

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

June 20, 2005

In Reply Refer To:
New York Independent System Operator, Inc.
Docket No. ER03-647-006

New York Independent System Operator, Inc.
3890 Carman Road
Schenectady, NY 12303

Attention: Robert E. Fernandez, Esq.
General Counsel and Secretary

Reference: New York Independent System Operator, Inc., Docket No. ER03-647-004,
Reports on Implementation of the ICAP Demand Curve

Dear Mr. Fernandez:

1. Pursuant to directives in the Commission's order dated May 20, 2003 that accepted the Installed Capacity (ICAP) Demand Curve,¹ the New York Independent System Operator, Inc. (NYISO) filed two reports on December 1, 2004: (a) "Report on Implementation of the ICAP Demand Curve" (Implementation Report), and (b) "Report on Withholding Behavior Under the ICAP Demand Curve" (Withholding Behavior Report). In addition, in an order issued September 22, 2004, the Commission directed the NYISO to examine in detail in its December report on implementation status: (1) trends in the amount of capacity purchased in the various auctions, and (2) the impact of the ICAP Demand Curve on new investment.²

¹ *New York Independent System Operator, Inc.*, 103 FERC ¶ 61,201, *reh'g denied*, 105 FERC ¶ 61,108 (2003) (May 20 Order).

² *New York Independent System Operator, Inc.*, 108 FERC ¶ 61,080 at P 10 (2004) (September 22 Order).

2. In the Implementation Report, the NYISO reviewed its experience with the implementation of the ICAP Demand Curve over the 18 months since its approval in May 2003. This report summarizes the results of an analysis conducted by the NYISO Market Services Department. As part of the study, the Market Services Department collected auction results from May 2003 through October 2004, encompassing the 2003 and 2004 Summer Capability Periods, and the 2003-2004 Winter Capability Period.

3. Based on the review of this data, the NYISO indicates that it has observed market trends that it anticipated in its Demand Curve filing. It reports that the amount of capacity committed to the New York markets has trended upwards for the New York Control Area as a whole as well as for the New York City and Long Island localities. The report states that, with the increase of available capacity, ICAP prices have stabilized and are moving downward. Regarding investment in new generation, the NYISO notes, “[g]iven the comparatively longer lead time required to site, develop, and complete the construction of a new generation project, it is difficult for the NYISO to demonstrate to the Commission any specific conclusions regarding the effects of the ICAP Demand Curves on development of new generation in the eighteen-month period since their implementation.”³ However, the NYISO still believes that “the ICAP Demand Curves will provide price signals that encourage the addition of new generation in future increments that maintain system reliability.”⁴

4. In the Withholding Behavior Report, the NYISO’s Market Monitoring and Performance (MMP) Department conducted a study of the impact of the ICAP Demand Curve on offering behavior in the NYISO’s ICAP market. As part of this study, the MMP collected data regarding certification, Unforced Capacity requirements, offers for capacity, and auction results from the 2003-2004 Winter Capability Period and 2004 Summer Capability Period.

5. Based on the review of this data, the NYISO indicates that it sees no evidence of significant physical or economic withholding in its ICAP markets. The NYISO states that there is no category of ICAP in which apparent withholding exceeds six percent of available supplies within the New York Control Area, and for most categories, apparent withholding percentages are much lower. The NYISO observes that it is difficult to conclude that external suppliers are withholding supplies from New York, or that “a strategy of physical withholding by any capacity owner in the New York markets was even in place, or that such a strategy would be profitable on a small scale.”⁵ Regarding

³ Implementation Report at 11.

⁴ *Id.*

⁵ Withholding Behavior Report at 3.

economic withholding, the NYISO states that if there is any, it is quite small, estimated at 0.4 percent in the winter capability period, and 0.2 percent in the summer capability period. The NYISO reports that its MMP cannot conclude that capacity owners are offering in such a way as to set auction clearing prices at anomalous levels or to avoid being taken in the auctions.

6. Notice of the filing was published in the *Federal Register*, 69 Fed. Reg. 76,462 (2004), with comments, protests and interventions due on or before December 23, 2004. Multiple Intervenors filed a motion to intervene⁶ and comments on the Implementation Report. Multiple Intervenors state that the NYISO did not comply with the Commission's directive for a detailed examination of the impact of the ICAP Demand Curve on new investment. Multiple Intervenors assert that there is no detailed analysis, and observe that the NYISO's finding that it cannot reach any conclusions regarding the effects on development of new generation is the same as that provided in its first annual implementation report and that prompted the Commission in the September 22 Order to require more detail. Multiple Intervenors conclude that the Commission should reject the filing and direct the NYISO to undertake the detailed analysis that had been required earlier. Multiple Intervenors also criticize the report for not providing sufficient detail regarding the amount of capacity purchased in various auctions, or the trends in those purchases both prior to and after implementation of the Demand Curve, and request that the Commission reject the report and require the NYISO to provide that additional data.

7. The Commission accepts NYISO's Implementation Report and Withholding Behavior Report as in compliance with the directives of the May 20 and September 22 Orders. These two reports provide valuable information on how the ICAP market operated between May 2003 through October 2004, and the effect of the ICAP Demand Curve on NYISO capacity markets, as directed in the May 20 Order. With regard to Multiple Intervenors' comments on the lack of a detailed analysis of the effects of the Demand Curve on new generation, we agree with the NYISO's assertion that 18 months is too short a period to determine the effects of the Demand Curve on new generation. However, we direct the NYISO to provide in its next compliance report⁷ either a detailed examination of the impact of the ICAP Demand Curve or specification of the period of time necessary to begin observing any effects of the Demand Curve on new generation. In addition, we direct the NYISO to provide the documentation (*e.g.*, data analysis, summaries of discussions with developers or financial representatives) that supports its conclusions on the impact of the ICAP Demand Curve on new generation in New York in its next compliance report. We also reject Multiple Intervenors' criticism of the analysis of the amount of capacity procured in the various auctions. Prior orders did not require

⁶ We note that Multiple Intervenors were already parties to this proceeding by virtue of their timely intervention filed in April 2003.

⁷ The NYISO's next report is due December 1, 2005.

the NYISO to provide data on auctions conducted before the Demand Curve was implemented, and we find that the NYISO has provided adequate information on the amount of capacity transacted in the various auctions over time.

By direction of the Commission.

Linda Mitry,
Deputy Secretary.