcome of this proceeding.

CMEEC is a political subdivision of the State of Connecticut created in 1976 pursuant to Conn. Gen. Stat. §§ 7-233a *et seq.* It is a non-profit municipal joint action electric agency that provides the power supply requirements, at wholesale, of six municipal electric department participants with retail service territories in Connecticut (five of which are members of CMEEC) as well as several other Connecticut public utility customers purchasing power at wholesale.¹ CMEEC is an active participant in the New England wholesale power markets, a Participant in the New England Power Pool (“NEPOOL”), and a load serving entity of long-standing. CMEEC purchases and sells electric energy and ancillary services in the wholesale markets administered by the ISO.

MMWEC is a political subdivision of the Commonwealth of Massachusetts and a NEPOOL Participant engaged, inter alia, in the procurement and development of bulk power supply resources for its eighteen (18) municipal electric system members and

¹ Specifically, CMEEC provides power supply service to members: the City of Norwich Public Utilities, the City of Groton Department of Utilities, the Borough of Jewett City Department of Public Utilities, the South Norwalk Electric Works, the Third Taxing District of the City of Norwalk Electric Department; and to a participant: the Town of Wallingford Department of Public Utilities – Electric Division; and to customers: the Bozrah Light & Power Company (owned by the City of Groton Department of Utilities) and the Mohegan Tribal Utility Authority.

others. See Mass. St. 1975, c. 775. In the exercise of its statutory powers, MMWEC acquires electric energy and ancillary services from the wholesale markets administered by the ISO.² MMWEC and its members purchase regional network transmission service (“RNS”) under the ISO-NE OATT.

NHEC is a consumer-owned electric distribution cooperative that provides retail electric distribution service to all of its more than 80,000 member consumer accounts located in nine of New Hampshire’s ten counties. In 2008, NHEC’s peak load was approximately 180 MW. NHEC is a NEPOOL Participant, a purchaser in New England wholesale markets, and a purchaser of RNS service under the ISO-NE OATT.

In its April 28, 2009, filing, the ISO proposed certain changes to the agreements, tariffs, and other protocols governing New England’s restructured wholesale markets and ISO-NE’s responsibilities in developing and operating them. As participants in these markets and signatories to the relevant agreements, the interests of CMEEC, MMWEC and NHEC in the outcome of this proceeding are direct and substantial and not adequately represented by any other party. As such, granting CMEEC, MMWEC and NHEC leave to intervene in this proceeding, jointly and individually, with full rights as parties is in the public interest.

² The Stony Brook Energy Center in Ludlow, Massachusetts, is home to MMWEC’s existing, 520-MW Stony Brook plant. During 2006, MMWEC announced plans to construct a 280 MW natural gas and oil-fired plant at the Stony Brook site, which will be interconnected to New England’s 345 kV transmission system. Along with owning and operating the gas and oil-fired Stony Brook power plant, MMWEC has ownership interests in several other New England bulk power facilities, the output of which is used by MMWEC to provide competitive power supply resources to its member municipal systems and other Massachusetts municipal utilities.

II. CORRESPONDENCE AND COMMUNICATIONS

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III. PROTEST

In Order No. 719 (at P 502), the Commission “establishe[d] by rule an obligation for each RTO and ISO to make reforms, as necessary, to increase its responsiveness to the needs of customers and other stakeholders.” The Commission further stated that “[u]pon each RTO’s or ISO’s submittal of its compliance filing, parties will be free to raise responsiveness issues specific to each RTO or ISO that they believe they have not

been resolved satisfactorily.” *Id.* at P 513. While Public Systems appreciate the effort that was put into the stakeholder process and the resulting compliance filing in response to Order No. 719, further changes and/or clarifications are needed with respect to two areas: (1) the ISO’s articulation of “responsiveness”-related commitments within its organizational “Mission Statement”; and (2) ISO’s procedures for registering load-response assets that are enrolled through retail aggregators.

A. *The Commission Should Direct Changes To The ISO’s Proposed “Mission Statement”*

As recounted in the Compliance Filing, the ISO responded to Order No. 719’s directives on “responsiveness” by convening (with NEPOOL) a stakeholder working group, the purpose of which was to provide a forum to explore, among other things, potential improvements in the ISO’s “responsiveness” to stakeholder concerns. During January-April 2009, the “RTO Responsiveness and Governance Working Group” met on eight occasions (with both in-person and teleconference participation) and discussed a range of “responsiveness/accountability” issues and how best to address them. The Working Group meetings included representatives of New England market participants, State Commissions, and Attorney General/Consumer Advocate offices.

From the perspective of Public Systems, the development of the Working Group was long overdue. Public Systems and others have for many years raised concerns, before both this Commission and Congress, that the ISO has been insufficiently attentive to the consumer impacts of its actions.³ Thus, once the Working Group was formed, each

³ For example, as part of a group known as “New England Public Systems,” CMEEC, MMWEC, and NHEC provided comments in Docket No. RM04-12-000 that identified several specific measures that we proposed the Commission adopt to address RTO accountability issues. CMEEC and MMWEC raised similar concerns in the proceeding leading up to the issuance of Order 719, in Docket No. RM07-19-000.

of the Public Systems participated actively and constructively in the process. Brian Forshaw, a representative of one of the Public Systems, was a member of the RTO Responsiveness Working Group's steering committee.

In the Working Group dialogue, Public Systems focused on changes in the ISO-Market Participant structure that would help to ensure that the ISO was obligated: (1) to consider the customer cost impacts of its market design and administration; (2) to provide information to stakeholders evaluating those cost impacts (and offsetting benefits); and (3) to ensure that the ISO's activities were aimed at either providing or facilitating the provision of services to customers at the lowest reasonable cost, consistent with reliability.

In terms of securing the adoption of these obligations, Public Systems focused on the ISO's existing "Mission Statement," which consists of a set of "Objectives" stated in Section 2.3 of the current Participants Agreement, a contract among the ISO, NEPOOL, and the individual NEPOOL Participants. Public Systems sought through the Working Group to secure three changes to the language of Section 2.3: (1) elimination of the prohibition on filing FERC complaints premised on alleged ISO violations of the "Objectives"; (2) imposition of an obligation on the part of the ISO to conduct cost-benefit analyses of proposed major market design changes; and (3) inclusion of an obligation on the part of the ISO to provide, or facilitate the provision of, reliable service at the lowest reasonable cost to customers.

As reported in the ISO's Compliance Filing (at 115), potential changes to the Mission Statement were the "most heavily discussed matter[s]" addressed by the Working Group, and Public Systems share the ISO's observation that in the course of

those discussions it “listened to [stakeholder] concerns and made real and substantive changes in response thereto.” *Id.* at 116. For example, Public Systems agree that progress has been made through the proposed elimination (Compliance Filing at 117) of language contained in Participants Agreement Section 2.3 that rendered the existing “Objectives” unenforceable. In addition, Public Systems’ request for ISO to provide cost-benefit analyses in support of major market design changes has been partially satisfied by ISO’s proposed commitment to provide, with respect to “any major ISO initiative that affects market design, system planning or operation of the New England bulk power system, ... quantitative and qualitative information on the need for and the impacts, including costs, of the initiative.” Compliance Filing at 117-18. We note that requiring ISO-NE to provide stakeholders with “information” is not the same as requiring cost-benefit analyses—and does not by itself fulfill the requirement that ISO-NE, as a proponent of rate changes or market rules, carry its burden of proof to demonstrate that those changes are just and reasonable. However, Public Systems are hopeful that this new obligation will generate additional data and discussion to facilitate a reasoned, evidence-based analysis of the costs and benefits of proposed ISO actions. While we may quibble with the time it has taken and the effort that has been expended to get here, we acknowledge that these are positive developments.⁴

While progress was made, however, the long-term effectiveness of ISO-NE’s commitment to provide information, and the extent to which it will in fact facilitate meaningful analyses of its actions, will be a function of how the ISO defines a “major”

⁴ Public Systems were generally supportive of the ISO-proposed changes and voted for them in the NEPOOL process. However, that support was expressly premised on the ability to seek additional and needed changes through the Order No. 719 compliance process.

initiative and the quality of the assumptions and scope of the quantitative and qualitative information and analysis that the ISO provides. Public Systems note that there is some cause for concern, as there will be no effective recourse if the ISO refuses to provide the requisite data in a particular case and that refusal inhibits the stakeholders' ability to demonstrate that ISO-NE's proposed action is in fact a "major" one. In order to minimize future controversies and to avoid undoing the significant progress that was made through the Working Group, Public Systems submit that the Commission should require ISO-NE to provide stakeholders with a written explanation of the bases for any determination the ISO makes that a proposed market rule change is "non-major" and does not trigger the obligation to provide quantitative and qualitative information.⁵

Public Systems also assert that ISO-NE's proposed commitment to fulfill its functions cost-effectively—while a step forward—does not go far enough. Specifically, Public Systems are concerned that, even as revised, the ISO's "Mission Statement" does not set forth in sufficiently clear terms what should be the ISO's core responsibility: seeking to ensure that customers receive reliable service at the lowest reasonable cost. Public Systems ask the Commission to require ISO-NE to amend the "Mission Statement" to provide that:

In fulfilling this mission and consistent with the preceding principles, the ISO shall strive, to the greatest extent possible, perform all its functions and services in a cost-effective manner, for the benefit of all those served by the ISO to provide or facilitate the provision of reliable service at the lowest reasonable cost to consumers.

⁵ Obviously, Public Systems do not seek to impose on ISO-NE an obligation to provide the same amount of information in support of a determination that a proposed market rule change is non-major as ISO-NE would be required to provide in support of major market rule changes. A rule of reason should apply. But the ISO's explanation of its decision that a proposed market rule change is non-major should be sufficiently detailed to make clear the bases for ISO's decision and to allow those bases to be questioned and debated.

There is nothing startling or novel about Public Systems' proposed language. The "lowest reasonable cost" obligation is consistent with a long line of precedent under the Federal Power Act and Natural Gas Act.⁶ In fact, the Commission has expressly found that RTOs are supposed to be providing reliable service at the lowest reasonable cost.⁷ Moreover, the ISO itself represented to the Connecticut Congressional delegation (in 2005) that its "twin goals" are to "achiev[e] reliability in New England at the lowest reasonable cost,"⁸ and the Commission made a similar observation in 2007, *ISO New England Inc.*, 118 F.E.R.C. ¶ 61,105, P 21 (2007) (explaining that ISO "seeks only to provide reliable service at the lowest reasonable cost"). Having described its mission to Congress and the Commission in these very terms, ISO-NE should not be heard now to argue against inclusion of such language in its mission statement on grounds that it sets a standard to which ISO-NE neither can nor should be held.

ISO-NE's rejection of a somewhat different formulation "supported by the public utilities commissions of Maine, Vermont, Connecticut and New Hampshire, along with

⁶ See *Atlantic Refining Co. v. Public Service Comm'n of New York*, 360 U.S. 378, 388 (1959) (noting it was Congress's intent in drafting the Natural Gas Act that natural gas "shall be sold in interstate commerce at the lowest possible reasonable rate consistent with the maintenance of adequate service in the public interest."); *National Fuel Gas Supply Association v. FERC*, 900 F.2d 340, 346 (DC Cir 1990) (discussing a natural gas pipeline's duty to "minimize its overall costs to achieve the lowest reasonable rates consistent with the maintenance of adequate long term service."); *Columbia Gas Transmission Corporation*, 26 F.E.R.C. ¶ 61,034 (1984) (enforcing a pipeline's "fundamental duty to provide service at the lowest, reasonable rate consistent with maintenance of adequate service"); *Panhandle Eastern Pipeline Co.*, 44 F.E.R.C. ¶ 61,246 (1988) ("The Commission has stated that it will find abuse if a pipeline evidences a reckless disregard of the pipeline's fundamental duty to provide service at the lowest reasonable cost consistent with the maintenance of adequate service."); *Louisville Gas & Electric Co.*, 61 F.E.R.C. ¶ 61,016 (1993) ("One of the Commission's primary regulatory goals is to ensure the lowest, reasonable cost energy to consumers, consistent with reliable service.").

⁷ *PJM Interconnection LLC*, 119 F.E.R.C. ¶ 61,063, P 6 (2007) ("As an RTO, PJM assumed responsibility to plan the regional transmission grid to meet the needs of the region as a whole, with emphasis on achieving reliable supply at the lowest reasonable cost.").

⁸ Letter from Gordon van Welie, President and Chief Executive Officer, ISO New England, Inc., to The Honorable Christopher Dodd, United States Senate, *et al.*, at 3 (Aug. 24, 2005) (available at http://www.iso-ne.com/pubs/pubcomm/corr/2005/ct_delegation_letter_8_24_05.pdf).

various end users, municipal entities and consumer advocates,” likewise does not justify ISO-NE’s failure to accept the formulation that is advanced by Public Systems here (and was presented in the Working Group discussions), and that ISO and the Commission have used before to describe the ISO’s mission. On the contrary, the arguments set forth in the Compliance Filing on this issue are off base. For example, in discussing the new mission statement commitment to provide cost information in support of major proposed changes (and immediately before explaining why it disagreed with the adoption of a lowest reasonable cost standard), ISO asserted that it “does not believe that, when actions are needed to meet mandatory reliability standards, a concern over costs can obviate the need for the desired change.” Compliance Filing at 117. But that assertion poses no conflict with the language suggested by Public Systems, which would include within ISO’s mission a requirement to “strive to provide or facilitate the provision of *reliable* service at the lowest reasonable cost.” The purpose of this language is not to compromise reliability in the interest of low rates, but to ensure that ISO will strive to maintain reliability in the most cost-efficient manner.

Similarly, ISO-NE objects to the other entities’ version of a “lowest reasonable cost” standard on grounds that it was (assertedly) born of a desire to minimize transmission costs, would require ISO-NE to choose between transmission solutions and generation solutions or other alternatives, and would put ISO-NE in the position of becoming a quasi-regulator rather than a market operator. Compliance Filing at 118-19. Another objection, advanced during Working Group deliberations, was that costs to consumers are largely determined by retail rate regulation and that a “lowest reasonable cost to consumers” standard either would hold ISO-NE to a standard it could not achieve

or would require it to become a retail rate regulator. But these arguments do not apply to Public Systems' proposed formulation. Public Systems' proposed language is plainly aimed at *wholesale* electricity markets and *wholesale* rates, and does not seek to impose retail rate responsibilities on the ISO. Wholesale power costs are the largest single component of retail rates, so minimizing such costs (to the extent consistent with reliability) clearly will facilitate the provision of reliable service at the lowest reasonable cost to consumers. However, the imposition of this obligation would not foist retail rate responsibilities upon the ISO.

In any case, as proposed by Public Systems herein, the revised Mission Statement would not put the ISO in a position of *guaranteeing* the lowest reasonable rates consistent with reliability. Rather, ISO would be required to "strive, to the greatest extent possible," to provide or facilitate the provision of reliable service at the lowest reasonable cost. Any suggestion that such a standard would be impossible to meet, or would put ISO-NE in the role of regulator, is simply misplaced. Public Systems are not seeking to elevate ISO-NE to the role of regulator but, rather, to establish by contract a clear standard against which this Commission may judge ISO-NE's efforts to fulfill its functions.

Finally, ISO-NE argues that imposing a lowest reasonable cost standard would force the ISO to "determine the relative costs and benefits of alternatives to transmission and advocate for the alternative with the 'lowest reasonable cost,'" which it claims it is unable to do. Compliance Filing at 118. Specifically, ISO-NE complains that such a requirement:

would force ISO-NE to predict many future costs and outcomes, a function that ISO-NE does not believe it could fulfill effectively; these costs and outcomes include the costs of a generation facility, fuel costs, environmental

costs, emissions offsets, and the like, as well as the time frame for this evaluation.

Id. However, ISO-NE's protestations fly in the face of decades of public utility experience in long-term planning and market design activities. Admittedly, predictions are never perfect, but no one is insisting that they must be. The point is that, in order to provide consumers with reliable service at the lowest reasonable cost, such projections should be made and defended so that decisions can be made reasonably based on a sound evidentiary foundation.

Especially in light of its own, repeated representations as to its "mission," the ISO's unwillingness to include in its Mission Statement a straightforward obligation to strive to provide or facilitate the provision of reliable service at the lowest reasonable cost has caused consternation among Public Power representatives and others. Part of the basis for the concern is that the actual Mission Statement language proposed by ISO-NE is less clear, and less protective of consumers, than the understanding of that commitment set forth in ISO-NE's filing letter. The first sentence of the new language added to ISO-NE's mission statement provides that:

In fulfilling this mission and consistent with the preceding principles, the ISO shall strive to perform all its functions and services in a cost-effective manner, for the benefit of all those served by the ISO.

Compliance Filing at 117. While this is fine as far as it goes, we fear that this language could be read much more narrowly than was intended, especially if it is viewed on a stand-alone basis, *i.e.*, without the explanation provided by ISO-NE's filing letter. Specifically, Public Systems are concerned that this language could be read to require only that ISO-NE resources be spent cost-effectively and to focus only on impacts of

ISO-NE spending on the ISO's own capital and administrative budgets. However, as the Commission well knows, direct ISO-NE budget impacts are a small percentage of the ultimate cost impact on consumers of ISO-NE market design and administration decisions.

ISO-NE's filing letter provides some helpful clarification with respect to this language:

The first sentence of this paragraph is intended to express ISO-NE's commitment to cost-effectiveness in all of its functions and services, including market design, operations and planning. Further, this commitment is made for the benefit of "all those served," which ISO-NE believes includes the ultimate end-use consumers. ISO-NE chose the term "all those served" to ensure that the broadest and most inclusive view of all of its customers was incorporated into ISO-NE's mission statement.

Compliance Filing at 117. Public Systems appreciate ISO-NE's explanation that its "commitment to cost-effectiveness" extends to "all of its functions and services, including market design, operations, and planning" and is made "for the benefit of 'all those served,'" including "ultimate end-use consumers." *Id.* However, that understanding of the scope of ISO-NE's commitment is not readily apparent from the face of the Mission Statement itself and should be included there. Moreover, ISO-NE should make clear that its "commitment to cost-effectiveness" in functions such as "market design operations, and planning" means more than performing such functions in a way that makes efficient use of ISO-NE resources and minimizes direct ISO-NE budget impacts. It should clarify that its commitment to strive to be cost effective means that it will attempt to ensure that its actions are cost effective when viewed from the perspective

of all-in delivered transmission and wholesale power costs to wholesale customers and retail consumers to whom wholesale costs ultimately flow.

Consequently, if the Commission does not require ISO-NE to set forth in its Mission Statement a commitment to “strive to provide or facilitate the provision of reliable service at the lowest reasonable cost to consumers,” as set forth *supra*, then, alternatively and at minimum, the Commission should require ISO-NE to amend its Mission Statement to bring the text of the Mission Statement more in line with the parties’ intent as expressed in the filing letter. To that end, Public Systems suggest that the Mission Statement text be amended to provide that:

In fulfilling this mission and consistent with the preceding principles, the ISO shall strive to perform all its functions and services, including the design and administration of wholesale markets, in a cost-effective manner, for the benefit of all those served by the ISO, including wholesale customers and ultimate consumers.

Finally, if the Commission does not require ISO-NE to amend its Mission Statement formally in either fashion, then the Commission should reiterate in any order accepting ISO’s Compliance Filing—as it has said before (*see supra* at 9 & nn.7-8)—that it expects ISOs and RTOs to seek to provide reliable service at the lowest reasonable cost.

B. Where ISO-NE's "Responsiveness" Commitments Require It to Provide Information to Certain Stakeholders, It Should Provide that Information to All Stakeholders Through Postings on Its Website

In connection with its efforts to improve its responsiveness to stakeholders, ISO-NE has agreed to provide certain information to state commissions, consumer advocates, and other organizations. For example, ISO-NE states that:

In addition to the outreach by the Board of Directors discussed above, ISO-NE notes that ISO-NE's External Affairs Department focuses significant efforts and resources on the ongoing relationships with the six New England's state regulatory agencies and other governmental officials involved in regional energy issues. Each month, the External Affairs Department sends a briefing report to the states, through NECPUC, summarizing ISO-NE activities that may be of interest to the states. The report includes new issues, updates on continuing issues and information on dates and subjects for upcoming stakeholder meetings and Commission filings.

Compliance Filing at 104. In its Compliance Filing, ISO-NE indicates that it has further agreed to make available to New England's consumer advocates "the same types of information and staff support that are provided to NECPUC." *Id.* at 108. ISO-NE further commits to provide substantial additional information and reports to the members of a "Consumer Liaison Group." *See id.* at 109-110.

Public Systems do not object to any of these requirements. Indeed, we support them as useful tools to promote ISO transparency and responsiveness. To further promote such transparency and responsiveness, however, Public Systems urge the Commission to require that ISO-NE post on its website any documents, reports, or other written information that is shared with NECPUC, the consumer advocates, or the Consumer Liaison Group pursuant to these provisions.

C. The ISO Should Be Directed to Require Certification of Compliance With Relevant Electric Retail Regulatory Authority Laws and Regulations Before It Registers Load Response Assets

Public Systems are generally supportive of the other, “non-responsiveness” changes that will be proposed by the ISO in its Order No. 719 compliance filing. However, Public Systems protest ISO-NE’s failure to modify its load-response asset registration procedures to ensure compliance with Order No. 719. In that order, the Commission required ISO-NE “to permit an ARC [aggregator of retail customers] to bid demand response on behalf of retail customers directly into the RTO’s or ISO’s organized markets, *unless* the laws or regulations of the relevant electric retail regulatory authority do not permit a retail customer to participate.” Order No. 719 at P 154 (emphasis added).

In doing so, the Commission recognized that “allowing ARCs to bid into the wholesale energy market without the relevant electric retail regulatory authority’s express permission may have unintended consequences, such as placing an undue burden on the relevant electric retail regulatory authority.” *Id.* P 155. The Commission expressly disclaimed any intent to “interfere with the operation of successful demand response programs, place an undue burden on state and local retail regulatory entities, or to raise new concerns regarding federal and state jurisdiction.” *Id.* Thus, the Commission put the onus of ensuring compliance with this regime squarely on the regulated ISOs and RTOs, explaining that “we will not require a retail electric regulatory authority to make any showing or take any action in compliance with this rule.” *Id.* The Commission acknowledged that ISOs and RTOs “should not be in the position of interpreting the laws or regulations of a relevant electric retail regulatory authority,” *id.* at n.212, but it

empowered ISOs and to RTOs to implement measures—such as certification requirements—to ensure compliance with such laws or regulations. *Id.* at P 158.

ISO-NE's processes for permitting retail demand response aggregation are not sufficient to comply with Order No. 719's goal of permitting retail demand response aggregation without imposing undue burdens on relevant electric retail regulatory authorities. Currently, the ISO allows ARCs to enroll customers and to participate in demand response programs without regard for whether a relevant electric retail regulatory authority has prohibited such participation, has mandated that such participation be coordinated with the local utility, or has imposed other certification requirements that must be met before a demand response aggregator can participate. ISO merely provides after-the-fact notice to the relevant electric retail regulatory authority, upon request, at which point it may pursue whatever legal remedies are available against the customer or the ARC. As ISO states in its Compliance Filing (at 38):

[U]nder existing procedures, ISO-NE, upon request, will provide informational reports to local distribution companies, including municipal utilities and cooperative utilities, that identify all demand response program resources assets in their metering domain and the enrolling participant that registered the asset. In the case of a municipal or cooperative utility that believes a demand response provider has inappropriately registered an asset within its service territory, the municipal utility can then take all appropriate legal or other actions available to them with respect to the retail customer that is associated with the demand response program asset or the enrolling participant.

This position is neither acceptable to Public Systems nor consistent with Order No. 719.

ISO-NE's existing procedures allow ARCs to register assets without regard for whether such registration is consistent with the laws or regulations of a relevant electric

retail regulatory authority. ISO-NE merely identifies the demand response assets and enrolling participants within a load-serving entity's metering domain, after the fact and only upon request, thereby putting the burden upon such entities and/or state regulatory authorities first to make such requests and then to "take all appropriate legal or other actions available to them with respect to the retail customer that is associated with the demand response program asset or the enrolling participant." *Id.* ISO-NE's procedures do not even make clear that the ISO will remove the improperly registered asset from its load response program.

This after-the-fact, upon-request notice process is inefficient, unduly burdensome to state and local regulatory authorities, and permits asset registrations that violate state or local regulatory requirements. While we recognize that ISO-NE should not be responsible for interpreting and applying the laws and regulations of relevant electric retail regulatory authorities, it need not do so in order to comply with requirements of Order No. 719. ISO-NE can comply with Order No.719, promote demand response participation, and ensure compliance with state and local laws and regulations by requiring the submission of a certification of compliance, issued by the relevant electric retail authority, as part of the ISO's asset-registration process. Such a certification requirement was expressly contemplated by Order No. 719 (at ¶ 158, item g), and could be implemented in a fashion similar to the process used by ISO-NE to verify the accuracy of information submitted to it regarding bilateral power sales agreements.⁹ A certification requirement would facilitate compliance with applicable state or local laws,

⁹ In that context, sellers submit information regarding the agreement to the ISO electronically, but the transaction is not activated in ISO-NE's system until the buyer verifies that such information is accurate.

and would encourage early coordination between ARCs and local distribution companies and/or state and local regulatory authorities. It would also reduce the likelihood that demand response assets will be incorrectly enrolled in the wrong domains—an error that has occurred on several occasions and that could cause significant problems if load reconstitution were to take place.¹⁰

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, Public Systems request that the Commission: (1) grant CMEEC, MMWEC and NHEC leave to intervene in this proceeding, jointly and individually, with full rights as parties; and (2) take action in accordance with the requests contained herein.

Respectfully submitted,

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¹⁰ In effect, the demand response would be “reconstituted” (*i.e.*, added back) into the wrong loads.

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated on this 26th day of May, 2009.

/s/ Jeffrey A. Schwarz

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