

## **IESO to NYISO Installed Capacity (ICAP) Memorandum of Understanding**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is dated as of the 25<sup>th</sup> day of August, 2016 (the “**Effective Date**”) between the Independent Electricity System Operator (“**IESO**”) and the New York Independent System Operator, Inc. (“**NYISO**”).

**WHEREAS** the IESO is a not-for-profit corporation continued under Ontario’s *Electricity Act, 1998*, as amended;

**AND WHEREAS** the NYISO is a not-for-profit corporation established under the laws of New York State;

**AND WHEREAS** the IESO is responsible for market operations, by directing the operation of the transmission system for the Province of Ontario pursuant to and subject to the restrictions of the *Electricity Act, 1998* and monitoring reliability of the power system in accordance with its market rules, as well as responsible for meeting Ontario’s long-term electricity needs through procurement and contract management activities;

**AND WHEREAS** NYISO is responsible for providing transmission service, maintaining the reliability of the electric power system and facilitating efficient markets for capacity, energy and ancillary services in the New York Control Area (“**NYCA**”), in accordance with its tariffs filed with the Federal Energy Regulatory Commission;

**AND WHEREAS** Installed Capacity (“**ICAP**”) is defined in Section 2.9 of the NYISO’s Market Administration and Control Area Services Tariff;

**AND WHEREAS** the IESO wishes to support the sale of ICAP to New York in accordance with certain general principles hereinafter set forth;

**AND WHEREAS** the NYISO wishes to support the purchase of ICAP from Ontario in accordance with certain general principles hereinafter set forth.

**NOW THEREFORE**, in consideration of the mutual covenants hereinafter set forth and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the IESO and NYISO agree in principle as follows:

### **1. PRINCIPLES**

The IESO and NYISO hereby agree to the following general principles in respect of the purchase and sale of ICAP from Ontario to New York:

#### **Planning Principles**

- I. The minimum duration for an ICAP transaction must be at least one month, which is the minimum duration required for an ICAP purchase in accordance with NYISO tariffs.

- II. The ICAP Seller<sup>1</sup> must demonstrate to the NYISO that the ICAP resource is not committed to and/or has not sold the same capacity to any other Balancing Authority (as defined by NERC), including the IESO, during the duration of its sale to the NYCA.
- III. Delivery of the energy associated with the ICAP transaction cannot be subject to frequent and routine curtailment by the IESO due to transmission constraints. Therefore, to reasonably ensure deliverability when called upon:
  - a) it is agreed that curtailment for transmission security may only be done in accordance with the applicable IESO market rules and NYISO tariffs, and the Curtailment Principles outlined below.
  - b) deliverability within the NYCA must meet the requirements of the NYCA system and should be consistent with the deliverability requirements of internal generators.

### **Scheduling Principles**

- I. When the energy associated with the ICAP transaction is scheduled, it must be backed by operating capacity. "Backed by operating capacity" means that the IESO will support a capacity-backed export<sup>2</sup> except as provided in the Curtailment Principles in this MOU. The IESO cannot include a capacity-backed energy export for operating reserve, and cannot curtail such export except as allowed under the Curtailment Principles provided in this MOU.
- II. The energy associated with an ICAP transaction must be schedulable on at least a daily basis, provided the ICAP resource is not on a recognized outage.
- III. The import offers associated with an ICAP resource must be bid in accordance with the NYISO tariffs, and the export bids associated with an ICAP resource must be bid in accordance with the IESO market rules.

### **Current Day Call Principles**

- I. When NYISO experiences a capacity shortage, the NYISO has first call rights, in accordance with NYISO market requirements, to the energy that is being produced or could be produced by an ICAP resource whether or not the energy had been previously scheduled by the buyer.

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<sup>1</sup> ICAP Seller: The entity selling Ontario-based capacity to the NYISO's ICAP market.

<sup>2</sup> A "capacity-backed export" is an energy export from Ontario to the NYCA which has been designated by the ICAP Seller to the IESO and the NYISO as being capacity-backed in response to a call on the ICAP Seller's capacity from NYISO.

- II. The ICAP Seller is obligated to provide available energy associated with an ICAP transaction in accordance with the NYISO's tariffs, subject to the Curtailment Principles in this MOU.

### **Curtailment Principles**

- I. When the NYISO has exercised its rights to the energy associated with an ICAP transaction, the capacity-backed export can only be curtailed by the IESO for the following conditions on its system:
  - a) to correct or prevent a violation of voltage, stability, or thermal transmission limits/criteria;
  - b) unavailability of the ICAP resource, where an ICAP contract is resource specific; or
  - c) to prevent the threat to the safety of any person, damage to equipment, the environment or the violation of any applicable law.
- II. Notwithstanding Curtailment Principle I above, the energy associated with an ICAP transaction cannot be curtailed by the IESO as a result of, or to avoid the following conditions on the IESO system:
  - a) global capacity shortage conditions resulting in the implementation of voltage reductions and/or load shedding; or
  - b) generator losses other than the identified source specific resource associated with the ICAP transaction.

## **2. TERM OF MOU**

- (a) This MOU may be terminated at any time by mutual agreement by the parties in writing. It may also be terminated by either party by the end of a calendar year, effective for the following Capability Year,<sup>3</sup> provided that such unilateral termination shall not prejudice ICAP sales entered into under this MOU prior to the date of such unilateral termination.
- (b) The provisions of section 3 (Confidentiality) of this MOU shall survive termination of this MOU.

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<sup>3</sup> Capability Year: A Summer Capability Period, followed by a Winter Capability Period (*i.e.*, May 1 through April 30).

### 3. CONFIDENTIALITY

All non-public, confidential or proprietary information (“**Confidential Information**”), as defined by the applicable provisions of the IESO market rules and the NYISO tariffs and/or as claimed by either party, disclosed by the IESO or NYISO (the “**Disclosing Party**”) to the other party hereto (the “**Receiving Party**”), including but not limited to information pertaining to the IESO’s market participants, and whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether marked, designated or otherwise identified as “confidential”, in connection with, or related to the subject matter of, this MOU is confidential and may not be disclosed by the Receiving Party unless consented to by the Disclosing Party in writing. Upon the Disclosing Party’s request, the Receiving Party shall promptly return all Confidential Information, documents and other materials received from the Disclosing Party, and destroy any reproductions thereof.

- (a) Confidential Information as described in subsection 3(a) of this MOU does not include, for the purposes of this MOU, information that is, (i) in the public domain at the time of disclosure; (ii) made known to the Receiving Party from a source other than the Disclosing Party; or (iii) previously known by or in the possession of the Receiving Party.
- (b) The IESO and the NYISO consent to the disclosure of Confidential Information, as described in subsection 3(a) of this MOU, to each Party’s Independent Market Monitor, if, and only as, required by the party’s market rules/tariffs, as applicable.
- (c) If Confidential Information, as described in subsection 3(a) of this MOU, is required to be disclosed by law, or legal or regulatory compulsion, the Receiving Party shall notify the Disclosing Party in a timely manner so that the parties may engage in a joint effort to prevent or limit the disclosure.
- (d) The Receiving Party shall protect and safeguard the confidentiality of Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care.
- (e) The confidentiality and non-use obligations described in this MOU shall remain in effect for as long as the Receiving Party holds such Confidential Information.

### 4. REPRESENTATIONS AND WARRANTIES

By executing this MOU, the NYISO and IESO each represent and warrant to the other that:

- (a) it possesses the right, power and authority to enter into this MOU and to perform its obligations hereunder;


- (b) this MOU constitutes a valid and legally binding obligation of it, enforceable against it in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization and other laws of general application; and
- (c) its execution, delivery and performance of this MOU does not violate or conflict with its organizational or formation documents, bylaws or operating agreements, or any applicable law, judgment, license, tariff, market rule, permit, regulatory order, or other governmental empowerment or authorization.

**5. GENERAL**

- (a) This MOU may be executed in any number of counterparts, each of which will be deemed an original and all of which taken together will be deemed to constitute one and the same instrument. Delivery of an executed signature page to this MOU by any party by electronic transmission or facsimile will be as effective as delivery of a manually executed copy of the MOU.
- (b) This MOU will be governed by the laws of the State of New York. The parties irrevocably and unconditionally submit to the jurisdiction of the courts of New York and all courts competent to hear appeals from them. The jurisdiction of any proceeding commenced by the MOU will vest solely and exclusively in New York.
- (c) Nothing in this MOU will make the relationship between the IESO and NYISO one of partnership, joint venture, agent/principal or employment.

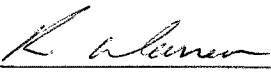
**IN WITNESS WHEREOF**, the parties have caused this MOU to be executed by their duly authorized representatives.

**NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

By:  Date: 8/25/2016  
Ricardo T. Gonzales, Senior Vice President and Chief Operating Officer

I have authority to bind the corporation.

**INDEPENDENT ELECTRICITY SYSTEM OPERATOR**

By:  Date: Aug 29/16  
Kim Warren, Vice President, Operations and Chief Operating Officer

I have authority to bind the corporation.