

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

October 29, 2004

In Reply Refer To:
New York Independent System Operator, Inc.
Docket No. ER04-1188-000

New York Independent System Operator, Inc.
Attn: Robert E. Fernandez, Esq.
General Counsel and Secretary
290 Washington Avenue Extension
Albany, NY 12203

Dear Mr. Fernandez:

1. In this letter order, the Commission accepts in part, as modified and with conditions, and rejects in part tariff revisions submitted by the New York Independent System Operator, Inc. (NYISO) to modify its incentivized Day-Ahead Economic Load Curtailment Program (Program), commonly known as the Day-Ahead Demand Reduction Program (DADRP). This letter order benefits customers by improving demand response program implementation in the New York Control Area.

2. In an order issued May 16, 2001,¹ the Commission approved revisions to the NYISO Services Tariff to implement the DADRP. On March 21, 2003, the Commission approved DADRP amendments to the Services Tariff including the adoption of a zonal floor bid price of \$50/MWh and an extension of availability of the DADRP through October 31, 2004.² NYISO asserted that the floor price was designed to prevent a DADRP Resource from submitting low bids for periods of time when its load would already be off-line for maintenance or regularly scheduled shutdowns, thus discouraging free-ridership and bidding behavior that provides no real benefit. The March 2003 Order

¹ *New York Independent System Operator, Inc.*, 95 FERC ¶ 61,223 (2001) clarified, 98 FERC ¶ 61,268 (2002).

² *New York Independent System Operator, Inc.*, 102 FERC ¶ 61,313 (2003) (March 2003 Order).

directed NYISO to file a detailed evaluation of the efficacy of the DADRP and any related proposed tariff revisions, including an evaluation of the costs and benefits of changing the status of the Program.

3. In the instant filing, NYISO proposes two amendments, and clarification of an existing practice. NYISO's first proposed change is to increase the zonal floor bid price from \$50/MWh to \$75/MWh to further minimize free-ridership, improve the program's "net social welfare" (the change in consumer and producer surplus) impacts and moderate market clearing prices. NYISO states that, as part of its annual evaluation of demand response programs, it analyzed the "net social welfare" associated with accepted DADRP offers for calendar years 2001 through 2003. The analysis indicated that, given the relatively low day-ahead energy prices seen in 2002 and 2003, the overall efficiency savings provided were less than the financial settlements paid to DADRP participants, resulting in a negative "net social welfare."³ Consequently, NYISO reevaluated the \$50/MWh floor price and determined an increase to \$75/MWh would be more effective. NYISO also states that it intends to continue to assess participation in the DADRP and the nature of bids submitted by participants to determine whether further changes in the floor price may be warranted in the future.

4. Notice of NYISO's filing was published in the *Federal Register*, 69 Fed. Reg. 56,213 (2004), with comments, protests, and interventions due on or before September 22, 2004. None was received.

5. In the March 2003 Order, we accepted NYISO's \$50/MWh floor in anticipation that it would encourage reduced consumption during peak periods when demand is high relative to supply and when energy prices rise. We also believed that it was reasonable to limit payment, as an incentive for reducing demand, when supply is ample relative to demand. NYISO has now determined that opportunities to be a free-rider in the DADRP could be further minimized by raising the bid floor to \$75/MWh, without harming the effectiveness of the program. No party opposed NYISO's proposed change to the bid floor. NYISO's proposal appears to be just and reasonable and we will therefore accept it.

6. The second change proposed by NYISO is to remove the current provision in section 4.16 that terminates the availability of the Demand Reduction Incentive Payment after October 31, 2004. The purpose of this change is to reflect NYISO's desire to continue the program without a pre-determined termination or sunset date. The proposed

³ See Neenan Associates, A Study of NYISO 2003 PRL Program Performance, (available at <http://mdex.nyiso.com/Demand+Response+Programs>).

elimination of the sunset date is also intended to address the concerns of Demand Reduction Aggregators and other parties that the uncertainty as to whether the program would continue beyond the current sunset date makes the DADRP difficult to market to potential new Demand Reduction resources.

7. NYISO states that it will continue to monitor participation in DADRP, as well as policy developments surrounding Market Participants' awareness of real-time energy prices, and assess on an ongoing basis the continuing need for an incentive in the DADRP. In the event that it determines that Market Participants have sufficient incentives to pursue economic demand reduction as a result of being subject to real-time prices or other initiatives, NYISO states that it will reconsider the continued need for an incentivized DADRP.

8. In the March 2003 Order, the Commission stated that “NYISO should evaluate whether these programs are the most effective means to incorporate demand response into the NYISO market, and whether the programs should remain temporary or become permanent. The Commission therefore directs NYISO to develop and file, beforehand, a detailed evaluation of the efficacy of these programs, including the costs and benefits of changing their status, and to propose any related tariff revisions.” To date, NYISO has not provided the detailed evaluation that we required, nor has it shown that the DADRP is “the most effective means to incorporate demand response into the NYISO market” or why the DADRP should become permanent. It has only shown that the program seems to be producing net benefits.⁴ Therefore we will only approve the extension of the availability of the Demand Reduction Incentive Payment for one year, until October 31, 2005, rather than indefinitely as requested. NYISO is hereby directed to submit a substitute Ninth Revised Sheet No. 34 to reflect this determination. NYISO is also directed to submit the evaluation required by our March 2003 Order and if it desires to further extend the availability of the Demand Reduction Incentive Payment of the DADRP, to make a filing at least 60 days prior to the requested effective date of any proposed revisions.

9. NYISO provides a clarification of its continued exclusion of distributed generation from DADRP participation in anticipation of comments that the program should be amended to allow participation by distributed generation resources. NYISO states that it believes that distributed generators are best integrated into both the NYISO markets and the reliable operation of the NYISO-administered bulk power system by being visible to

⁴ See, e.g., New York Independent System Operator, Inc. Semi-Annual Compliance Report on Demand Response Programs and the Addition of New Generation FERC Docket No. ER01-3001-008 (March 2001).

NYISO system operators and the NYISO operations and market administration software. The DADRP, on the other hand, is aimed primarily at resources that are, by definition, not directly visible to NYISO. In addition, because of the DADRP's current incentives, it is possible that in certain instances participating distributed generation would be able to receive double the payment that similarly-situated non-participating distributed generation might receive. NYISO believes that allowing distributed generation resources to participate in DADRP could provide a significant financial incentive for generating units that might otherwise be directly visible to, and controllable by, NYISO to go "behind the fence." In NYISO's opinion, such a result could have a negative impact on the reliable operation of New York's bulk power system.

10. No party filed comments on this issue. The Commission agrees with NYISO and therefore will allow the continued exclusion of distributed generation resources from participation in the DADRP.

11. Accordingly, the Commission accepts NYISO's proposed revisions to its FERC Electric Tariff Original Volume No. 2, Ninth Revised Sheet No. 34 and Second Revised Sheet No. 95A, as modified. NYISO is directed to file a substitute Ninth Revised Sheet No. 34 to reflect the extension of the Demand Reduction Incentive Payments to October 31, 2005, in accordance with the above discussion.

By direction of the Commission.

Linda Mitry,
Acting Secretary.