

IESO - NYISO Memorandum of Understanding for Capacity-Backed Transactions

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is dated as of the 1st day of April, 2022 (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 being responsible for meeting Ontario’s long-term electricity needs;

AND WHEREAS the 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 Auction Capacity is defined in Chapter 11 of the IESO’s Market Rules;

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

AND WHEREAS the IESO wishes to support the sale of ICAP to New York and the purchase of Auction Capacity from New York in accordance with certain general principles hereinafter set forth;

AND WHEREAS the NYISO wishes to support the sale of Auction Capacity to Ontario and the purchase of ICAP from Ontario in accordance with certain general principles hereinafter set forth;

AND WHEREAS the IESO and the NYISO entered into the “IESO to NYISO Installed Capacity (ICAP) Memorandum of Understanding” (“**ICAP MOU**”) dated August 25, 2016 and now wish to amend and replace the ICAP MOU with this MOU.

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 Capacity¹ between Ontario and New York.

Planning Principles

- I. The minimum duration for a Capacity sale must be at least one month for Capacity-Backed Transactions² sinking in New York and for the duration of the Obligation Period³ for Capacity-Backed Transactions sinking in Ontario. These minimum durations are in accordance with the NYISO Tariffs and IESO Market Rules.
- II. The Source Balancing Authority must demonstrate to the Sink Balancing Authority⁴ that the Capacity Seller⁵ has not committed to and/or has not sold the same Auction Capacity from the Capacity-Backing Resource⁶ to any other Capacity Purchaser and/or Balancing Authority⁷ for the duration of the Obligation Period associated with the sale.
- III. Delivery of the energy associated with the Capacity-Backed Transaction cannot be subject to frequent and routine curtailment by either balancing authority 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, NYISO Tariffs, NYISO Procedures,⁸ Operating Instructions, and the Curtailment Principles⁹.
 - b) deliverability within the Sink Balancing Authority's area as defined by NERC must meet the requirements of the Sink Balancing Authority's system and

¹ Capacity: For the purposes of this MOU, Capacity refers to ICAP for capacity from Ontario to New York and refers to Auction Capacity for capacity from New York to Ontario. Definitions for ICAP and Auction Capacity are referenced in the preamble to this MOU.

² Capacity-Backed Transaction: An energy export from the Source Balancing Authority's control area to the Sink Balancing Authority's control area, or an energy import from the Source Balancing Authority's control area to the Sink Balancing Authority's control area, which has been designated by the Source Balancing Authority as being capacity-backed in response to a Capacity call from the Sink Balancing Authority. Depending on the transaction, this may be specified as "Capacity-Backed Import Transaction" or "Capacity-Backed Export Transaction" in the relevant Operating Instructions.

³ Obligation Period is as defined under the IESO Market Rules.

⁴ Sink Balancing Authority is as defined by NERC.

⁵ Capacity Seller: The entity selling Capacity to the NYISO's ICAP market or the IESO's Capacity Auction.

⁶ Capacity-Backing Resource is a specific generating resource or other facility that is backing the trade of Capacity from one balancing authority to another.

⁷ Balancing Authority is as defined by NERC.

⁸ See the definition of ISO Procedures in the NYISO Tariffs. The procedures adopted by the NYISO in order to fulfill its responsibilities under the NYISO OATT, the NYISO Services Tariff and the NYISO Related Agreements.

⁹ See the "Curtailment Principles" section in this MOU.

should be consistent with the Sink Balancing Authority's deliverability requirements of internal generators.

- c) deliverability to the Sink Balancing Authority's area must meet the requirements of the Source Balancing Authority's system and should be consistent with the Sink Balancing Authority's deliverability requirements of external generators.

- IV. Upon request by the Capacity Seller or the Sink Balancing Authority, the Source Balancing Authority must assist in either providing or verifying the accuracy of a Capacity-Backing Resource's accredited unforced capacity ("UCAP") rating for Capacity qualification purposes, its injection point and deliverability, as well as metered generation data on specific dates for purposes of confirming the capability of that Capacity-Backing Resource or for confirming the Capacity provided by that Capacity-Backing Resource for a given Capacity-Backed Transaction.

Scheduling Principles

- I. When the energy associated with the Capacity-Backed Transaction is scheduled, it must be Backed by Operating Capacity. "Backed by Operating Capacity" means that the Source Balancing Authority will support a Capacity-Backed Transaction except as provided in the Curtailment Principles in this MOU. The Source Balancing Authority associated with the Capacity-Backed Transaction cannot include a Capacity-Backed Transaction for Operating Reserve,¹⁰ and cannot curtail such export except as allowed under the Curtailment Principles provided in this MOU.
- II. The energy associated with a Capacity-Backed Transaction must be schedulable in accordance with NYISO Tariffs and the IESO Market Rules, provided the Capacity-Backing Resource is not on a recognized outage.
- III. The import offers and export bids associated with a Capacity-Backed Transaction must be placed in accordance with the NYISO Tariffs and the IESO Market Rules.

Current Day Call Principles

- I. When experiencing a Capacity shortage, the Sink Balancing Authority associated with the Capacity-Backed Transaction has first call rights, in accordance with the Sink Balancing Authority's market requirements, to the energy that is being produced or could be produced by a Capacity-Backing Resource, up to its committed Capacity. Subject to a Capacity shortfall occurring in both Balancing Authority control areas at the same time, in the event that both NYISO and the IESO call on the energy associated with a Capacity-Backed Transaction for the same delivery hour(s), subject to scheduling principles in NYISO's tariffs and the IESO's Market Rules, the Net Scheduled Interchange, which, accounts for both Capacity calls, is

¹⁰ Operating Reserve as defined in the Interconnection Agreement between the IESO and the NYISO, dated May 1, 2002

expected to be delivered.

- II. The Source Balancing Authority will facilitate the Capacity Seller in fulfilling its obligations to provide available energy associated with a Capacity-Backed Transaction in accordance with the NYISO Tariffs and the IESO Market Rules, subject to the Curtailment Principles in this MOU.

Curtailment Principles

- I. When the Sink Balancing Authority has exercised its rights to the energy associated with a Capacity-Backed Transaction, the transaction can only be curtailed by the Source Balancing Authority or Reliability Coordinator 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 Capacity-Backing Resource, where a Capacity contract is resource specific;
 - c) to prevent the threat to the safety of any person, damage to equipment, the environment or the violation of any applicable law;
 - d) if either the IESO or the NYISO market has been suspended or experiences a market tool failure which results in being unable to facilitate scheduling/coordination; or
 - e) where the Capacity-Backing Resource is under contract with the Source Balancing Authority to provide Black Start service and is required for grid restoration.
- II. Notwithstanding Curtailment Principle I above, the energy associated with a Capacity-Backed Transaction cannot be curtailed by the Source Balancing Authority as a result of, or to avoid the following conditions on the Source Balancing Authority system:
 - a) global capacity shortage conditions resulting in the implementation of voltage reductions and/or load shedding; or
 - b) loss of generation other than the identified source specific resource associated with the Capacity-Backed 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,¹¹ provided that such unilateral termination shall not prejudice commitments secured in Capacity 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.

3. CONFIDENTIALITY

- (a) 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 or the NYISO’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.
- (b) 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.
- (c) 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 requisite compliance and monitoring entities, if, and only as, required by the party’s market rules/tariffs, as applicable.
- (d) 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.
- (e) 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.

¹¹ Capability Year: A Summer Capability Period, followed by a Winter Capability Period (*i.e.*, May 1 through April 30).

- (f) 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 and the Province of Ontario. 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.
- (d) Capitalized terms in this MOU have the meaning provided in this MOU and in the interconnection agreement between the IESO and NYISO.

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

NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

By: _____

Ricardo T. Gonzales
Senior Vice President &
Chief Operating Officer

Date: March 31, 2022

I have authority to bind the corporation.

INDEPENDENT ELECTRICITY SYSTEM OPERATOR



By: _____

Leonard Kula
Chief Operating Officer &
Vice-President, Markets and Reliability

Date: March 14, 2022

I have authority to bind the corporation.