

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426  
108 FERC ¶ 61,280  
September 22, 2004

In Reply Refer To: New York ISO, Inc.  
Docket No. ER03-647-004

Kathy Robb  
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200 Park Avenue, 31<sup>st</sup> Floor  
New York, NY 10166-0136

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

Dear Ms. Robb:

1. Pursuant to directives in the Commission's order dated May 20, 2003 that accepted the ICAP Demand Curve,<sup>1</sup> the New York Independent System Operator, Inc. (NYISO) filed two reports on December 8, 2003: (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).
2. In the Implementation Report, the NYISO reviewed its experience with the implementation of the ICAP Demand Curve since its approval in May 2003. This report summarizes the results of a study conducted by the NYISO Market Services Department. As part of the study, the Market Services Department collected auction results from the 2002 and 2003 Summer Capability Periods, the 2002-2003 Winter Capability Period and the first month of 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 the NYISO's Demand Curve filing. Capacity prices are higher than a year ago, but have steadily declined since the implementation of the ICAP Demand Curve, while the total amount of capacity offered into the Installed Capacity auctions has increased. Based on the analysis of the preliminary results by the Market

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

Services Department, “the NYISO concludes that the ICAP Demand Curve has already begun to stabilize prices in the Installed Capacity Market, which will help create incentives for investment in new generation.”<sup>2</sup>

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 Installed Capacity market. As part of this study, the MMP collected data regarding certification, Unforced Capacity requirements, offers, and results from the 2002 and 2003 Summer Capability Period Installed Capacity auctions.

5. Based on the review of this data, the NYISO indicates that it has not observed, in the short time since the implementation of the ICAP Demand Curve, significant economic or physical withholding in the Installed Capacity market. The NYISO reports that the ICAP Demand Curve has reduced the incentive to withhold capacity, because the Market-Clearing Prices are not significantly affected by reductions in the amount of capacity bid into the market. Nevertheless, the NYISO states, MMP is continuing to investigate unique offering behavior in the Long Island ICAP Spot Market auction, which demonstrated different patterns of capacity purchases and prices than the remainder of the state.

6. Notice of the filing was published in the *Federal Register*, 68 Fed. Reg. 74,571 (2003), with comments, protests, and interventions due on or before December 29, 2003. AES Eastern Energy, L.P., Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (Con Edison), Independent Power Producers of New York, Inc. (IPPNY), Multiple Intervenors, New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation (NYSEG and RG&E), and NRG Companies filed timely protests or comments in support of the NYISO compliance report. Most of these entities also filed motions to intervene. In addition, Indicated New York Transmission Owners, filed a motion to intervene.<sup>3</sup> NYISO and Keyspan-Ravenswood, L.L.C. submitted answers to the protests.

7. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2), prohibits answers to protests unless otherwise permitted by the decisional authority. We are not persuaded to accept the answers and will, therefore, reject them.

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<sup>2</sup> Implementation Report at 1.

<sup>3</sup> We note that all of the entities that filed motions to intervene, including Indicated New York Transmission Owners, were already parties to this proceeding by virtue of their timely interventions filed in April 2003.

8. No comments were submitted regarding the Withholding Behavior Report. Six parties commented on the Implementation Report. Three parties (AES Eastern Energy, IPPNY, and NRG Companies) filed comments in support and recommend that the Implementation Report be accepted. They commend the NYISO on the quality of the analysis, and are pleased that the ICAP Demand Curve has performed in practice as was intended and expected. While they acknowledge that there has been insufficient time and experience with the ICAP Demand Curve to gauge whether there have been increased commitments to bilateral transactions, they argue that over time the ICAP Demand Curve should encourage long-term contracting.

9. Three parties (Con Edison, Multiple Intervenors, and NYSEG and RG&E) protest the conclusions in the Implementation Report. They assert that the Implementation Report did not address the impact of the Demand Curve on customers and question whether the implementation of the Demand Curve has facilitated new generation investment. Con Edison argues that the conclusions about the implementation of the ICAP Demand Curve causing prices for installed capacity to decrease while causing the availability of capacity to increase are misleading. Con Edison states that, in reality, the ICAP Demand Curve has increased costs to LSEs by both increasing the amount of capacity that they have to purchase and the cost of that capacity. Con Edison also highlights the lack of incentive to conduct bilateral deals by noting the reduction in capacity purchased in the Capability Period auction and the monthly auctions (as opposed to the spot market auction). Multiple Intervenors argue similar points and states that to determine the real cost impact of the Demand Curve on capacity, the price of capacity under the Demand Curve should be compared to the price of capacity that existed prior to the Demand Curve's implementation. Multiple Intervenors also argue that "it is incumbent on the Commission to ensure that the Demand Curve costs are accurately portrayed and that the purported benefits of the Demand Curve are received,"<sup>4</sup> and they request that the Commission require frequent updates on the impact of the ICAP Demand Curve on new investment.

10. The Commission accepts NYISO's Implementation Report and Withholding Behavior Report as in compliance with the directions of the May 20 Order. These two reports provide valuable information on how the installed capacity markets operated during the Summer 2003 capability period, and the effect of the ICAP Demand Curve on NYISO capacity markets, as directed in the May 20 Order. We are cognizant of the criticisms raised by several parties that the Implementation Report did not address cost impacts on customers and the increased capacity obligations of LSEs in New York. The Commission shares the concerns of the parties about whether bilateral deals are disadvantaged and whether incentives for investment in generation are being realized, but it is too short of a time period to draw definitive conclusions about the long-term impact

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<sup>4</sup> Multiple Intervenors Comment at 6.

of the ICAP Demand Curve. However, we will direct the NYISO in its forthcoming two annual reports on implementation status to examine in detail: (1) trends in the amount of capacity purchased in the various auctions, and (2) the impact of the ICAP Demand Curve on new investment.

By direction of the Commission.

Linda Mitry,  
Acting Secretary.