



“What is the Future of FERC-regulated Demand Response”

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Why Order No. 745 Vacatur

753 F.3d 216 (D.C. Cir. 2014) (“*EPSA v FERC*”)

- **By definition and operation, demand response is a demand side retail resource**
- **Overreach of Order No. 745 implementing full LMP with no offset for the foregone purchase by retail load (LMP-G)**
- **Overstatement of equivalency or comparability with generation (“1 negawatt = 1 megawatt”)**
- **Attempt to resolve retail barriers by mandating wholesale compensation (Chairman Wellinghoff statements)**

Broader Issues Raised by Wholesale DR

- **Structural changes in the wholesale markets create new pressures for resource performance, resource mix going forward**
- **Demand plays an important role, but it matters how, when and under what terms it participates as a resource**
- **Behind-the-meter diesel generation masquerading as DR poses serious environmental concerns (*EPA RICE NESHAP rule and appeals*)**
- **Undercutting “1 NW = 1 MW” is lack of comparability in performance requirements and obligations, particularly in capacity markets (must offer rules, 2.5 % holdback in PJM, qualification milestones, rate of obligation buy-out)**

Post *EPSA v FERC* at the Commission

- **Beyond energy markets: FirstEnergy complaint (PJM, EL14-55 filed 5/23/14); NEPGA complaint (ISO NE, EL15-21 filed 11/14/2014)**
- **Complaints created ex parte with FERC – cannot discuss “next steps” or a path forward**
- **Certain RTOs have stated they will move forward *based on guidance* from FERC**
- **Has FERC developed guidance or approaches to be ready for issuance of the mandate?**

Post *EPSA v FERC* in the RTOs: PJM

- **White paper on evolution of DR for stakeholder discussion (early Fall 2014)**
- **“Stop Gap” proposal filed to address treatment of DR if Supreme Court cert is denied before 2015 Base Residual Auction for capacity (ER15-852, filed 1/14/15)**
 - **Moves demand curve to reflect load reduced by DR bids through wholesale entities (LSEs), thereby reducing amount of capacity to be procured and price for that capacity**
 - **Nearly all stakeholders across the spectrum opposed or raised concerns**
- **FERC rejects as premature, introducing excessive uncertainties, interfering with FERC’s ability to respond should the *EPSA v FERC* mandate issue (Order issued 3/31/15).**
- **Tony Clark dissent -- order avoids merits and opportunity to address prior regulatory overreach and “system inefficiencies created by the overcompensation of [DR]...[FERC should] seize the opportunity to provide guidance on a functional demand-side product to the betterment of the PJM markets.”**

Post *EPSA v FERC*: ISO New England

- **Price-Responsive Demand approved for full implementation in energy markets (pursuant to Order 745) June 1, 2017**
- **Capacity market rules (FCM) revised to be consistent with PRD, specified rights and obligations of DR capacity to better match generation resources (must offer requirement)**
- **ISO NE “Contingency Plan” white paper on DR treatment issued 4/17/15 – delays energy market PRD full implementation to at least 2018; offers demand side alternatives for DR participation as demand side resource in FCM (NEPOOL Markets Committee meeting May 6-7)**

Post *EPSA v FERC*: NYISO

- **New York LSEs file DR backstop petition to address contingency tariff DR issues (NYPSC Case 15-E-01000) pending *EPSA v FERC* outcome**
- **Proposal anticipates NYISO will continue administrative operational role to incorporate utility DR programs to meet capacity obligation and compensate customers that provide DR**

Best Approach – Price Responsive Demand (PRD)

- Versions approved for energy markets in eastern RTOs
- Dynamic retail rate provides signals to customer for optimum demand response participation and load reduction when needed
- PRD functions as demand side resource in RTO markets with provisions allowing visibility to system operator to ensure performance, measuring reductions, thereby fully compliant with jurisdictional boundaries
- **PJM IMM (Stop Gap proceeding comments): *If PJM wants to prepare for the future, regardless of the Supreme Court decision in the EPSA case, it should dismantle the current obsolete and flawed approach to demand response as a supply side product and implement an approach consistent with the principles underlying the Price Responsive Demand (PRD) rules that became effective May 15, 2012. Granting the relevant parts of the FirstEnergy's DR complaint pending in Docket No. ER14-55 could achieve this objective.***



Commissioner Tony Clark Dissent to PJM Stop Gap Order

Enabling functioning price-responsive demand is the right answer to the conundrum in which we now find ourselves, and it is where the Commission should expend the bulk of its efforts. Price-responsive demand provides all of the proper price-forming benefits the Commission seeks, but without concocting bureaucratically complex schemes to pay consumers not to consume power. In a world of robust price-responsive demand, end-use customers would be aided by advanced demand side management devices. This would allow them to signal their willingness to pay for energy, thereby fulfilling their role on the demand side of the equation. The result would be a properly functioning, efficient, and competitive marketplace.

Rededicating ourselves to this effort by refining PJM's existing PRD product is exactly what is needed at this time. The Commission's efforts would promote active participation of the States because only they have the retail rate setting authority needed to align retail rates in such a way that enables price-responsive demand. The Commission's prior impatience with the pace of price-responsive demand has led us to the position in which we now find ourselves—jurisdictionally uncertain and compromised from the standpoint of sound economics.

While the existing PRD product is a rational way for demand response to be recognized in the wholesale market, the current market rules have left PRD under-utilized in the PJM region. The wholesale capacity and energy market designs overcompensate and subsidize demand response as a supply resource, and not surprisingly, developers are being lured toward that unsustainable compensation scheme. The Commission should work with the States to promote more accurate demand-side signals, and the PRD product is a good start. *

So What Next?

- **Orderly transition, which will require guidance from FERC and development by RTOs to meet individual market designs**
- **Existing state programs may be ramped up anew**
- **State authority over DR may assist states with EPA Clean Power Plan compliance**
- **Timing – anybody's guess**



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