

# ELCON PRESS RELEASE

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## ELCON FILES AT COURT OF APPEALS IN NEW YORK GENERATOR CASE

The Electricity Consumers Resource Council (ELCON), along with several other industrial electricity users, has filed a petition with the United States Court of Appeals (D.C. Circuit) appealing an order by FERC that approved a proposal by the New York ISO (NYISO) allowing the ISO to implement a plan allegedly designed to increase generation.

“The New York ISO’s so-called Demand Curve plan will not accomplish its stated objective— which is increased generation – but even FERC admits that it is a novel and experimental proposal that will increase costs for ends users,” asserted John Anderson, ELCON’s executive director. “And it will also – unnecessarily – increase profits for generators.”

Specifically, the ELCON petition questions the wisdom and legality of the NYISO’s Installed Capacity’s (ICAP) Demand Curve proposal. The ICAP Demand Curve proposal administratively sets a clearing price for generated power that is neither cost-based nor market-based. Moreover, as the ELCON petition describes, the price is not known until after all generation is bid into a monthly “Spot Market Auction.” The NYISO defended this proposal as necessary to stimulate new generation in New York and to incent the continued operation of low-capacity generating units.

The industrial users’ petition emphasizes that that the rate increases which will be caused by the ICAP Demand Curve, and are acknowledged by FERC, will not guarantee new investment in New York State. The petition points out that FERC is required to “relate its action to the primary aim of the Federal Power Act to guard the consumer against excessive rates.” It goes on to say that that the justification offered by NYISO and earlier approved by FERC does not meet that standard. In fact, the ELCON petition states that “it was arbitrary and capricious for FERC to approve the Demand Curve on the grounds that it will give more money to existing suppliers of generating capacity without any evidence of a demonstrable connection between these additional funds yielded by the Demand Curve and any additional investment in new capacity.” In fact, states ELCON and the other petitioners, “there is no assurance that increased Demand Curve revenues will be directed to the siting of new generation in New York or indeed anywhere in the United States.”

“Keeping the system up and running is of paramount importance to industrial users,” noted Anderson. “If the system is short of power at times of peak demand, residential consumers may lose their air conditioning, but industrial customers can lose their business. However there is no reason to believe that the New York Demand Curve will encourage any increase in the construction of new generation. It will simply result in an increase in the bank accounts of existing generators.

“The Federal Power Act has a number of consumer protection features,” said Anderson. “We are hopeful that the Court of Appeals will look at FERC’s approval of the NYISO Demand Curve and measure it against FERC’s responsibilities under the FPA. If they see it like we see it, we will have given power to the people – and the people won’t have to pay excessive rates to get it.”

A copy of the ELCON filing is available at [www.elcon.org](http://www.elcon.org).

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ELCON, established in 1976, is the national association of large industrial users of electricity from virtually every manufacturing sector. ELCON members seek a reliable supply of electricity at competitive prices and have long supported federal and state efforts to achieve that objective.