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February 1, 2000

By Hand:

The Honorable David P. Boergers
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E., Room 1A
Washington, D.C. 20426

New York Independent System Operator, Inc.
Docket Nos. ER97-1523-012, ER97-4234-009 and OA97-470-011
Filing of Transitional Installed Capacity Market Design

Dear Mr. Boergers:

Pursuant to Section 205 of the Federal Power Act and to 18 C.F.R. § 35.13 (1999), the New York Independent System Operator, Inc. ("NYISO"), by counsel, hereby submits a Transitional Installed Capacity ("ICAP") market design, consisting of a series of revisions to the NYISO's Market Administration and Control Area Services Tariff ("ISO Services Tariff") and an accompanying "Installed Capacity Auction Description" document. The NYISO respectfully requests that the Commission issue an order approving the Transitional ICAP market design no later than March 15, 2000, so that it may be implemented by the NYISO's 2000 Summer Capability Period, which will commence on May 1, 2000. The NYISO intends that the Transitional ICAP market design will be supplanted by a Permanent ICAP market design in time for the 2000-2001 Winter Capability Period, which will commence on November 1, 2000. NYISO staff and interested stakeholders are currently developing tariff revisions to implement the Permanent ICAP market design, which the NYISO hopes to file with the Commission in April 2000.

Although the Transitional ICAP market design does not represent the final stage of the NYISO's redesign of the New York ICAP market it is nevertheless a substantial improvement over existing ICAP arrangements. The Transitional ICAP market design has been endorsed by both the

NYISO's independent Board of Directors and by an overwhelming majority of the stakeholders represented on the NYISO's Management Committee. The NYISO thus respectfully requests that the Commission, consistent with its precedent, show a reasonable measure of deference to the decisions reached by the NYISO's independent governance institutions and expeditiously approve the Transitional ICAP market design.

In the event that the Commission is unable to approve the Transitional ICAP market design in time for the 2000 Summer Capability Period, the NYISO respectfully requests that the Commission instead approve its January 28, 2000 compliance filing in this proceeding. The compliance filing makes relatively minor changes to the NYISO's existing ICAP market design in order to bring it into compliance with the Commission's October 28th *Order on Installed Capacity Auction Proposal* ("*Order*").[1] These changes will enable the NYISO to conduct ICAP auctions during the 2000 Summer Capability Period under the currently effective ICAP provisions of the ISO Services Tariff if the Transitional ICAP market design is not in place. It must be emphasized that both the NYISO Board and the overwhelming majority of stakeholders represented on the NYISO's Management Committee agree that the Transitional ICAP market design is greatly superior to the current market design, even as modified by the compliance filing, and urge the Commission to approve the Transitional ICAP market design in a timely manner.

I. Documents Submitted

Enclosed with this filing letter are an original and five copies of the following documents.

1. Revised Sections 5.9 - 5.15 of the ISO Services Tariff (setting forth the NYISO's proposed Transitional ICAP market design) (Attachment I);

2. An "Installed Capacity Auction Description" (providing additional detail regarding the Installed Capacity auction procedures the NYISO proposes to employ as part of the Transitional ICAP market design) (Attachment II);

3. A redlined document comparing the "Installed Capacity Auction Description" document with the "interim" ICAP auction proposal submitted on August 10, 1999, as

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[1] 89 FERC ¶ 61,109 (1999), *order on reh'g*, 90 FERC ¶ 61,___ (January 27, 2000).

supplemented on September 17, 1999, in Docket Nos. ER97-1523-012, ER97-4234-009 and OA97-470-011 ("Attachment III"); and

4. A draft *Federal Register* Notice ("Attachment IV").

The NYISO has not included a redlined document illustrating its proposed revisions to the ISO Services Tariff in this filing because it is has not yet been able to prepare a complete electronic version of the existing ISO Services Tariff that complies with the Commission's electronic filing requirements. Rather than deferring the filing until this task is completed, which would risk delaying the implementation of the Transitional ICAP market design, the NYISO respectfully asks the Commission to grant a temporary waiver of any regulations that might require the filing of a redlined document. The NYISO will submit a redlined document as soon as possible to help the Commission better understand the proposed changes to the ISO Services Tariff. In the meantime, it is hoped that the extensive discussion in this letter will enable the Commission to identify the changes that are being proposed as part of the Transitional ICAP market design.

II. Copies of Correspondence

Copies of correspondence concerning this filing should be served on:

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III. Effective Date, Request for Waiver and Request for Expedited Commission Action

The NYISO respectfully requests that the Commission waive its usual notice requirements and permit the proposed Transitional ICAP market design to become effective no later than March 15, 2000. There is good cause for waiver in this proceeding because the Transitional ICAP market design must be accepted no later than March 15 if the NYISO is to conduct the first "Obligation Procurement Period Auction," as scheduled, on March 31, 2000. If the Obligation Procurement Period Auction is not held on March 31, it will be impossible to implement the Transitional ICAP market design in time for the 2000 Summer Capability Period, which begins May 1, 2000. Moreover, a waiver of the usual notice requirements will not prejudice interested market participants because they have already had numerous opportunities to review and offer their comments on the Transitional ICAP market design as it has developed over time.

Expedited Commission action is especially appropriate in this proceeding because the Transitional ICAP market design was developed, and has been approved, by the NYISO's independent governance institutions.[2] In prior cases, the Commission has deferred to decisions made by previously-approved, independent NYISO governance structures with broad stakeholder support.[3] The Transitional ICAP market design has been endorsed by the NYISO's Board of Directors and by 93.63% of the voting interests represented on the NYISO's Management Committee. It is thus worthy of Commission deference and should be accepted as a well-considered, balanced approach to improving New York's ICAP market.

In addition, the Commission should recognize that the Transitional ICAP market design is the product of months of effort by a broadly representative special ICAP working group and that it incorporates numerous compromises between and among NYISO staff, the staff of the New York Public Service Commission ("NYPSC"), various interested Market Participants and environmental interests. The Commission should respect these efforts and approve the Transitional ICAP market design in its entirety.

IV. Background

Current Sections 5.9 - 5.13 of the ISO Services Tariff establish the NYISO's currently effective ICAP market design. Under these provisions, all Load-Serving Entities ("LSEs") serving Load in the New York Control Area ("NYCA") are required to satisfy an ICAP requirement, for a six-month Capability Period. Each LSE's ICAP requirement is not finally established until, and thus may be fully satisfied only after, the conclusion of a Capability Period. The existing provisions also establish special locational ICAP requirements for LSEs serving Load in New York City and authorize the NYISO to implement additional locational ICAP requirements. LSEs are expected to satisfy their requirements by procuring ICAP through bilateral transactions or through NYISO-administered auctions which are to be conducted upon the request of an LSE.[4]

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[2] The Commission determined that the NYISO's governance structure satisfied its independence requirements in *Central Hudson Gas & Elec. Corp., et. al.*, 89 FERC ¶ 61,229 (1999).

[3] *See, e.g., PJM Interconnection, L.L.C.*, 84 FERC ¶ 61,212 at 62,035 (1998) ("[W]e emphasize that in accepting PJM's proposed revisions . . . we deferred to the judgment of the PJM ISO and its Board concerning a regional solution to an identified regional problem based on what we understand is a broad, if not unanimous, consensus.")

[4] ISO Services Tariff, § 5.12.

In an Order issued July 29, 1999,[5] the Commission approved various aspects of the current ICAP market design but directed the NYISO to file "a detailed proposal for an installed capacity [6] The July 29th Order added that the "detailed proposal should include, but not be limited to, bidding rules and procedures, procedures for determining market clearing prices, and market power mitigation procedures."[7]

On August 10, 1999, as supplemented on September 17, 1999, the NYISO and the Member Systems of the New York Power Pool ("Member Systems") jointly filed a detailed "interim" ICAP auction proposal that was intended to go into effect in time for implementation in the 1999-2000 Winter Capability Period (*i.e.*, November 1, 1999 - April 30, 2000). The NYISO and the Member Systems also promised to develop a permanent ICAP auction design for the 2000 Summer Capability Period.

Subsequently, on September 23, 1999, the NYISO canceled the proposed interim auction citing an overall lack of certainty among Market Participants as to how the new arrangements would work. At the same time, the NYISO renewed its pledge to implement revised auction procedures in time for the 2000 Summer Capability Period.

In the *Order*, the Commission identified the features of the interim auction design that were acceptable and provided guidance to "aid in the design and implementation of a permanent ICAP auction to commence at a future date." [8] As is discussed below, the *Order's* guidance has been incorporated into the Transitional ICAP Market Design.[9]

V. Development of the Transitional and Permanent Installed Capacity Market Designs

A. Overview

In October 1999, the respective Chairpersons of the NYISO's Management Committee and Business Issues Committee instituted a process that would enable market participants, NYISO staff,

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5 *Central Hudson Gas & Electric Co., et al.*, 88 FERC ¶ 61,138 (1999).

6 88 FERC ¶ 61,138 at 61,393 (1999).

7 *Id.*

8 89 FERC ¶ 61,109 at 61,298 (1999).

9 In addition, the *Order's* guidance has been incorporated into the NYISO's compliance filing.

state regulators and environmental interests to join in an effort to improve New York's ICAP market design. Subsequently, a special ICAP working group was formed and began a series of meetings aimed at achieving this goal.[10] It quickly became apparent that a sizable majority of working group participants favored making more substantial revisions to NYISO's ICAP market design than the *Order* required. Ultimately, after many meetings and much negotiation, the working group came to favor: (i) making LSE obligations known and requiring that they be satisfied prior to the beginning of each "Obligation [11] rather than permitting them to be satisfied during a post-Capability Period "back-buying" period, as under the existing system; (ii) developing new procedures to accommodate Load-shifting associated with the implementation of retail competition in New York State; (iii) establishing regular monthly ICAP auctions to facilitate ICAP transactions; (iv) clarifying energy recall protocols; (v) accommodating participation in the installed capacity market by additional resources such as distributed generation and interruptible load resources; (vi) eliminating unnecessary obstacles to ICAP resources becoming ICAP suppliers, thereby increasing the amount of ICAP available in New York State; and (vii) adopting market-based, proportionate sanctions to ensure that both LSEs and Installed Capacity Suppliers satisfy their ICAP obligations. These features, among others, have all been included in the NYISO's Transitional ICAP market design. An overview of the proposed Transitional Installed Capacity market design is provided below in Section VI.

In addition to the modifications noted above, sizable majorities of working group participants supported: (i) the use of an unforced capacity methodology, closely modeled on the system used by the PJM ISO, to more accurately evaluate the availability of resources seeking to qualify as ICAP suppliers; and (ii) reducing the duration of an Obligation Procurement Period from six months to one-month in order to increase the efficiency of New York's ICAP market and to make it more comparable with neighboring ICAP markets. Both of these features were endorsed by a non-binding vote of the

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[10] The ICAP working group meetings were open to all New York market participants and most were attended by approximately forty people, representing market participants, NYISO staff, the New York State Public Service Commission and environmental interests.

[11] Proposed Section 2.122a of the ISO Services Tariff defines an Obligation Procurement Period as "[t]he period of time during which LSEs shall be required to satisfy their Installed Capacity requirements." The term "Obligation Procurement Period" has been introduced in the proposed Transitional Installed Capacity market design to allow for future reductions in the length of time that LSEs must procure Installed Capacity without forcing a change to the existing definition of Capability Period (ISO Services Tariff Section 2.17), which has independent significance outside of the ICAP context.

NYISO's Business Issues Committee on November 23, 1999.[12] However, as is discussed in greater detail below, it was subsequently determined that neither of these features could be implemented in time for the 2000 Summer Capability Period. Accordingly, the NYISO proposes to implement them for the 2000-2001 Winter Capability Period by incorporating them into the Permanent ICAP market design proposal.

It is anticipated that these two features will be the only major substantive additions that the to-be filed Permanent ICAP market design will make to the Transitional ICAP market design proposal. Thus, the Transitional ICAP market design is not something that will be discarded after six months. Instead, it will serve as a foundation for the Permanent ICAP market design and most of its components will continue in effect indefinitely. At the same time, certain provisions of the Transitional Installed Capacity market design are specifically intended to govern only during the 2000 Summer Capability Period and, subject to further negotiations, may be modified in the Permanent Installed Capacity market design. All such provisions are explicitly noted in the proposed revisions to the ISO Services Tariff (Attachment I).

B. Adoption of an Unforced Capacity Methodology

The NYISO, and a majority of NYISO's Business Issues Committee, originally intended to implement an unforced capacity methodology for the 2000 Summer Capability Period. Adopting an unforced capacity approach was expected to result in a more accurate assessment of the total ICAP resources available to the NYCA, which would bring considerable reliability benefits, and in more accurate determinations of how much ICAP individual resources were capable of providing, which would increase the ICAP market's efficiency. It was also intended that the implementation of an unforced capacity methodology would satisfy the NYISO's commitment, pursuant to the Joint Offer of Settlement submitted in Docket ER97-1523-003, *et. al.*,[13] to establish improved accreditation criteria for ICAP suppliers.

Under an unforced capacity approach the amount of ICAP a given resource would be authorized to supply is based on its dependable maximum net capability ("DMNC"), or in the case of

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[12] Because specific tariff language addressing these two features has not yet been developed neither feature has yet been formally approved by the NYISO's Management Committee, a necessary pre-requisite to their inclusion in a Section 205 filing by the NYISO.

[13] *See, Joint Offer of Settlement of the Member Systems of the New York Power Pool and the Interested Parties,* Docket Nos. ER97-1523-003, OA97-470-004, ER97-4234-002 (not consolidated), November 17, 1999 at 7.

non-generation resources, an equivalent measure, adjusted to reflect its equivalent demand forced outage rate ("EFOR-D") Each resource's EFOR-D would be determined using NERC Generating Availability Data System ("GADS") data, or for non-generation resources, equivalent GADS data.

The ICAP working group devoted considerable time and attention to debating the merits of the unforced capacity methodology and to determining how it could best be implemented in New York State. It eventually became clear, however, that complex questions concerning the "translation" of existing locational ICAP requirements into unforced capacity terms, the suitability of existing GADS data, and other technical considerations, could not be resolved in time for an unforced capacity methodology to be implemented for the 2000 Summer Capability Period. It was therefore decided that the NYISO would submit a Transitional ICAP market design proposal, using DMNC ratings, and their equivalents, instead of unforced capacity calculations, to determine how much ICAP a given resource would be allowed to sell. By this means the greatest possible number of improvements can be made in advance of the upcoming Summer Capability Period while work continues on an unforced capacity methodology. In the meantime, the ICAP Working Group is scheduled to immediately resume work on finalizing an unforced capacity methodology. The NYISO will submit a complete unforced capacity methodology, which will be one of the two major additional components, of its Permanent ICAP market design, in time for implementation in the 2000-2001 Winter Capability Period.[14]

C. Adoption of a One-Month Obligation Procurement Period

The NYISO's Business Issues Committee voted at its November 23, 1999 meeting to reduce the duration of an Obligation Procurement Period, *i.e.*, the period of time during which LSEs must procure ICAP, from six-months to one-month. However, due to NYISO staff concerns about the possible reliability implications of such a change, it was agreed that the NYISO would not go ahead and establish a one-month Obligation Procurement Period until NYISO staff completes a study of the reliability effects associated with a move to shorter Obligation Procurement Period. In the event that the NYISO's Board of Directors and its Management Committee agree that the study demonstrates that a move to a one-month Obligation Procurement Period will not have an adverse effect on reliability, the NYISO will propose, as part of the Permanent ICAP market design, that the Commission approve a

[14] The NYISO believes that the timely filing of a Permanent ICAP market design proposal which includes an unforced capacity methodology will satisfy its commitment under the Settlement to develop improved generator accreditation standards.

change to a one-month Obligation Procurement Period.[15] This study will be completed in time for a one-month Obligation Procurement Period to be implemented for the 2000-2001 Winter Capability Period.

VI. Overview of Transitional Installed Capacity Market Design

The Transitional ICAP market design is set forth in Attachment I, which contains new and revised sections to be included in the ISO Services Tariff, and Attachment II, which contains a detailed Installed Capacity Auction Description document, based on the interim ICAP auction proposal submitted in August, but modified to reflect the guidance provided by the *Order*, and to reflect the changes proposed in Attachment I.

A. Overview of Revised ISO Services Tariff Provisions (Attachment I)

1. Sections Affected

The NYISO proposes to make the following changes to the ISO Services Tariff. First, it proposes to revise the definitions currently found in Sections 2.17 ("Capability Period") and 2.74

Second, it would add the following new definitions: (i) "Adjusted Actual Peak Load" (Section 2.2a); (ii) "Bidder" (Section 2.15a); (iii) "Capability Year" (Section 2.17a); (iv) "DMNC Test Period" (Section 2.46a); (v) "Energy Limited Resource") (Section 2.49a); (vi) "Excess Amount" (Section 2.49b); (vi) "In-City" (Section 2.68a); (vii) "Installed Capacity Marketer" (Section 2.74a); (viii) "Installed Capacity Supplier" (Section 2.74b); (ix) "Market-Clearing Price" (Section 2.102a); (x) "Obligation Procurement Period" (Section 2.122a); (xi) "Offeror" (Section 2.124a); (xii) "Special Case Resource" (Section 2.172a); and (xiii) "System Resource" (Section 2.177a). The noteworthy aspects of these new definitions are discussed below.

Third, although the NYISO does not propose to eliminate Section 2.61 "Generator Classes" from the ISO Services Tariff the concept of "Generator Classes" plays no role in the Transitional ICAP

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[15] The NYISO anticipates that its unforced capacity and shortened Obligation Procurement Period proposals will be separable, *i.e.*, if the Commission is unable to approve one of them in time for implementation by the 2000-2001 Winter Capability Period the NYISO would still be able to implement the other.

market design, which allows ICAP suppliers to sell an amount of ICAP derived from their DMNC, not their class identity.[16] The existing definition has, however, been retained as a placeholder and will be revised to reflect the adoption of an unforced capacity system in the permanent ICAP market design.

Fourth and finally, the NYISO proposes to replace current Sections 5.9 - 5.13 of the ISO Services Tariff in their entirety with proposed Section 5.9 - 5.15. Each of the proposed new tariff provisions is discussed in detail below.

2. Section 2 (Definitions)

Proposed Section 2.2a introduces the concept of "Adjusted Actual Peak Load," *i.e.*, the prior calendar year's peak load adjusted to reflect load relief measures, peak load reductions and normalized weather design changes. The NYCA's Adjusted Actual Peak Load is an element in the calculations to be performed under proposed ISO Services Tariff Sections 5.10 ("NYCA Installed Capacity Requirement"). Moreover, each Transmission District's Adjusted Actual Peak Load establishes the foundation for the Transmission District peak load forecasts required by 5.11.1 ("Allocation of the

Proposed Sections 2.15a ("Bidder") and 2.124a ("Offeror") establish definitions applicable to would-be buyers and sellers of ICAP in NYISO-administered ICAP auctions. These terms were introduced in the interim ICAP auction proposal but are not defined in the existing version of the ISO Services Tariff. Since the terms continue to be used in the Installed Capacity Auction Description document it was thought best to include them in the revised ISO Services Tariff.

A separate definition of "Capability Year" has been added as proposed Section 2.17a for stylistic reasons. The currently effective ISO Services Tariff contains an identical definition of "Capability Year," *i.e.*, a Summer Capability Period followed by a Winter Capability Period (May 1 - April 30), but includes it in the definition of "Capability Period." Concurrently, the NYISO proposes to

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[16] The Transitional ICAP market design likewise makes no reference to "Availability Standards," which are not defined in the currently effective ICAP tariff provisions but which are mentioned repeatedly in existing Section 5.10.1. Contrary to the language of current Section 5.10.1, the NYISO is not developing generator class-based "Availability Standards" but is instead developing an unforced capacity regime which will accurately determine the availability of individual ICAP resources. Moreover, despite the reference in current Section 5.10.1, there are no Availability Standards in effect pursuant to New York Power Pool procedures.

revise the definition of "Capability Period" (Section 2.17) to eliminate the surplus definition of "Capability Year," drop language allowing the NYISO Operating Committee's to unilaterally change the duration of a Capability Period, and remove the existing provision's distinction between "On-Peak" and "Off-Peak" periods within a Capability Period (which is irrelevant to the actual NYISO operations.)

Proposed Section 2.46a ("DMNC Test Period") would incorporate another definition that was introduced in the interim ICAP auction proposal, but which is not referred to in the existing ICAP tariff provisions, into the ISO Services Tariff. A DMNC Test Period is the time frame during which an ICAP resource must conduct a DMNC test if the test is to be valid for purposes of determining how much ICAP that resource will be entitled to provide. The time and duration of DMNC test periods will be set forth in the ISO Procedures.[17]

Proposed Section 2.49a ("Energy Limited Resource") pertains to potential ICAP resources that due to design considerations, environmental restrictions, the need to recharge or refill, or other non-economic reasons are not able to operate continuously, but are able to operate for at least four consecutive hours each day. The NYISO proposes to facilitate participation by such entities in New York's ICAP market by allowing them to qualify as ICAP Suppliers, provided that they satisfy the requirements set forth in proposed Section 5.12.8(c).

Proposed Section 2.49b ("Excess Amount") pertains to the special "phasing" provisions that have been added to the NYISO's ICAP auction design in order to address complications associated with participation in ICAP auctions by generators located within the New York City Locality that are subject to market power mitigation measures. More specifically, the "Excess Amount" is the difference between the amount charged to ICAP buyers, and that paid to ICAP sellers, in NYISO-administered ICAP auctions, which is subsequently rebated to LSEs located in New York City. As is discussed in more detail below, the proposed rebate system, and thus, the "Excess Amount" concept, are both

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[17] Consistent with the currently effective provisions of the ISO Services Tariff, the Transitional ICAP market design proposes to address a number of technical issues and operating procedures that do not directly concern Commission jurisdictional rates or services in the "ISO Procedures," *i.e.*, the NYISO Manuals. The NYISO Manuals are publicly available via the NYISO's web-site but are not on file with the Commission. In previous cases, the Commission has allowed other ISOs to use manuals in this way, and it should continue to permit the NYISO to do so here. *See, e.g., Pennsylvania-New Jersey-Maryland Interconnection*, 81 FERC ¶ 61,257 at 62,267 (1997).

essential safeguards which ensure the New York's ICAP market is not distorted by the existence of the market power mitigation measures.

Proposed Section 2.68a ("In-City") which defines "In-City" as "[l]ocated electrically within the New York City Locality (LBMP Load Zone J)" has been added because the Transitional ICAP market design draws a number of important distinctions between In-City generators, In-City LSEs and entities located outside of New York City.

The NYISO proposes to substantially revise Section 2.74's definition of "Installed Capacity." The current definition identifies ICAP as the generators and "load facilities" that are capable of providing, or reducing the demand for, energy in the NYCA consistent with the Reliability Rules. The proposed definition more accurately treats ICAP as a kind of product, *i.e.*, capacity made continuously available for a period of time for purposes of satisfying the NYCA's Installed Reserve Requirement. The Transitional ICAP market design will use the term "Installed Capacity Supplier" to refer to the entities that produce or provide ICAP.

Proposed Section 2.74a defines entities that buy and resell ICAP in order to make a profit as "Installed Capacity Marketers. Participation by such entities in New York's ICAP market is encouraged by the NYISO in order to increase the liquidity. The limitations on ICAP Marketers' participation that are noted in the definition have been imposed in response to concerns regarding the possible imposition of regulations by the Commodities Futures Trading Commission, which are addressed in detail below.

Proposed Section 2.74b ("Installed Capacity Supplier") is a broad term encompassing generators, energy limited resources, ICAP marketers, interruptible load resources, special case resources or system resources. The currently effective ICAP provisions lack such an umbrella term.

Proposed Section 2.102a ("Market-Clearing Price") provides a definition that appears frequently in the Installed Capacity Auction Description ("Attachment II") and in Sections 5.13 and 5.14 of the revised ISO Services Tariff.

Proposed Section 2.122a ("Obligation Procurement Period") defines an Obligation Procurement Period as "[t]he period of time during which LSEs shall be required to satisfy their Installed Capacity requirements." The term "Obligation Procurement Period" has been introduced to facilitate future reductions in the length of time that LSEs must procure Installed Capacity without forcing a change to the existing definition of Capability Period. Under the currently effective ICAP provisions, ICAP must be procured for the duration of a Capability Period, which would require that any reduction in the amount of time that ICAP had to be purchased to result in a corresponding change in the

definition of "Capability Period," despite the fact that there are many, non- ICAP related, reasons for having a six-month Capability Period. Adopting a separate "Obligation Procurement Period" definition will avoid this problem.

Proposed Section 2.172a ("Special Case Resource") is applicable to generators and loads capable of interruption upon demand that are rated 100 kW or higher (typically qualifying ICAP Suppliers must be at least 1 MW) which are not visible to the NYISO's Market Information System. The NYISO proposes to facilitate participation by such entities in New York's ICAP market by allowing them to qualify as ICAP Suppliers if they can satisfy the requirements set forth in proposed Section 5.12.8(a).

Finally, proposed Section 2.177a ("System Resource") establishes a new category of ICAP supplier consisting of entities that control a portfolio of ICAP associated with generators which are all sited in the same location and which are all made available to the NYISO. System Resources may be located inside or outside of the NYCA. Special provisions applicable to System Resources are found in proposed Section 5.12.6.

3. Section 5.9

Proposed Section 5.9, "Transitional Implementation of Revised Installed Capacity Market Provisions," specifies that the Transitional ICAP market design is intended to remain in effect only during the 2000 Summer Capability Period, after which it is to be supplanted by the Permanent ICAP market design. It also specifies that the NYISO Board may continue the Transitional ICAP market design in effect if the Permanent ICAP market design is not in place in time for the 2000-20001 Winter Capability Period.

4. Section 5.10

Proposed Section 5.10, "NYCA Installed Capacity Requirement," describes the methodology that the NYISO shall use to calculate the annual ICAP requirement for the entire NYCA, a subject that is presently addressed, in considerably less detail, in the first paragraph of the currently effective Section 5.10.1. The proposed revisions are intended to clarify precisely how the NYISO will perform these calculations. Pursuant to proposed Section 5.10, the NYISO will establish the NYCA's total ICAP requirement by multiplying one plus the NYCA Installed Reserve Margin, which is established each year by the NYSRC, by the NYCA peak load forecasted by the NYISO. The NYISO's peak load forecast will be based on the prior calendar year's "Adjusted Actual Peak Load" adjusted to reflect regional load growth forecasts, which shall be proposed by the New York State Transmission Owners,

and reviewed by the NYISO, pursuant to procedures which are being developed by all market participants. These procedures will be set forth in the ISO Procedures.

Like the current effective Section 5.10.1, proposed Section 5.10 empowers the NYISO to determine how much ICAP must be sited within the NYCA and within each NYISO-defined Locality, as well as the amount of ICAP that may be procured from external control areas.

5. Section 5.11

Proposed Section 5.11 establishes ICAP requirements applicable to LSEs.

A. Section 5.11.1

Proposed Section 5.11.1, "Allocation of the NYCA Installed Capacity Requirement to LSEs," describes the procedures that the NYISO will use to allocate the NYCA's total ICAP requirement among New York State's Transmission Districts and to LSEs serving load within each Transmission District. The proposed Section makes substantial changes to Section 5.10.1 of the currently effective ISO Services Tariff in order to clarify the various reporting and forecasting responsibilities of the parties that will be interacting with retail customers and with the NYISO, *i.e.*, transmission owners, municipal utilities and LSEs. These clarifications were deemed necessary because the continuing implementation of retail competition in New York State demands greater specificity, and more emphasis on accommodating load-shifting, than is provided in the existing ISO Services Tariff.

B. Section 5.11.2

Proposed Section 5.11.2, "LSE Obligations," requires LSEs to submit certification forms demonstrating that they have satisfied their ICAP requirements, either through bilateral transactions or through participation in NYISO-administered ICAP auctions, prior to the beginning of each Obligation Procurement Period, and again prior to the beginning of each month within an Obligation Procurement Period. The exact dates by which such demonstrations must be made will be specified in the ISO Procedures but will be no later than ten days prior to the beginning of the relevant Obligation Procurement Period or upcoming month.[18] LSEs that fail to make the required showing in a timely manner will be subject to the Deficiency Procurement Auction procedures of proposed Section 5.14.

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[18] It is necessary to leave the specific dates to be defined in the ISO Procedures instead of simply establishing them in the ISO Services Tariff because proposed Section 5.13.1, requires the NYISO to allow at least four business days between the posting of the results of an ICAP auction and the date that

(continued . . .)

This Section represents a major change from the currently effective ICAP market design's "back-buying" system under which final ICAP requirements are not established until after the conclusion of a period and deficient LSEs enjoy an opportunity to make up any deficiencies without penalty after the Capability Period.[19] Clear majorities of market participants believed that replacing back-buying with a system that established final ICAP requirements upfront would provide greater certainty and thus enhance the efficiency of New York's ICAP market.

C. Section 5.11.3

Proposed Section 5.11.3, "Load-Shifting Adjustments," revises the procedures the NYISO will follow when accounting for customer gains and losses among LSEs during an Obligation Procurement Period. The new procedures will allow LSEs that gain and lose load between the Monthly Auctions[20] to cover these changed obligations through financial settlements. Specifically, load-gaining LSEs shall be required to pay load-losing LSEs a pro-rated portion of the applicable market-clearing price of ICAP, established at the most recent Monthly Auction, in order to "rent" ICAP sufficient to cover the shifting load until the first day of the month after the next regularly scheduled Monthly Auction. This system allows load-losing LSEs to retain ICAP they have purchased on behalf of their loads without incurring a financial penalty and simultaneously allows load-gaining LSEs to predict the cost of satisfying new customers' ICAP requirements until the time of the next regularly Monthly Auction. Both features will increase the efficiency of New York's ICAP market.

In short, proposed Section 5.11.3 provides specific mechanisms that will enable New York's ICAP market to function in a retail access environment. Currently effective Section 5.10.1 does not contain such mechanisms.

LSEs must meet their ICAP requirements. Because the ISO will be holding mid-monthly auctions each month it must have flexibility to make minor scheduling adjustments to these dates, *e.g.*, in order to account for holidays and weekends.

[19] The "back-buying" system is established by existing Sections 5.10.1, 5.10.2 and 5.13.

[20] Additional detail concerning monthly ICAP auctions, and the NYISO's ICAP auction procedures in general, is provided below in the discussion of proposed Section 5.13.3.

D. Section 5.11.4

Proposed Section 5.11.4, "LSE Locational Installed Capacity Requirements," is substantially similar to Section 5.10.2 of the currently effective ISO Services Tariff. The relatively minor revisions and clarifications found in proposed Section 5.11.4 bring it into conformance with other proposed changes. The most significant new language is found in the second to last paragraph, which specifies, consistent with the Commission-approved In-City market mitigation measures, that any entity which purchases ICAP associated with generators that are subject to market mitigation measures in NYISO-administered auctions may not resell that ICAP at a subsequent auction at a price higher than the price it originally paid.

6. Section 5.12

Proposed Section 5.12 establishes ICAP requirements applicable to ICAP Suppliers.

A. Section 5.12.1

Proposed Section 5.12.1, "Installed Capacity Supplier Qualification Requirements," establishes the criteria that must be met by entities seeking to become ICAP suppliers. These include: (i) a requirement that all ICAP suppliers, other than Special Case Resources, be rated no lower than 1 MW; (ii) information submission requirements, set forth in Section 5.12.1(i) - (v), that refine, but otherwise closely follow those found in Section 5.11 of the currently effective ISO Services Tariff; and (iii) bidding and scheduling requirements, set forth in Section 5.12.1(vi) and (vii), that oblige ICAP resources to schedule day-ahead bilateral transactions or bid into the NYISO's Day-Ahead Market.[21] Special Case Resources are exempt from Section 5.12.1's information submission requirements but are subject to the information requirements of Section 5.12.8(a). Entities reselling ICAP purchased from external System Resources located in external control areas that have agreed not to curtail ICAP sold to the NYCA, or to afford such ICAP the same curtailment priority that they afford their own control area load, shall be

[21] ICAP suppliers that fail to honor these commitments are subject to formula-based financial sanctions pursuant to proposed Section 5.12.9(b). ICAP suppliers that bid into the Day-Ahead Market but are not scheduled, may enter into external energy transactions pursuant to proposed Section 5.12.7.

subject to control area-specific information submission requirements that will be set forth in the ISO Procedures.[22]

B. Section 5.12.2

Proposed Section 5.12.2, "Additional Provisions Applicable to External Installed Capacity Suppliers," describes additional qualification requirements applicable to ICAP suppliers located in external control areas. Specifically, external ICAP resources, and entities purchasing from them for resale in New York, may qualify as ICAP suppliers if they can demonstrate that they will not be curtailed or recalled by the external control area. Alternatively, entities that purchase ICAP from external System Resources for resale in New York may qualify as ICAP suppliers if they can demonstrate that the external control area will afford NYCA load the same curtailment priority that it affords its own control area load. ICAP supplied by such entities, will, however, be derated by the NYISO to reflect the possibility of curtailment. These provisions are meant to increase the amount of ICAP available in New York State.

In addition, proposed Section 5.12.2 preserves existing ICAP rights that are not included in Table 3 of Attachment L to the NYISO's Open Access Transmission Tariff. Identical language was included in the existing ICAP tariff provisions and has thus been approved by the Commission.

C. Section 5.12.3

Proposed Section 5.12.3, "Installed Capacity Supplier Maintenance Scheduling Requirements," establishes maintenance scheduling requirements for ICAP suppliers based on those included in Section 5.11 of the currently effective ISO Services Tariff. The proposed Section, however, adds different requirements for Interruptible Load Resources and external System Resources and exempts Special Case Resources from Section 5.12.3 entirely. In addition, it specifies that an entity which intends to supply ICAP in a given month that did not qualify as an ICAP supplier prior to the beginning of an Obligation Procurement Period may qualify as an ICAP supplier for that month, provided that it notifies the NYISO no later than the first day of the prior month, so that its proposed outages may be subject to

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[22] Thus for example, marketers purchasing ICAP from External System Resources located in Hydro-Quebec's control area, which has agreed to afford ICAP sold in New York the same curtailment priority that its control area load receives, would be subject to the special information submission requirements specified in the ISO Procedures. These special requirements are to be posted on the NYISO's web site.

rescheduling by the NYISO. This change is intended to make it easier for new or restored resources to qualify as ICAP suppliers during an Obligation Procurement Period, thus increasing the amount of ICAP available in New York State.

D. Section 5.12.4

Proposed Section 5.12.4, "Required Certification That Installed Capacity Has Not Been Resold," obliges all ICAP suppliers to submit certification forms demonstrating that the ICAP they have sold in New York State has not also been sold elsewhere.

This requirement is set forth in Section 5.11(v) of the currently effective ISO Services Tariff and in Proposed Section 5.12.1(v). It was determined, however, that this requirement was sufficiently important to warrant reiteration in a separate Section.

E. Section 5.12.5

Proposed Section 5.12.5, "Installed Capacity Sales," establishes the general principle that ICAP suppliers will be authorized to sell an amount of ICAP each month equal to the total of the seasonal DMNCs of their resources for the Capability Period in which the month falls. It also clarifies that ICAP may be sold in a six-month strip, or in any combination of monthly or multi-monthly segments.

In addition, the provision addresses: (i) the circumstances under which the NYISO will allow ICAP Suppliers whose DMNC is found to have increased during an Obligation Procurement Period to prospectively sell additional ICAP; (ii) the NYISO's treatment of, and testing procedures applicable to, ICAP suppliers that were derated in the previous like Capability Period, but that claim they have regained the ability to provide the amount of ICAP they were previously authorized to sell; and (iii) the NYISO's treatment of new generation that enters service during an Obligation Procurement Period. In all three cases, the NYISO's fundamental policy is to allow as many resources as possible to act as ICAP suppliers, consistent with its need to properly test ICAP suppliers' ability to actually provide the ICAP they claim to be able to supply.

Finally, proposed Section 5.12.5 includes a "daily demonstration" requirement, pursuant to which each Installed Capacity Supplier, except as noted in proposed Section 5.12.8, must demonstrate that the amount of energy which it schedules, bids or declares to be unavailable on a particular day is not less than the amount of ICAP it sold for that day.

F. Section 5.12.6

Proposed Section 5.12.6, "System Resources Sales": (i) establishes information submission requirements for System Resources located within the NYCA; (ii) states that the amount of ICAP a System Resource located within the NYCA may sell will be determined pursuant to the ISO Procedures; and (iii) specifies that all System Resources, whether located inside or outside of the NYCA, may only aggregate resources that are located within a single Locality (*i.e.*, New York City or Long Island), that are located exclusively in the remainder of the NYCA which is not part of any Locality, or that are located in a single external control area.

G. Section 5.12.7

Proposed Section 5.12.7, "External Transactions and Recall Procedures," states that ICAP resources which are not out on maintenance or scheduled in the Day-Ahead Market be used to supply energy for use in external transactions, but that they such energy shall be subject to recall at any time by the NYISO. Consequently, ICAP Suppliers that enter into an external transaction must submit a recall bid at the same time that they schedule the transaction. Recall bids may be set at any level and shall specify the price which the NYISO may recall energy. In the event that an ICAP Supplier's energy is recalled, it shall be paid the higher of its recall bid or the real-time locational based marginal price ("LBMP") at the relevant proxy generator bus.

This provision explains the NYISO's recall procedures in considerably more detail than is provided by the currently effective ICAP provisions.[23] It is expected that these market-oriented recall policies will help to make New York's ICAP market more efficient.

H. Section 5.12.8

Proposed Section 5.12.8, "Special Case Resources and Other Installed Capacity Suppliers," is meant to facilitate greater participation by alternative ICAP resources that do not currently enjoy an opportunity to become ICAP Suppliers. This provision was developed with by a special sub-group of the ICAP working group but was ultimately accepted by the larger working group.

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[23] Existing Section 5.11 states only that ICAP providers may enter into "Transactions with other Control Areas subject to Reliability Rules and ISO Procedures."

Section 5.12.8(a) would allow Special Case Resources, as defined in proposed Section 2.172a, to become ICAP suppliers without satisfying proposed Section 5.12.5's requirement to make a daily demonstration that the amount of energy which they schedule, bid or declare unavailable on a given day is not less than the number of MWs of ICAP they have sold for that day. In order to qualify for this treatment, however, Special Case Resources must be available to operate at the NYISO's discretion, on twenty four hours notice of the potential need to operate and two hours actual notice,[24] for at least four hours a day. However, entities which are subject to restrictive environmental permits need only be available to operate for two hours a day. Special Case Resources may not qualify as ICAP suppliers if they were operated as load-modifiers, and thus reduced the ICAP requirement of the LSE that served them, unless that LSE's ICAP requirement is adjusted upwards to prevent double-counting. Special Case Resources that qualify as ICAP suppliers pursuant to this provision will be derated, pursuant to ISO Procedures, to reflect the number of hours that they are actually available.

An LSE that purchases ICAP from a Special Case Resource that becomes an ICAP supplier pursuant to proposed Section 5.12.8(a) may not resell that ICAP. This restriction is meant to prevent Installed Capacity associated with Special Case Resources that receive preferential treatment pursuant to Section 5.12.8(a) from enjoying an unfair competitive advantage over other ICAP.

Proposed Section 5.12.8(b) provides that municipal utilities which own existing generation in excess of their ICAP requirements, and net of any capacity provided by the New York Power Authority ("NYPA"), may offer the excess capacity for sale as ICAP without complying with Section 5.12.5's daily demonstration requirement. Municipal utilities seeking to take advantage of this provision must operate the energy at the NYISO's request, make their energy available to the New York State Power System and to submit certain information to the NYISO. The purpose of this provision is to facilitate participation by existing municipal generation. Because this provision is controversial it has been written so that it explicitly governs only during the 2000 Summer Capability Period. Future negotiations will determine whether it is renewed, modified or eliminated by the Permanent ICAP market design.

Proposed Section 5.12.8(c) prescribes special procedures pursuant to which Energy Limited Resources may qualify as ICAP suppliers if they bid into the NYISO's Day-Ahead Market for twenty four hours each day and are able to provide the energy equivalent of their claimed ICAP for four hours

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[24] The proposed Section would also give the ISO discretion, pursuant to the ISO Procedures, to exempt distributed generators that are incapable of starting in two hours from the two hour notice requirement.

each day. After an Energy Limited Resource has provided energy for four hours the NYISO will attempt to avoid calling on it during the time in which it is known to be recharging or replacing depleted resources.

I. Section 5.12.9

Proposed Section 5.12.9, "Sanctions Applicable to Installed Capacity Suppliers," authorizes the NYISO to impose financial sanctions on ICAP suppliers that fail to comply with certain provisions of the proposed ICAP tariff provisions. NYISO Staff has consistently maintained that the failure of ICAP suppliers to meet their obligations would seriously jeopardize reliability in New York and has thus advocated the inclusion of effective sanctions in the proposed ICAP tariff provisions. The proposed provisions of Section 5.12.9 are the product of extensive negotiations between NYISO Staff and various market participants that were reluctant to accept sanctions and represent a carefully negotiated compromise between them.

Consistent with prior Commission precedent,[25] proposed Section 5.12.9 includes a number of safeguards, such as prior notice to ICAP suppliers that the NYISO is considering sanctions, affording ICAP suppliers a reasonable opportunity to explain why they should not be sanctioned (or alternatively, why the amount of any sanction should be reduced), and granting ICAP suppliers a right to appeal sanctions through the NYISO's Dispute Resolution Procedures. In addition, the NYISO may at its own discretion reduce the level of any sanction below the maximums specified in the proposed ICAP tariff provisions.

Proposed Section 5.12.9(a) authorizes the NYISO to impose escalating daily financial sanctions on ICAP suppliers that submit the information required by proposed Section 5.12.1(i) - (iv) more than three days late. The daily sanction may reach as high as $1000 or $10/per MW of ICAP to be provided by the ICAP Supplier after the required information is ten days late.[26] ICAP suppliers will, however, receive a warning from the NYISO that they face possible sanctions on the first day that they

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[25] *See, e.g., New England Power Pool*, 85 FERC ¶ 61,379 at 62,468-69, 62,470 (1998) (approving a sanctions proposal that included similar procedural protections.)

[26] These amounts are consistent with amounts the Commission has allowed other ISOs to impose on entities that failed to submit required information in a timely manner. For example, pursuant to its Market Rule 13, ISO New England is authorized to impose financial sanctions as high as $2000/day when required reports are late.

are late. Sanctions are warranted in this situation because the NYISO must have the information in question in a timely manner if it is to properly administer New York's ICAP market.

Proposed Section 5.12.9(b) authorizes the NYISO to impose a formula-based sanction on ICAP suppliers that fail to honor the scheduling and bidding commitments established by proposed Section 5.12.1(vi) and (vii). Failing to meet these commitments threatens reliability in New York. The maximum allowed sanction is equal to the product of the deficiency charge established pursuant to proposed Section 5.14.1 (pro-rated on a daily basis) and the maximum number of MWs that the ICAP supplier failed to bid or schedule in any hour in that day.

Moreover, proposed Section 5.12.9(b) authorizes the NYISO to impose an additional formula-based financial sanction on ICAP suppliers that fail to meet their scheduling and bidding requirements during hours that the NYISO recalls energy pursuant to proposed Section 5.12.7. Stronger sanctions are justified in this context because the NYISO will very likely only recall energy when capacity is extremely tight in New York state. Moreover, ICAP Suppliers that have failed to comply with their obligations during such hours will be exacerbating the situation.[27] Accordingly, such ICAP suppliers are subject to a sanction equal to the product of the number of MWs of ICAP that a supplier failed to schedule or bid during that hour and the corresponding real-time LBMP at the applicable proxy generator bus. Furthermore, the offending ICAP supplier will not be paid its recall bid if its energy is recalled during the hour in question.

Any financial sanctions collected pursuant to this proposed Section shall be applied to reduce the charge under Rate Schedule 1 of the ISO Services Tariff.

7. Section 5.13

Proposed Section 5.13, "Installed Capacity Auctions," in conjunction with proposed Sections 5.14, "Installed Capacity Deficiencies and Deficiency Procurement Auctions, and 5.15, "Payment and Allocation of Installed Capacity Auction Rebates," describes the procedures the NYISO will follow when administering ICAP auctions. Under the Transitional ICAP market design the NYISO will conduct more, and more regular, auctions than are contemplated by the existing ICAP tariff provisions, or by the interim ICAP auction proposal.

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[27] Both of the formula sanctions established in Section 5.12.9(b) are consistent with Commission precedent. *See, e.g., New England Power Pool*, 85 FERC ¶ 61,379 (1998) (approving ISO New England's Market Rule 13, which allows it to impose a number of different formula-based sanctions.)

A. Special In-City Auction Procedures

The Transitional ICAP market design includes special In-City auction procedures that are designed to address complications associated with participation by generators located within the New York City Locality that are subject to market power mitigation measures and by entities seeking to resell ICAP associated with such generators. These market power mitigation measures are applicable, in the form of bid caps, to three "bundles" of generation formerly owned by the Consolidated Edison Company of New York, Inc. ("ConEd"), that were divested by auction to three separate generation companies in 1999.[28] They do not apply to other In-City ICAP suppliers or to new generation.

Mitigated generators are required to participate in the ICAP auctions and are thus prohibited from selling ICAP through bilateral arrangements. Their bids are capped at $105/kW per year, which translates to $52.50 per kW per (six month) Obligation Procurement Period or $8.75 per kW/month. By contrast, because capacity in New York City is expected to be tight for the immediately foreseeable future, non-mitigated In-City ICAP suppliers could, in principle, sell ICAP up to a maximum of $12.50 per kW/month, which is the LSE deficiency bid level in New York City.[29] The price differential is an intentional design feature, meant to attract new generation to New York City.

Under the current market mitigation measures, if the In-City market-clearing price exceeds the mitigated price, unmitigated ICAP suppliers would receive the market-clearing price, mitigated ICAP Suppliers would be paid the $8.75 mitigated price and buyers would pay a price equal to the weighted average of the market-clearing price and the mitigated price. The weighted average approach, however, represents a serious design problem, especially when generation is short in New York City, because the price paid be winning bidders can be less than the winning bid price. When this is the case, price is unable to effectively play its normal economic role as a rationing tool.[30]

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[28] The market mitigation measures were approved by the Commission in *Consolidated Edison Company of New York, Inc.*, 84 FERC ¶ 61,287 (1998).

[29] This deficiency level is derived from a table set forth in Section 5.13 of the existing ISO Services Tariff, which has been transplanted in its entirety into Section 5.14.1 of the proposed ICAP tariff provisions. The table sets the In-City deficiency bid level at $75/kW per six-month Obligation Procurement Period, or $12.50/kW per month.

[30] For example, where the total in-city ICAP requirement is 8,200 MW, but only 7,800 MW of In-City generation exists and the highest offer by unmitigated generators is $12.49, 400 MWs of LSE needs will go unmet and those LSEs will have to pay the $12.50 penalty. To avoid the penalty, LSEs

(continued . . .)

As part of the Transitional ICAP market design the NYISO proposes to correct this flaw by replacing the weighted average provision with a rebate system that yields the same desired market power mitigation result without the attendant design problems.[31] Under the proposed ICAP tariff provisions, all NYISO-administered ICAP auctions would be held as if no special rules exist, except that offers to sell by mitigated generators would be subject to the $8.75 per kW/month cap. Market-clearing prices would be calculated normally and all ICAP would be sold at the market-clearing price, with the NYISO collecting the money. If the market-clearing price exceeds the $8.75 bid cap, unmitigated ICAP suppliers will receive that price while mitigated ICAP suppliers will receive $8.75/kW. The NYISO would then rebate any Excess Amount that it still holds to all LSEs serving In-City customers in proportion to their In-City ICAP obligations. LSES, and other entities, that have no such obligations will receive no rebates. Similarly, LSEs that have purchased In-City ICAP in excess of their In-City obligations will receive no rebates for their excess purchases.

This proposal solves the rationing problem by giving the benefits of the bid cap directly to New York City LSEs (and therefore, ultimately, to New York City retail customers) in a separate step rather than through artificially reduced market-clearing prices. LSEs serving load in New York City therefore need not even participate in a NYISO-administered ICAP auction to receive a share of the rebates associated with it. This is beneficial because it affords market participants greater flexibility. By contrast, the weighted average pricing approach forces all buyers, including buyers of unmitigated generation, to shun the bilateral market and enter the auction since doing so is the only way to obtain the benefits of the mitigation measures.

In addition to the rebate system, the Transitional ICAP market design includes a second special In-City auction procedure, pertaining to sales of ICAP associated with In-City generators to buyers located outside of New York City. The mitigation measures specify that ICAP suppliers may not sell mitigated ICAP to buyers located outside of New York City without the express written consent of the NYISO. The purpose of this restriction is to prevent withholding from the New York City market. The NYISO proposes to more efficiently implement this restriction by expressly providing that ICAP

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should be willing to pay up to $12.50 to buy available ICAP. Nevertheless, the mitigation rules dictate that the price paid by LSEs in the auction will equal the weighted average price, *e.g.*, $10.00. In this case, all buyers are willing to pay $12.50, some buyers' wants are unsatisfied, but winning bidders actually pay only $10.00.

[31] The rebate mechanism is described in more detail in Section 5.15 of the proposed ICAP tariff provisions, and in the discussion of proposed Section 5.15 below.

suppliers may sell ICAP associated with mitigated generation to buyers located outside of New York City only after the NYISO has verified that all LSEs serving In-City loads have met their ICAP obligations.

The NYISO will accomplish this by holding each ICAP auction in two phases, the first phase for the New York City market only, and the second for all other locations. ICAP suppliers may only sell ICAP associated with In-City generation in the second phase if the NYISO determines that all LSEs serving load in New York City have satisfied their In-City ICAP requirements in the first phase. When ICAP suppliers are allowed sell ICAP associated with In-City generators in the second phase they will not be restricted to the mitigated price but may instead receive the full market-clearing price, since they are presumed to lack market power when selling outside of New York City. This phased approach strikes a reasonable balance between the interests of In-City buyers, who must be protected from withholding, and the interests of ICAP suppliers that want to sell genuinely excess ICAP associated with otherwise mitigated In-City generators to other markets.

Both phases of NYISO-administered ICAP auctions will be conducted on the same day. During the 2000 Summer Capability Period, ICAP suppliers that take part in both phases of an auction shall be permitted to submit separate bids in each phase. This two-bid rule is controversial and the NYISO's ICAP working group will revisit it as it prepares a Permanent ICAP market design filing.

Although the special In-City auction provisions admittedly add another layer of complexity to the Transitional ICAP market design, they nevertheless represent the best and most efficient way to prevent the NYISO-administered ICAP auctions from being distorted by the existence of the market mitigation measures. Moreover, they reflect the work of a special In-City ICAP working group, which included representatives of the NYPSC, ConEd, the three generation companies that currently own mitigated In-City generation and the City of New York. Their work was ultimately accepted, with some modifications, by the larger ICAP working group and, ultimately, by the NYISO's Management Committee. The Commission should therefore accept to the special In-City Procedures, as a reasonable solution to a very complicated design problem.

B. Section 5.13.1

Proposed Section 5.13.1, "General Auction Requirements," establishes a number of standard ICAP auction-related provisions that are applicable to all ICAP auctions. These include: (i)

requirements that market participants must meet in order to participate in an auction;[32] (ii) requirements pertaining to participant certification forms; and (iii) a requirement that the NYISO post auction results at least four business days prior to the dates by which LSEs are required to demonstrate that they have satisfied their ICAP requirements.[33] It also clarifies that those In-City generators which are subject to market mitigation measures are required to offer to sell all of their ICAP into the NYISO-administered auctions. Although this requirement is clearly established by the mitigation measures it was decided that it would be appropriate to reiterate it in the ISO Services Tariff.

C. Section 5.13.2

Proposed Section 5.13.2, "The Obligation Procurement Period Auction," directs the NYISO to conduct an Obligation Procurement Period Auction, at the request of an LSE, no later than thirty days prior to the start of each Obligation Procurement Period. ICAP will be bought and sold in such auctions for the entire duration of the upcoming Obligation Procurement Period. For the reasons set forth above, each Obligation Procurement Period Auction will consist of two phases. Participation in the first phase will be limited to In-City market participants. In the first phase, all LSEs shall pay the market-clearing price of ICAP. All ICAP suppliers that are selected to provide ICAP shall receive the market-clearing price, except in the case of In-City Generators that are subject to mitigation measures, which shall receive the lesser of the market-clearing price or the mitigated price. In addition, any entity that resells ICAP associated with mitigated In-City generators shall receive the lesser of the market-clearing price or the price that it paid for the ICAP. If the market-clearing price exceeds the total amount paid to ICAP suppliers, the NYISO shall rebate the Excess Amount pursuant to proposed Section 5.15.

All ICAP suppliers and LSEs may participate in the second phase, except in the case of ICAP associated with In-City Generators that are subject to market mitigation measures, which may only sell in the second phase if it has been established that all LSEs located in the New York City Locality have satisfied their In-City ICAP requirements. LSEs awarded ICAP in the second phase shall pay the market-clearing price and all ICAP suppliers, with the exception noted below, shall receive the market-clearing price. Any entity that resells ICAP associated with In-City Generators subject to market

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[32] An explanation of the limitation on participation in ICAP Auction noted in proposed Section 5.13.1 is provided below in the discussion of the Installed Capacity Auction Description.

[33] *See supra* n. 18, for an explanation of why the specific posting dates are to be provided in the ISO Procedures, rather than the ISO Services Tariff.

mitigation measures shall receive the lesser of the applicable market-clearing price or the price that it paid for the ICAP. The NYISO shall rebate any Excess Amount pursuant to proposed Section 5.15.

D. Section 5.13.3

Pursuant to Proposed Section 5.13.3, "Monthly Auctions," the NYISO will conduct regular Monthly Auctions, upon the request of an LSE. The first such Monthly Auction shall be conducted no later than fifteen days prior to the beginning of an Obligation Procurement Period. Subsequent Monthly Auctions shall be held no later than the fifteenth day of each month during an Obligation Procurement Period. In each Monthly Auction, ICAP may be sold for any one or more remaining months in the Obligation Procurement Period. The pre-Obligation Procurement Monthly Auction provides LSEs with an additional opportunity to satisfy their ICAP requirements prior to the beginning of an Obligation Procurement Period. Monthly Auctions held during an Obligation Procurement Period provides LSEs that have gained load as a result of load-shifting to procure additional ICAP to satisfy their increased ICAP requirements. Both kinds of Monthly Auctions are also available to other market participants, as is noted in the Installed Capacity Auction Description.

The first Monthly Auction shall be conducted in two phases, in accordance with the above description of phased Obligation Procurement Period Auctions. Subsequent Monthly Auctions that are held during an Obligation Procurement Period shall be conducted in two phases, unless it is first established that all In-City LSEs have satisfied their locational ICAP requirements, in which case the auction will not be phased, but will be conducted as if it were the second phase of a pre-Obligation Procurement Period Monthly Auction.

E. Section 5.13.4

Proposed Section 5.13.4, "Detailed Installed Capacity Auction Description," notes that additional detail concerning NYISO-administered ICAP auctions is provided in the Installed Capacity Auction Description document which has been included in this filing as Attachment II.

8. <u>Section 5.14</u>

A. Section 5.14.1

Proposed Section 5.14.1, "LSE Deficiencies," governs when LSEs violate proposed Sections 5.11.2 or 5.11.3 by failing to procure sufficient ICAP by the applicable deadline. When such deficiencies occur the NYISO shall procure the required ICAP on behalf of deficient LSEs by conducting a Deficiency Procurement Auction. This provision is the product of extensive negotiations

and is intended to strike a reasonable balance between the need for strong upfront LSE incentives to satisfy their ICAP requirements, which promotes reliability, and the need for an efficient market design that does not, for example, set deficiency bids levels so high as to produce a windfall for ICAP suppliers, or to cause them to offer ICAP exclusively in Deficiency Procurement Auctions.

An initial Deficiency Procurement Auction will be held no later than the twenty third day of the month immediately preceding the start of an Obligation Procurement Period. Monthly Deficiency Procurement Auctions will be held, when necessary, no later than the twenty third day of each month.

The initial Deficiency Procurement Auction will consist of six separate monthly auctions, which will be phased when necessary, consistent with the prior discussion of the special In-City auction procedures. In both phases, the NYISO shall submit deficiency bids on behalf of deficient LSEs at a level determined pursuant to a deficiency charge table set forth in Section 5.14.1.[34] During the first phase, the NYISO shall submit deficiency bids on behalf of deficient In-City LSEs that are required to make locational ICAP purchases in order to satisfy their In-City locational ICAP requirements. The NYISO shall solicit bids from qualified In-City Generators, and from any other entity that owns excess In-City Locational Installed Capacity. LSEs that are awarded Installed Capacity in the first phase shall pay to the NYISO the lesser of the market-clearing price or the deficiency bid. The NYISO shall pay ICAP suppliers that are selected to provide ICAP the market-clearing price, which can be no greater than the deficiency bid, except in the case of capacity associated with In-City generators that are subject to mitigation measures, which shall receive the lesser of the market-clearing price or the mitigated price. Any entity that resells ICAP associated with In-City generators that are subject to market mitigation measures shall receive the lesser of the market-clearing price or the price that it paid for that ICAP. If the market-clearing price exceeds the total amount paid to ICAP suppliers, the NYISO shall rebate the Excess Amount pursuant to proposed Section 5.15.

During the second phase, the NYISO shall submit deficiency bids, determined pursuant to the deficiency charge table in Section 5.14.1, on behalf of all remaining deficient LSEs and shall solicit bids from all qualified ICAP suppliers, including ICAP associated with otherwise mitigated In-City generators, provided that all LSEs located in New York City have satisfied their In-City locational

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[34] The deficiency charge table is identical to the one set forth in Section 5.13 of the currently effective ISO Services Tariff, which has previously been approved by the Commission. The table establishes separate deficiency charges for New York City, Long Island and for all other NYCA LBMP Load Zones for the first three years of NYISO operations. After the first three years, the deficiency charge in all load zones will equal three times the localized levelized embedded cost of a combustion gas turbine.

ICAP requirements. Deficient LSEs that are awarded ICAP shall pay the NYISO the lesser of the market-clearing price, or the deficiency bid. The NYISO will use these deficiency payments to pay the market-clearing price, except as noted below, to ICAP suppliers that are selected to provide ICAP. However, any entity that resells ICAP associated with In-City generators that are subject to market mitigation measures shall receive the lesser of the market-clearing price or the price that it paid for its ICAP. The NYISO shall rebate any Excess Amount pursuant to proposed Section 5.15.

The NYISO shall conduct monthly Deficiency Procurement Auctions in two phases if In-City LSEs are required to participate in them in order to satisfy their In-City locational ICAP requirements. If, however, In-City LSEs are not required to participate in a given monthly Deficiency Procurement Auction, then that auction will not be phased.

Any LSEs that are still deficient after the completion of a Deficiency Procurement Auction must pay a monthly deficiency charge to the NYISO based on the deficiency charge table. The NYISO will attempt to use these deficiency charges to procure enough ICAP to satisfy any remaining unmet ICAP requirements from generators that are capable of selling ICAP but that failed to qualify as ICAP suppliers in a timely manner. To avoid creating perverse incentives, the NYISO shall not procure ICAP from ICAP suppliers that withheld their ICAP. Similarly, the NYISO will not pay an ICAP supplier, more than the applicable deficiency charge for ICAP, or the applicable locational price cap, whichever is less, pro-rated to reflect the time that the resource will provide ICAP. Any remaining monies collected by the NYISO shall be applied to reduce the charge under Rate Schedule 1 of the ISO Services Tariff.

In order to guard against gaming and the exercise of market power, the NYISO shall not reveal the number of MWs by which LSEs are deficient prior to a Deficiency Procurement Auction.

B. Section 5.14.2

Proposed Section 5.14.2, "Installed Capacity Supplier Deficiencies," provides that if an ICAP supplier is found to have sold more ICAP in a month than it is actually authorized to sell it shall be considered to be "deficient." The NYISO shall enter deficiency bids, and prospectively purchase ICAP, on behalf of deficient ICAP suppliers in the appropriate Deficiency Procurement Auction as if they were deficient LSEs. Similarly, if an ICAP supplier is found to have been deficient for any prior portion of an Obligation Procurement Period, it shall be retroactively liable to pay the NYISO the monthly deficiency charge calculated pursuant to the deficiency charge table set forth in proposed Section 5.14.1. Any deficiency charges collected pursuant to this Section that ultimately remain in the NYISO's hands shall be applied to reduce the charge under Rate Schedule 1 of the ISO Services Tariff.

Proposed Section 5.14.2 has been included in the proposed ICAP Tariff provisions to give ICAP suppliers an incentive to honor their commitments and to ensure comparable treatment of deficient ICAP suppliers and LSEs.

9. Section 5.15

Proposed Section 5.15, "Payment and Allocation of Installed Capacity Auction Rebates," implements the rebate mechanism that is a key feature of the special In-City auction procedures. Pursuant to this provision, the NYISO will rebate any Excess Amounts collected in the various ICAP auctions to all LSEs with locational ICAP requirements in New York City. Rebates shall be paid to LSEs in proportion to their respective shares of the New York City locational ICAP requirement, regardless of whether particular LSEs took part in a particular ICAP auction. The NYISO shall pay such rebates monthly and shall include interest accrued between the time that Excess Amounts were collected, and the time that rebates are actually paid.

B. Overview of Installed Capacity Auction Description (Attachment II)

As was noted above, the Installed Capacity Auction Description document (Attachment II), is based on the interim auction proposal that was submitted on August 10, 1999, as supplemented September 17, 1999. The interim ICAP auction proposal has been revised, however, in several important respects.

1. Changes Made to Ensure Compliance With the *Order*

The Installed Capacity Auction Description makes two major changes to the interim ICAP auction proposal in order to ensure its compliance with the guidance provided by the *Order*. First, Section 9, concerning the calculation of market-clearing prices has been greatly expanded and clarified to provide a better explanation of how market-clearing prices will be determined and to "adequately explain and support" why the NYISO's chosen methodology is a reasonable way to make such determinations.[35] The Installed Capacity Auction Description also includes six detailed examples which further clarify how the NYISO will calculate market-clearing prices.

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[35] *See* 89 FERC at 61,300 (requiring the NYISO to make such a showing.)

Second, the Installed Capacity Auction Description expands the universe of potential participants in NYISO-administered auctions beyond LSEs, a limitation which the Commission has found to be overly restrictive.[36] Under the proposal, ICAP marketers may freely participate in the auctions, provided that four conditions are met. Specifically, auction participants must: (i) comply with the creditworthiness requirements established in the NYISO's Open-Access Transmission Tariff; (ii) be Customers, pursuant to Section 2.34 of the ISO Services Tariff, (iii) only use ICAP purchased through an NYISO-administered auction in a manner consistent with their commercial interests; and (iv) not resell ICAP purchased through an NYISO-administered auction to external control areas.

Restriction (i) is a reasonable limitation designed to exclude participants that clearly lack the financial wherewithal to reliably meet the financial obligations associated with participation in the New York ICAP market. Restrictions (ii), (iii), and (iv) have been adopted at the specific recommendation of outside counsel in order to avoid subjecting NYISO-administered ICAP auctions to regulation by the Commodities Future Trading Commission ("CFTC") pursuant to the Commodities Exchange Act.[37]

Stated simply, the NYISO has been advised that there is a strong likelihood that the CFTC would consider ICAP sold through NYISO-administered auctions[38] to be a CFTC-jurisdictional commodity option (on electric capacity). Such a finding would cause the CFTC to treat the NYISO as a commodities exchange and to impose onerous exchange trading regulations. The NYISO hopes to avoid this result by ensuring that ICAP sold in its auctions qualifies for the "trade option" exemption from regulation established by CFTC Rule 32.4(a). To qualify for the exemption, ICAP must be:

> offered by a person which has a reasonable basis to believe that the option is offered to a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the commodity option transaction, or the products or by-products thereof, and that such producer, processor, commercial user or merchant is offered or enters into the commodity option transaction solely for purposes related to its business as such.[39]

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36 89 FERC at 61,301.

37 7 U.S.C. § 1 (1994).

38 Because the NYISO has been advised that CFTC jurisdiction is considerably less likely to attach to bilateral ICAP transactions it does not propose to restrict the types of entities that may engage in such transactions.

39 17 C.F.R. § 32.4(a).

The NYISO has been advised that ICAP suppliers, LSEs and ICAP marketers would be considered "producers, processors, commercial users of, or merchants handling" ICAP solely for "commercial purposes," provided that restrictions (ii), (iii) and (iv) (above) are in place. All of these entities would thus be eligible to participate in NYISO-administered auctions without triggering the CFTC's jurisdiction. The Installed Capacity Auction Description thus substantially expands the scope of participation in NYISO-administered auctions. Only brokers and speculators lacking commercial interests in New York's various electricity markets would be excluded from participation in the ICAP auctions, and even they could still engage in bilateral transactions.

Although the trade option exemption is the only immediately available route by which the NYISO may avoid CFTC regulation, the NYISO is concurrently seeking a broader CFTC waiver that would allow unfettered participation in its auctions. To the extent that future CFTC action permits the NYISO to further broaden the scope of participation in its auctions, the NYISO will seek the Commission's permission to make appropriate changes to the ISO Services Tariff and to the Installed Capacity Auction Description.

Finally, the Commission should keep in mind that that a clear majority of stakeholders involved in developing the Transitional ICAP market design, as well as an overwhelming majority of the interests represented in the NYISO's Management Committee, accepted the CFTC-related limited on participation as necessary evils that were more tolerable than exposure to CFTC regulation. The Commission should defer to this collective decision and allow the NYISO to impose the limitations described in this filing while it seeks a more expansive CFTC waiver that will facilitate even broader participation in the ICAP auctions.

2. Compliance with the January 27, 2000 Order

In its January 27, 2000 *Order Granting Rehearing and Request for Clarification*[40] of the *Order* the Commission specified that all participants in ICAP auctions, including non-LSEs, were "equally subject to the cap on the market-clearing price that is applicable under the market mitigation [41] Both the proposed Installed Capacity Auction Description and the Transitional ICAP market design's proposed ICAP tariff provisions incorporate this requirement.

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40 90 FERC ¶ 61,___ (2000).

41 90 FERC ¶ 61,___, *slip op*. at 3.

3. Additional Changes Reflecting Proposed Revisions to the ICAP Market Design.

In addition to changes that have been proposed in response to the Commission's recent orders, the Installed Capacity Auction Description document differs from the interim ICAP auction proposal insofar as it reflects the various new features included in the proposed ICAP tariff provisions set forth in Attachment I. For example, the Installed Capacity Auction Description includes provisions describing Obligation Procurement Period Auctions, Monthly Auctions, Deficiency Procurement Auctions. It also addresses the phasing and rebate rules that are part of the special In-City auction procedures.

VII. Names and Addresses of Persons to Whom a Copy of this Filing Has Been Mailed

Copies of this filing are being mailed to all of those persons on the Commission's service list in Docket Nos. ER97-1523-000, *et. al.* (not consolidated), to all of those who have executed Service Agreements under the ISO Services Tariff and to the electric regulatory agencies in New York, New Jersey and Pennsylvania.

VIII. Section 35.13(b)(7)

The NYISO has no knowledge of any relevant expenses or costs of service that have been alleged or judged in any administrative or judicial proceeding to be illegal, duplicative or unnecessary costs that are demonstrably the product of discriminatory employment practices.

IX. Effect of Rate Schedule Change

It is not possible to determine the impact of this filing on rates with any certainty.

X. *Federal Register* Notice

A form of Federal Register Notice is provided as Attachment IV hereto. A diskette containing an electronic copy of the Notice is also provided.

XII. Conclusion

WHEREFORE, the New York Independent System Operator, Inc., respectfully asks that the Commission issue an Order approving its proposed Transitional Installed Capacity market design no later than March 15, 2000.

Respectfully submitted,

Ted J. Murphy
Counsel for
New York Independent System
Operator, Inc.

Attachments

Attachment I

Attachment I

I. Definitions

The following list new and revised definitions are part of the Transitional Installed Capacity Market Design.

2.2a Adjusted Actual Peak Load

Actual peak Load adjusted to reflect: (i) Load relief measures such as voltage reduction and Load Shedding; (ii) peak Load reductions provided by Interruptible Load Resources; and (iii) normalized design weather conditions, as necessary.

2.15a Bidder

An entity that bids to purchase Installed Capacity in an Installed Capacity auction.

2.17 Capability Period

Six month periods which are established as follows: (1) from May 1 through October 31 of each year ("Summer Capability Period"); and (2) from November 1 of each year through April 30 of

2.17a Capability Year

A Summer Capability Period, followed by a Winter Capability Period (*i.e.*, May 1 - April 30).

2.46a DMNC Test Period

The period within a Capability Period during which a Generator's, System Resource's or Special Case Resource's DMNC test must be conducted if that DMNC test is to be valid for purposes of determining the amount of Installed Capacity that resource is permitted to provide. Such periods will be established pursuant to the ISO Procedures.

2.49a Energy Limited Resource

Capacity resources that, due to design considerations, environmental restrictions on operations, cyclical requirements, such as the need to recharge or refill, or other non-economic reasons, are unable to operate continuously on a daily basis, but are able to operate for at least four consecutive hours each day.

2.49b Excess Amount

The difference, if any, between the amounts charged to purchasers of Installed Capacity in an ISO-administered Installed Capacity auction and the amounts paid to sellers of Installed Capacity in that ISO-administered Installed Capacity auction.

2.68a In-City

Located electrically within the New York City Locality (LBMP Load Zone J.)

2.74 Installed Capacity

External or Internal Capacity, in increments of 100 kW, that is continuously made available for the portion of an Obligation Procurement Period for which that Capacity is being sold for the purpose of satisfying the NYCA's Installed Reserve Requirement.

2.74a Installed Capacity Marketer

An entity which has signed this Tariff and which purchases Installed Capacity from qualified Installed Capacity Suppliers, either bilaterally or through ISO-administered auctions. Installed Capacity Marketers that purchase Installed Capacity through ISO-administered auctions may only resell Installed Capacity purchased in such auctions in the NYCA.

2.74b Installed Capacity Supplier

An Energy Limited Resource, Generator, Installed Capacity Marketer, Interruptible Load Resource**,** Special Case Resource or System Resource that satisfies the ISO's qualification requirements for selling Installed Capacity.

2.102a Market-Clearing Price

The price determined in an Installed Capacity auction for each ISO-defined Locality, the remainder of the NYCA and each adjacent External Control Area for which all offers to sell and bids to purchase Installed Capacity are in equilibrium.

2.122a Obligation Procurement Period

The period of time during which LSEs shall be required to satisfy their Installed Capacity requirements. Obligation Procurement Periods shall begin and end on the same dates as the Capability Periods defined by Section 2.17 of this Tariff.

2.124a Offeror

An entity that offers to sell Installed Capacity in an auction.

2.172a Special Case Resource

Loads capable of being interrupted upon demand, and distributed generators, rated 100 kW or higher, that are not visible to the ISO's Market Information System and that are subject to special rules, set forth in Section 5.12.8(a) of this Tariff and related ISO Procedures, in order to facilitate their participation in the Installed Capacity market as Installed Capacity Suppliers.

2.177a System Resource

A portfolio of Installed Capacity provided by Generators located in a single ISO-defined Locality, the remainder of the NYCA, or any single External Control Area, that is owned by or under the control of a single entity and that is made available, in whole or in part, to the ISO. System Resources may be External or Internal to the NYCA.

II. Installed Capacity Tariff Provisions

The following provisions are to be added to the ISO Services Tariff. Existing Sections 5.9 - 5.13 of the ISO Services Tariff are to be eliminated in their entirety.

5.9 Installed Capacity --- Transitional Implementation of Revised Installed Capacity Market Provisions

During the 2000 Summer Obligation Procurement Period, the provisions of Sections 5.10 - 5.15 of this Tariff shall govern Installed Capacity requirements in the NYCA. If a permanent Installed Capacity market design cannot be implemented in time for the 2000 - 2001 Winter Capability Period, the ISO Board shall have the unilateral right to continue the provisions of Section 5.10 - 5.15 of this Tariff in effect until such time as a permanent Installed Capacity market design is in place.

5.10 NYCA Installed Capacity Requirement

The Installed Capacity requirement is derived from the NYCA's Installed Reserve Margin, which is established each year by the NYSRC. The NYCA Installed Capacity requirement for the Capability Year beginning each May 1 will be established by multiplying the NYCA peak Load forecasted by the ISO by one plus the NYCA Installed Reserve Margin, expressed on a percentage basis. The ISO will calculate a NYCA peak Load each year by applying regional Load growth unit factors to the prior calendar year's Adjusted Actual Peak Load. Regional Load growth factors shall be proposed by the Transmission Owners and reviewed by the ISO pursuant to procedures agreed to by

all Market Participants which shall be described in the ISO Procedures. Disputes concerning the development of regional Load growth factors shall be resolved through the ISO's Dispute Resolution Procedures.

The ISO shall determine the amount of Installed Capacity that must be sited within the NYCA, and within each Locality, and the amount of Installed Capacity that may be procured from areas External to the NYCA, in a manner consistent with the Reliability Rules.

5.11 Requirements Applicable to LSEs

5.11.1 Allocation of the NYCA Installed Capacity Requirement to LSEs

Each Transmission Owner and each municipal electric utility will submit to the ISO, for its review pursuant to mutually agreed upon procedures which shall be described in the ISO Procedures, a weather-adjusted Capability Year peak Load forecast for its Transmission District. The ISO Procedures shall authorize the ISO to approve each Transmission Owner's forecasting methodology. Each Transmission District's peak Load forecast shall assume, as a starting point, the relevant Transmission District's Adjusted Actual Peak Load during the prior calendar year, and shall incorporate regional Load growth factors developed pursuant to Section 5.10 of this Tariff. Each Transmission Owner must also submit aggregate peak Load data, coincident with the Transmission District peak, for all customers served by each LSE active within its Transmission District. The aggregate peak Load data may be derived from direct meters or Load profiles of the customers served. Each Transmission Owner shall be required to submit such forecasts and aggregate peak Load data, no later than February 15th each year, which shall reflect verified Load-shifting through December 31 of the previous year.

All aggregate peak Load data submitted by a Transmission Owner must be accompanied by documentation indicating that each affected LSE has been provided the data regarding the assignment of customers to the affected LSE. Any disputes between LSEs and Transmission Owners regarding such data or assignments shall be resolved pursuant to the ISO's Dispute Resolution Procedures, or the Transmission Owner's retail access procedures, as applicable.

The ISO shall allocate the NYCA Installed Capacity requirement among all LSEs serving Load in the NYCA prior to the beginning of each Capability Year. Each LSE's Installed Capacity requirement will equal the product of: (i) the NYCA Installed Capacity requirement; and (ii) the peak Load of that LSE's customers in each Transmission District, coincident with the Transmission District peak, adjusted for applicable regional Load growth, divided by the sum of the forecasted peak Loads located in all Transmission Districts.

The ISO shall calculate a preliminary Installed Capacity requirement estimate for each LSE, which will reflect documented Load-shifting adjustments through the end of February, and provide it to each LSE no later than March 22nd each year. Transmission Owners must submit the required Load-shifting information to the ISO and to each LSE affected by the Load-shifting no later than March 7th each year. The ISO shall notify each LSE of its final Installed Capacity requirement on April 10th each year. Each LSE's final Installed Capacity requirement shall reflect documented Load-shifts as of April 1st that are scheduled to occur before May 1st. Transmission Owners must submit the required Load-shifting information to the ISO and to each LSE affected by the Load-shifting no later than April 1 each year. In the event that there is a pending dispute regarding a Transmission Owner's forecast as

of April 10th, the ISO shall nevertheless establish each LSE's final Installed Capacity requirement, subject to possible adjustments consistent with the ISO's Dispute Resolution Procedures.

Each month, as Transmission Owners report Customers gained and lost by LSEs through Load-shifting, the ISO will adjust the requirement for each LSE such that (a) the total Transmission District Installed Capacity requirement remains constant and (b) an individual LSE's requirement reflects the gains and losses. If an LSE loses a customer as a result of that customer leaving New York State, the Load-losing LSE shall be relieved of its obligation to procure Installed Capacity to cover the Load associated with the departing customer as of the date that the customer's departure is accepted by the ISO and shall be free to sell any excess Installed Capacity. In addition, when a customer leaves New York State, the ISO will adjust each LSE's Installed Capacity requirement so that the total Transmission District Installed Capacity requirement remains constant.

5.11.2 LSE Obligations

Each LSE must procure Installed Capacity in an amount equal to its Installed Capacity requirement from any Installed Capacity Supplier through Bilateral Transactions and/or purchases in ISO-administered Installed Capacity auctions. Each LSE must demonstrate that it has obtained a sufficient amount of Installed Capacity prior to the beginning of each Obligation Procurement Period, and again prior to the beginning of each month. To satisfy this requirement, each LSE must submit completed Installed Capacity certification forms to the ISO by the date specified in the ISO Procedures, which shall be no later than ten (10) days prior to the beginning of an Obligation Procurement Period, and again during each month by the date specified in the ISO Procedures, which

shall be no later than the twentieth (20th) day of each month within an Obligation Procurement Period. The ISO shall develop appropriate certification forms which shall, at a minimum, require LSEs to: (i) designate the total amount of Installed Capacity they have procured; (ii) specify how much Installed Capacity is associated with resources located in each ISO-defined Locality, the remainder of the NYCA and each External Control Area; and (iii) identify any Installed Capacity Supplier from which they have procured Installed Capacity pursuant to Bilateral Transactions.

LSEs that fail to timely satisfy their Installed Capacity requirement, or that fail to make timely submissions of the required certification forms, shall be required to participate in a Deficiency Procurement Auction pursuant to Section 5.14.1 of this Tariff.

5.11.3 Load-Shifting Adjustments

The ISO shall account for Load-shifting among LSEs each month using the best available information provided to it and the affected LSEs by the individual Transmission Owners**.** The ISO shall, upon notice of Load-shifting by a Transmission Owner and verification by the relevant Load-losing LSE, increase the Load-gaining LSE's Installed Capacity requirement and decrease the Load-losing LSE's Installed Capacity requirement to reflect the Load-shifting. The Load-gaining LSE shall pay the Load-losing LSE a pro-rated portion of the Market-Clearing Price of Installed Capacity, as established at the most recent previous regular monthly Installed Capacity auction that successfully cleared, for each day that the Load-gaining LSE serves the Load, until the first day of the month after the next regular monthly Installed Capacity auction. The amount paid by a Load-gaining LSE shall be reduced by the Load-losing LSE's share of any rebate associated with the lost Load paid pursuant to Section 5.15 of

this Tariff. By the time specified in the ISO Procedures, the Load-gaining LSE must procure sufficient Installed Capacity to meet its increased Installed Capacity requirement for the remainder of the Obligation Procurement Period, and the Load-losing LSE may sell Installed Capacity that it no longer needs to satisfy its Installed Capacity requirement.

By the seventh (7th) day of each month, each Transmission Owner shall report to the ISO and to each LSE serving Load in its Transmission District the updated, aggregated LSE Loads documented as of the end of the prior month. By the tenth (10th) day of the current month, the ISO shall provide each LSE with a revised Installed Capacity requirement for the following month, which shall reflect all documented Load-shifts as of the end of the current month. Any disputes among Market Participants concerning Load-shifting shall be resolved pursuant to the ISO's Dispute Resolution Procedures or the Transmission Owner's retail access procedures, as applicable. In the event of a pending dispute concerning a Load-shift, the ISO shall make its monthly Installed Capacity adjustments as if the Load-shift reported by the Transmission Owners had occurred, or if the dispute pertains to the timing of a Load-shift, as if the Load-shift occurred on the effective date reported by the Transmission Owner, but will retroactively modify these allocations, as necessary, based on determinations made pursuant to its Dispute Resolution Procedures, or the Transmission Owner's retail access procedures, as applicable.

5.11.4 LSE Locational Capacity Requirements

The ISO will determine the Locational Installed Capacity requirement, stated as a percentage of the Locality's forecasted Capability Year peak Load, that shall be uniformly applicable to each LSE serving Load within a Locality. In establishing Locational Installed Capacity requirements, the ISO will

take into account all relevant considerations, including the total NYCA Installed Capacity requirement, the NYS Power System transmission Interface Transfer Capability, the Reliability Rules and any other FERC-approved Locational Installed Capacity requirements.

Any Locational Installed Capacity requirements operative at the commencement of ISO operations adopted by LIPA or under settlement agreements approved by the PSC shall continue in effect in accordance with their terms unless and until the ISO implements new or modified Locational Installed Capacity requirements.

Each LSE will secure the required amount of Installed Capacity for the upcoming Obligation Procurement Period from resources consistent with the locational requirements established by the ISO. Installed Capacity associated with Generators located in the New York City Locality that are subject to market mitigation measures may not be sold at a price greater than the locational price cap, except as explicitly provided in Sections 5.13.2, 5.13.3 and 5.14.1 of this Tariff.

In addition, any Customer that purchases Installed Capacity associated with any Generator that is subject to market mitigation measures in an ISO-administered auction may not resell that Installed Capacity in a subsequent auction for a price higher than the price it paid for it. The ISO shall inform Customers that purchase Installed Capacity in an ISO-administered auction of the number of MWs they have purchased that are subject to market mitigation measures.

The ISO shall have the right to audit all executed Installed Capacity contracts and related documentation of arrangements by an LSE to use its own Generation to meet its Locational Installed Capacity requirement for an upcoming Obligation Procurement Period.

5.12 Requirements Applicable to Installed Capacity Suppliers

5.12.1 Installed Capacity Supplier Qualification Requirements

In order to qualify as an Installed Capacity Supplier in the NYCA, Energy Limited Resources, Generators, Installed Capacity Marketers, Interruptible Load Resources or System Resources rated 1 MW or greater, other than entities purchasing Installed Capacity from External System Resources located in External Control Areas that have agreed to certain curtailment conditions (see below), and other than Special Case Resources which are subject to the information requirements of Section 5.12.8 of this Tariff, must: (i) provide information reasonably requested by the ISO including the name and location of Generators and Interruptible Load Resources; (ii) provide documentation to the ISO, of DMNC testing for the previous like Capability Period, or historical production data for the previous like Capability Period, no more than twelve (12) months old, except in the case of new Generators, or, in the case of Interruptible Load Resources, documentation of sustained disconnection for one (1) hour or longer that is no more than one (1) year old, in accordance with ISO Procedures; (iii) abide by the ISO Generator maintenance coordination procedures; (iv) provide the expected return date from any outages (including partial outages) to the ISO; (v) provide documentation demonstrating that it will not utilize the same Installed Capacity for more than one (1) buyer at the same time; (vi) if the resource is an Energy Limited Resource, Generator or System Resource it must commit that it will either schedule it in Day-Ahead Bilateral Transactions to supply Load within the NYCA or bid it into the Day-Ahead Energy Market, unless the Energy Limited Resource, Generator or System Resource is unable to do so due to a maintenance or forced outage or due to temperature related de-ratings; (vii) if the resource is an Interruptible Load Resource, it must commit that it will bid, at the price at which it is willing to be

interrupted, in the Day-Ahead Market, for both Energy and Operating Reserves; and (viii) abide by ISO Procedures.

The ISO shall inform each potential Installed Capacity Supplier that is required to submit DMNC data of its approved DMNC ratings for the Summer Capability Period no later than February 15th, and for the Winter Capability Period no later than August 15th.

In the case of entities purchasing Installed Capacity from External System Resources located in External Control Areas that have agreed not to curtail the Installed Capacity or to afford it the same curtailment priority that they afford their own Control Area Load, the information submission requirements for certification as an Installed Capacity Supplier shall be established in the ISO Procedures.

5.12.2 Additional Provisions Applicable to External Installed Capacity Suppliers

External Generators and entities purchasing from them may qualify as Installed Capacity Suppliers if they demonstrate that their Installed Capacity is deliverable to the NYCA and will not be recalled or curtailed by an External Control Area to satisfy its own Control Area Loads.

Alternatively, an entity that purchases Installed Capacity from an External System Resource located in an External Control Area may qualify to sell Installed Capacity in the NYCA if it demonstrates that the External Control Area will afford NYCA Load the same curtailment priority that it affords its own Control Area Load. Installed Capacity supplied by such entities will be de-rated by the ISO, pursuant to ISO Procedures, to reflect the possibility of curtailment.

External Installed Capacity rights existing as of September 17, 1999 that do not correspond to Table 3 of Attachment L to the ISO OATT shall survive for the term of the relevant External Installed Capacity contract or until the relevant External Generator is retired.

5.12.3 Installed Capacity Supplier Maintenance Scheduling Requirements

All Installed Capacity Suppliers, except for Interruptible Load Resources, External System Resources that are Control Areas and Special Case Resources, intending to supply Installed Capacity to the NYCA must submit a confidential notification to the ISO of their proposed outage schedules for the next three calendar years no later than July 1st of the current calendar year, except for the 2000-2001 Capability Year in which case the deadline for submission of proposed outage schedules will be February 29, 2000. Transmission Owners will be notified of these and subsequently revised outage schedules. Based upon a reliability assessment, if Operating Reserve deficiencies are projected to occur in certain weeks for the upcoming calendar year, the ISO will request voluntary maintenance re-scheduling. In the case of Generators actually supplying Installed Capacity to the NYCA, if voluntary re-scheduling is ineffective, the ISO will invoke forced re-scheduling of their outages to ensure that projected Operating Reserves over the upcoming year are adequate. The re-scheduling process will be described in detail in the ISO Procedures.

A Supplier that intends to supply Installed Capacity in a given month that did not qualify as an Installed Capacity Supplier prior to the beginning of the Obligation Procurement Period must notify the ISO no later than the first day of the prior month so that it may be subject to forced re-scheduling of its proposed maintenance outages in order to qualify as an Installed Capacity Supplier.

Interruptible Load Resources shall notify the ISO at least thirty (30) days prior to the beginning of an Obligation Procurement Period of scheduled maintenance that would reduce their ability to interrupt. Interruptible Load Resources must also submit to the ISO, and, at the ISO's discretion, also submit to the local Transmission Owner, a written commitment that any scheduled maintenance that would reduce their ability to interrupt without reducing their Load a corresponding amount will only be conducted from November 1 through March 31.

In the case of an External System Resource located in an External Control Area, maintenance schedules for interconnections linking such External System Resources to the NYCA shall be coordinated by the External Control Area and the ISO.

5.12.4 Required Certification That Installed Capacity Has Not Been Resold

Each Installed Capacity Supplier must submit certification forms to the ISO, no later than the dates specified in the ISO Procedures demonstrating that the Installed Capacity it has sold has not been sold elsewhere. The ISO shall develop appropriate certification forms.

5.12.5 Installed Capacity Sales

Installed Capacity Suppliers will be authorized to sell an amount of Installed Capacity in each month of an Obligation Procurement Period equal to the total of the seasonal DMNCs of its resources for the corresponding Capability Period. Installed Capacity may be sold in a six-month strip, or in monthly, or multi-monthly segments.

If an Energy Limited Resource's, Generator's, Installed Capacity Marketer's or System Resource's DMNC is determined to have increased during an Obligation Procurement Period, pursuant to testing procedures described in the ISO Procedures, the amount of Installed Capacity that it shall be

authorized to sell during that Obligation Procurement Period shall also be increased on a prospective basis. If a Generator's 1999 Summer Capability Period DMNC rating was derated from its 1998 Summer Capability Period DMNC rating, the Generator may sell Installed Capacity up to the level demonstrated in 1998 for the entire 2000 Summer Capability Period based upon a temperature adjusted DMNC test that is performed and reported to the ISO between March 1 and March 24, 2000. The Generator will be required to verify the claimed DMNC rating by performing an additional test during the 2000 Summer DMNC Test Period. Any shortfall between the amount of Installed Capacity sold by the Generator for the 2000 Summer Capability Period and the amount verified during the 2000 Summer DMNC Test Period will be subject to deficiency charges pursuant to section 5.14.2 of this tariff. The deficiency charges will be applied to no more than the difference between the Generator's 1999 summer period DMNC rating and the amount of Installed Capacity the Generator sold for the 2000 Summer Capability Period. If a new Generator enters service during an Obligation Procurement Period it may qualify as an Installed Capacity Supplier, pursuant to ISO Procedures, and sell Installed Capacity in the NYCA.

Subsequent to the sale of Installed Capacity, each Installed Capacity Supplier must, except as noted in Section 5.12.8 of this Tariff, demonstrate that the amount of Energy which it schedules, bids, or declares to be unavailable on that day is not less than the amount of Installed Capacity that it sold for that day, rounded down to the nearest whole MW. If an entity other than the owner of an Energy Limited Resource, Generator, Interruptible Load Resource or System Resource that is providing Installed Capacity is responsible for bidding and scheduling it, the owner and that entity must designate which of them will be responsible for complying with the requirements of this paragraph. The

designated bidding and scheduling entity will be subject to sanctions pursuant to Section 5.12.9(b) of this Tariff, if the bidding and scheduling requirements are violated.

5.12.6 System Resources Sales

An Installed Capacity Supplier offering to sell Installed Capacity associated with Internal System Resources must submit the DMNC testing data described in Section 5.12.1 for all of its Generators. The amount of Installed Capacity that a System Resources Installed Capacity Supplier may offer will be determined pursuant to ISO Procedures. Installed Capacity Suppliers offering to sell System Resources may only aggregate resources on the basis of ISO-defined Localities, the remainder of the NYCA, or on an individual External Control Area basis, as per the ISO Procedures.

5.12.7 External Transactions and Recall Procedures

All Installed Capacity that is not out on maintenance or a forced outage, or scheduled in the Day-Ahead Market may be used to supply Energy for use in External Transactions but will be subject to recall at any time by the ISO. Installed Capacity Suppliers that enter into External Transactions must submit recall Bids defining the price at which the ISO may recall the Energy associated with the Installed Capacity they have sold to the NYCA. If an Installed Capacity Supplier's Energy is recalled it will be paid the higher of its recall Bid or the Real-Time LBMP at the relevant Proxy Generator Bus. Recall Bids shall be treated in the same manner as any other bid for purposes of the ISO's BME and SRE. Installed Capacity Suppliers must submit their recall Bids at the same time that they schedule External Transactions.

5.12.8 Special Case Resources and Other Installed Capacity Suppliers

5.12.8(a) Special Case Resources

Special Case Resources may qualify as Installed Capacity, without having to comply with the daily bidding and scheduling requirement set forth in Section 5.12.5 of this Tariff, if: (i) they are available to operate for a minimum of four (4) hours each day, at the direction of the ISO, except for those subject to operating limitations established by environmental permits, which will not be required to operate in excess of two (2) hours and which will be derated by the ISO pursuant to ISO Procedures to account for the Load serving equivalence of the hours actually available, following notice of the potential need to operate twenty four (24) hours in advance, and a notification to operate two (2) hours ahead; and (ii) they were not operated as a Load modifier coincident with the peak upon which the Installed Capacity requirement of the LSE that serves that customer is based, unless that LSE's Installed Capacity requirement is adjusted upwards to prevent double-counting. The ISO will have discretion, pursuant to ISO Procedures, to exempt distributed generators that are incapable of starting in two (2) hours from the requirement to operate on two (2) hours notification. Distributed generators and Loads capable of being interrupted upon demand that are not available on certain hours or days will be derated by the ISO, pursuant to ISO Procedures, to reflect the Load serving equivalence of the hours they are actually available. Distributed generators and Loads capable of being interrupted upon demand will be required to comply with verification and validation procedures, to be developed by the ISO, in consultation with interested Market Participants, by March, 2000. Such procedures will not require metering other than interval billing meters on customer Load or testing other than DMNC or sustained disconnect, as appropriate, unless agreed to by the customer.

Installed Capacity sold to an LSE by a Special Case Resource pursuant to this subsection may not be resold by that LSE.

Transmission Owners that require assistance from distributed generators larger than 100 kW and Loads capable of being interrupted upon demand for Load relief purposes or as a result of a Local Reliability Rule, shall direct their requests for assistance to the ISO for implementation consistent with the terms of this Section.

5.12.8(b) Existing Municipally-Owned Generation

During the 2000 Summer Obligation Procurement Period, a municipal utility that owns existing generation in excess of its Installed Capacity requirement, net of NYPA-provided capacity, may offer the excess capacity for sale as Installed Capacity provided that it is willing to operate the generation at the ISO's request, and provided that the Energy produced is deliverable to the New York State Power System. Such a municipal utility shall not be required to comply with the requirement of Section 5.12.5 of this Tariff that an Installed Capacity Supplier bid into the Energy market or enter into bilateral transactions. Municipal utilities shall, however, be required to submit their typical physical operating parameters, such as their start-up times, to the ISO. This subsection is only applicable to Generators that were in service or under construction as of December 31, 1999.

5.12.8(c) Energy Limited Resources

An Energy Limited Resource may qualify as an Installed Capacity Supplier if it bids into the Day-Ahead Market for twenty four (24) hours each day and if it is able to provide the Energy equivalent of the claimed Installed Capability for four (4) hours of Energy each day. After an Energy-Limited Resource has provided the Energy equivalent of the claimed Installed Capacity for four (4)

hours, the ISO will avoid calling on it during those hours in which the ISO knows it will be recharging, or replacing depleted resources. Nevertheless, the ISO may call on Energy Limited Resources at any time during emergencies.

5.12.9 Sanctions Applicable to Installed Capacity Suppliers

Pursuant to this Section, the ISO may impose financial sanctions on Installed Capacity Suppliers that fail to comply with certain provisions of this Tariff. The ISO shall notify Installed Capacity Suppliers prior to imposing any sanction and shall afford them a reasonable opportunity to demonstrate that they should not be sanctioned and/or to offer mitigating reasons why they should be subject to a lesser sanction. The ISO may impose a sanction lower than the maximum amounts allowed by this Section at its sole discretion. Installed Capacity Suppliers may challenge any sanction imposed by the ISO pursuant to the ISO Dispute Resolution Procedures.

Any sanctions collected by the ISO pursuant to this Section will be applied to reduce the Rate Schedule 1 charge under this Tariff.

5.12.9(a) Sanctions for Failing to Provide Required Information

If an Installed Capacity Supplier fails to provide the information required by Section 5.12.1(i) - 5.12.1(iv) of this Tariff in a timely fashion, the ISO may take the following actions. On the first day that required information is late, the ISO shall notify the Installed Capacity Supplier that required information is past due and that it reserves the right to impose financial sanctions if the information is not provided by the end of the next day. Starting on the third day that the required information is late, the ISO may impose a daily financial sanction up to the higher of $500 or $5 per MW of Installed Capacity that the Generator, Interruptible Load Resource or System Resource in question is capable of

providing. Starting on the tenth day that the required information is late, the ISO may impose a daily financial sanction up to the higher of $1000 or $10 per MW of Installed Capacity that the Generator, Interruptible Load Resource or System Resource in question is capable of providing.

5.12.9(b) Sanctions for Failing to Comply with Scheduling Requirements

On any day in which an Installed Capacity Supplier fails to comply with the scheduling and bidding requirements of Sections 5.12.1(vi) and (vii) of this Tariff, the ISO may impose a financial sanction up to the product of a deficiency charge, calculated pursuant to the Table in Section 5.14.1 of this Tariff (pro-rated on a daily basis), and the maximum number of MWs that the Installed Capacity Supplier failed to schedule or bid in any hour in that day.

In addition, if an Installed Capacity Supplier fails to comply with the scheduling and bidding requirements of Sections 5.12.1(vi) and (vii) of this Tariff during an hour in which the ISO recalls Energy associated with NYCA Installed Capacity Suppliers, the ISO may impose an additional financial sanction equal to the product of the number of MWs the Installed Capacity Supplier failed to schedule during that hour and the corresponding Real-Time LBMP at the applicable Proxy Generator Bus. An Installed Capacity Supplier that is subjected to the aforementioned sanction and which has entered into an External Transaction shall not be paid its recall Bid if the ISO recalls Energy associated with its Installed Capacity during the hour in which the aforementioned sanction is imposed.

5.13 Installed Capacity Auctions

5.13.1 General Auction Requirements

The ISO will administer Installed Capacity auctions to accommodate LSEs' and Installed Capacity Suppliers' efforts to enter into Installed Capacity transactions and to give LSEs an opportunity

to satisfy their Installed Capacity requirements. The ISO shall conduct regular auctions, at the request of an LSE, at the times specified in this Section and the ISO Procedures.

Installed Capacity Suppliers, LSEs and Installed Capacity Marketers that are Customers under this Tariff will be allowed to participate in Installed Capacity auctions, provided that they satisfy the creditworthiness requirements set forth in Section 11.0 of the ISO OATT. Installed Capacity purchased in Installed Capacity auctions may not be sold to External Control Areas. Offers to sell and bids to purchase Installed Capacity shall be made in $/kW for the time period appropriate to the auction. The ISO shall impose no limits on bids or offers in any auction, except to the extent required by any applicable market mitigation measures.

Installed Capacity Suppliers that wish to participate in an ISO-administered auction must submit completed certification forms to the ISO no later than ten days prior to the beginning of an Installed Capacity auction in which they intend to offer Installed Capacity, demonstrating that their Installed Capacity has not been committed to a Bilateral Transaction.

In-City Generators that are subject to FERC-approved market mitigation measures are required to offer to sell all such Installed Capacity into the ISO-administered Installed Capacity auctions. All other Installed Capacity Suppliers may offer to sell into the ISO-administered Installed Capacity auctions at their discretion.

The ISO Procedures shall specify the dates by which the ISO will post the results of Installed Capacity auctions. The ISO Procedures shall ensure that there are at least four business days between the time that auction results are posted and the dates that LSEs are required to demonstrate that they

have procured sufficient Installed Capacity to cover their Installed Capacity requirements pursuant to Section 5.11.2 of this Tariff.

5.13.2 The Obligation Procurement Period Auction

An Obligation Procurement Period Auction will be conducted, at the request of an LSE, no later than thirty (30) days prior to the start of each Obligation Procurement Period in which Installed Capacity will be purchased and sold for the entire duration of the Obligation Procurement Period. The exact date of the Obligation Procurement Period Auction shall be established in the ISO Procedures. The Obligation Procurement Period Auction is intended to establish Market-Clearing Prices for each ISO-defined Locality, the remainder of the NYCA and adjacent External Control Areas.

Each Obligation Procurement Period Auction shall consist of two phases which shall be conducted on the same day. Participation in the first phase shall be limited to: (i) LSEs located in the New York City Locality seeking to make locational Installed Capacity purchases in order to satisfy their In-City Locational Installed Capacity requirement; (ii) any other entity seeking to purchase In-City locational Installed Capacity; (iii) qualified In-City Generators; and (iv) any other Installed Capacity Supplier that owns excess Installed Capacity associated with qualified In-City Generators. In the first phase of the Obligation Procurement Period Auction, LSEs that are awarded Installed Capacity shall pay the Market-Clearing Price of Installed Capacity determined in that phase. Installed Capacity Suppliers that are selected to provide Installed Capacity shall receive the Market-Clearing Price determined in that phase, except in the case of In-City Generators that are subject to mitigation measures, which shall receive the lesser of the Market-Clearing Price or the applicable locational price cap. Any entity that resells Installed Capacity associated with In-City Generators that are subject to

market mitigation measures shall receive the lesser of the Market-Clearing Price or the price that it paid for that Installed Capacity. If the Market-Clearing Price exceeds the total amount paid to Installed Capacity Suppliers, the ISO shall rebate the Excess Amount pursuant to Section 5.15 of this Tariff.

All Installed Capacity Suppliers and LSEs may participate in the second phase of the Obligation Procurement Period Auction, except with respect to any Installed Capacity associated with In-City Generators that are subject to market mitigation measures, which may sell in the second phase only if it has been established by the ISO that all LSEs located in the New York City Locality have satisfied their In-City Locational Installed Capacity requirements. LSEs awarded Installed Capacity in the second phase shall pay the applicable Market-Clearing Price determined in that phase. Installed Capacity Suppliers, with the exception noted below, including In-City Generators otherwise subject to market mitigation measures, that are selected to provide Installed Capacity shall receive the applicable Market-Clearing Price determined in that phase. Any entity that resells Installed Capacity associated with In-City Generators subject to market mitigation measures shall receive the lesser of the applicable Market-Clearing Price or the price it paid for that Installed Capacity. The ISO shall rebate any Excess Amount pursuant to Section 5.15 of this Tariff. During the 2000 Summer Obligation Procurement Period, In-City Generators that are permitted to offer to sell in the second phase shall be permitted to make separate offers in the first and second phases of the Obligation Procurement Period Auction.

The results of the Obligation Procurement Period Auction will be made available to Market Participants at the time specified in the ISO Procedures which shall be prior to the start of the Monthly Installed Capacity Auctions held prior to the beginning of each Obligation Procurement Period.

5.13.3 Monthly Auctions

Monthly Auctions will be held, at the request of an LSE, no later than fifteen (15) days prior to the start of each Obligation Procurement Period, and, at the request of an LSE, no later than the fifteenth (15th) day of each month during an Obligation Procurement Period, during which Installed Capacity may be purchased and sold for any one or more remaining months in the Obligation Procurement Period. The exact dates of each Monthly Auction shall be established in the ISO Procedures. Each Monthly Auction is intended to establish Market-Clearing Prices for each ISO-defined Locality, the remainder of the NYCA and all adjacent External Control Areas.

Each Monthly Auction held prior to the beginning of an Obligation Procurement Period shall consist of two phases which shall be conducted on the same day. Participation in the first phase shall be limited to: (i) LSEs located in the New York City Locality seeking to make locational Installed Capacity purchases in order to satisfy their In-City Locational Installed Capacity requirement; (ii) any other entity seeking to purchase In-City locational Installed Capacity; (iii) qualified In-City Generators; and (iv) any other Installed Capacity Supplier that owns excess Installed Capacity associated with qualified In-City Generators. In the first phase of each Monthly Auction, LSEs that are awarded Installed Capacity shall pay the Market-Clearing Price of Installed Capacity determined in that phase. Installed Capacity Suppliers that are selected to provide Installed Capacity shall receive the Market-Clearing Price determined in that phase, except in the case of In-City Generators that are subject to mitigation measures, which shall receive the lesser of the Market-Clearing Price or the applicable locational price cap. Any entity that resells Installed Capacity associated with In-City Generators that are subject to market mitigation measures shall receive the lesser of the Market-Clearing Price or the price that it paid

for that Installed Capacity. If the Market-Clearing Price exceeds the total amount paid to Installed Capacity Suppliers, the ISO shall rebate the Excess Amount pursuant to Section 5.15 of this Tariff.

All Installed Capacity Suppliers and LSEs may participate in the second phase of each pre-Obligation Procurement Period Monthly Auction, except with respect to any Installed Capacity associated with In-City Generators that are subject to market mitigation measures, which may sell in the second phase only if it has been established by the ISO that all LSEs located in the New York City Locality have satisfied their In-City Locational Installed Capacity requirements. LSEs awarded Installed Capacity in the second phase shall pay the applicable Market-Clearing Price determined in that phase. Installed Capacity Suppliers, with the exception noted below, including In-City Generators otherwise subject to market mitigation measures, that are selected to provide Installed Capacity shall receive the applicable Market-Clearing Price determined in that phase. Any entity that resells Installed Capacity associated with In-City Generators subject to market mitigation measures shall receive the lesser of the applicable Market-Clearing Price or the price it paid for that Installed Capacity. The ISO shall rebate any Excess Amount pursuant to Section 5.15 of this Tariff. During the 2000 Summer Obligation Procurement Period, In-City Generators that are permitted to offer to sell in the second phase shall be permitted to make separate offers in the first and second phases of the auction.

Monthly Auctions held during an Obligation Procurement Period shall be phased unless the ISO has established that all LSEs with Locational Installed Capacity requirements located in the New York City Locality have satisfied their Locational requirements. If the ISO establishes that these LSEs have not satisfied their Locational Installed Capacity requirements, that Monthly Auction will be conducted as if it were being held prior to the beginning of an Obligation Procurement Period *(i.e.,* it shall consist of

two phases.) If, however, the ISO establishes that LSEs have satisfied their Locational Installed Capacity requirements, that Monthly Auction will not be phased and will be conducted as if it were the second phase of a pre-Obligation Procurement Period Monthly Auction.

The results of each Monthly Auction will be made available to Market Participants no later than thirteen (13) days prior to the beginning of the next month.

5.13.4 Detailed Installed Capacity Auction Description

Additional detail concerning the ISO's Installed Capacity auction procedures are provided in the ISO's detailed "Installed Capacity Auction Description," which is on file with the Commission.

5.14 Installed Capacity Deficiencies and Deficiency Procurement Auctions

5.14.1 LSE Deficiencies

If an LSE violates Sections 5.11.2 or 5.11.3 of this Tariff by failing to procure sufficient Installed Capacity to cover its Installed Capacity requirement for an Obligation Procurement Period, or, as a result of Load-shifting, for any month within an Obligation Procurement Period, the ISO shall procure sufficient Installed Capacity to cover the remainder of the LSE's Installed Capacity requirement for that Obligation Procurement Period, or month, through Deficiency Procurement Auctions.

The ISO shall conduct the initial Deficiency Procurement Auction no later than the twenty third (23rd) day of the month immediately preceding the start of an Obligation Procurement Period. The exact date of the initial Deficiency Procurement Auction shall be established in the ISO Procedures. The initial Deficiency Procurement Auction will consist of six (6) separate two-phase monthly auctions. Both phases of each initial Deficiency Procurement Auction shall be conducted on the same day. In each phase of each initial Deficiency Procurement Auction the ISO shall submit deficiency bids on behalf of

deficient LSEs at a level per MW determined by dividing the appropriate number specified in the following Table by six.

Deficiency Bids and Charges

LOCATION	INTERIM FIRST THREE YEARS AFTER ISO COMMENCES OPERATIONS	END-STATE AFTER THREE YEARS OF ISO OPERATIONS
In-City New York City (LBMP Load Zone J)	**$75/kW per** Obligation Procurement Period	**3 Times Localized Levelized Embedded Cost of GT**
Long Island (LBMP Load Zone K)	**Year 1: $60/kW per** Obligation Procurement Period **Year 2: $65/kW per** Obligation Procurement Period **Year 3: $70/kW per** Obligation Procurement Period	**3 Times Localized Levelized Embedded Cost of GT**
All Other LBMP Load Zones in the NYCA	**Year 1: $52.5/Kw per** Obligation Procurement Period **Year 2: $57.5** **Year 3: $62.5**	**3 Times Localized Levelized Embedded Cost of GT**

During the first phase of an initial Deficiency Procurement Auction the ISO shall submit deficiency bids on behalf of deficient LSEs located in the New York City Locality that are required to make locational Installed Capacity purchases in order to satisfy their In-City Locational Installed Capacity requirement. The ISO shall solicit bids from qualified In-City Generators, and from any other entity that owns excess In-City Locational Installed Capacity. LSEs that are awarded Installed Capacity in the first phase auction shall pay to the ISO the lesser of the Market-Clearing Price of Installed Capacity determined in that phase or the deficiency bid. The ISO shall pay Installed Capacity

Suppliers that are selected to provide Installed Capacity the Market-Clearing Price determined in that phase which can be no greater than the deficiency bid, except in the case of Installed Capacity associated with In-City Generators that are subject to mitigation measures, which shall receive the lesser of the Market-Clearing Price or the applicable locational price cap. Any entity that resells Installed Capacity associated with In-City Generators that are subject to market mitigation measures shall receive the lesser of the Market-Clearing Price or the price that it paid for that Installed Capacity. If the Market-Clearing Price exceeds the total amount paid to Installed Capacity Suppliers, the ISO shall rebate the Excess Amount pursuant to Section 5.15 of this Tariff.

In the second phase of each initial Deficiency Procurement Auction, the ISO shall submit deficiency bids on behalf of all remaining deficient LSEs and shall solicit bids from all qualified Installed Capacity Suppliers, including Installed Capacity associated with In-City Generators otherwise subject to mitigation measures that has not been sold, provided that all LSEs located in the New York City Locality have satisfied their In-City Locational Installed Capacity requirements. Deficient LSEs that are awarded Installed Capacity shall pay to the ISO the lesser of the applicable Market-Clearing Price of Installed Capacity determined in that phase, or the deficiency bid. The ISO will use these deficiency payments to pay the applicable Market-Clearing Price determined in that phase of Installed Capacity, except as noted below, to Installed Capacity Suppliers that are selected to provide Installed Capacity, including participating In-City Generators otherwise subject to market mitigation measures. Any entity that resells Installed Capacity associated with In-City Generators that are subject to market mitigation measures shall receive the lesser of the Market-Clearing Price or the price that it paid for that Installed Capacity. The ISO shall rebate any Excess Amount pursuant to Section 5.15 of this Tariff. During the

2000 Summer Obligation Procurement Period, In-City Generators that are permitted to offer to sell in the second phase shall be permitted to make separate offers in the first and second phases of the initial Deficiency Procurement Auction.

In addition to the initial Deficiency Procurement Auction, the ISO shall conduct a monthly Deficiency Procurement Auction no later than the twenty third (23rd) day of any month in which a Load-gaining LSE fails to procure Installed Capacity to cover new Load it has gained. The exact date of each monthly Deficiency Procurement Auction shall be established in the ISO Procedures. If In-City LSEs are required to participate in a monthly Deficiency Procurement Auction in order to satisfy their In-City Locational Installed Capacity requirement the auction will be conducted as if it were an initial Deficiency Procurement Auction *(i.e.*, it shall consist of two phases.) If In-City LSEs are not required to participate in a monthly Deficiency Procurement Auction in order to satisfy their In-City Locational Installed Capacity requirement the auction will not be phased but will instead be conducted as if it were the second phase of an initial Deficiency Procurement Auction.

Any LSEs that are still deficient after the completion of a Deficiency Procurement Auction must pay a monthly deficiency charge to the ISO based on the deficiency charges set forth in the Table above, divided by six, and multiplied by the number of MWs by which they are deficient. The ISO will attempt to use these deficiency charges to procure Installed Capacity from Generators that are capable of selling Installed Capacity but that failed to qualify to sell it prior to the Deficiency Procurement Auction, *e.g.*, recently upgraded Generators, new Generators and existing Generators that were otherwise not able to qualify. The ISO shall not procure Installed Capacity from previously qualified Installed Capacity Suppliers that withheld their Installed Capacity. The ISO will not pay an Installed

Capacity Supplier, more than the applicable deficiency charge per MW of Installed Capacity, or the applicable locational price cap per MW of Installed Capacity, whichever is less, pro-rated to reflect the portion of the Obligation Procurement Period for which the Installed Capacity Supplier provides Installed Capacity. Any remaining monies collected by the ISO pursuant to this paragraph will be applied to reduce the Schedule 1 charge.

The ISO shall not reveal the number of MWs that LSEs are deficient prior to a Deficiency Procurement Auction.

5.14.2 Installed Capacity Supplier Deficiencies

In the event that the amount of Installed Capacity that an Installed Capacity Supplier is authorized to sell in a given month is determined to have been less than the amount that the Installed Capacity Supplier actually sold for that month, the ISO shall prospectively purchase Installed Capacity on behalf of that deficient Installed Capacity Supplier in the appropriate Deficiency Procurement Auction.

The ISO shall submit a deficiency bid, calculated pursuant to Section 5.14.1 of this Tariff in the appropriate Deficiency Procurement Auction on behalf of a deficient Installed Capacity Supplier as if it were a deficient LSE. The deficient Installed Capacity Supplier shall be required to pay to the ISO the Market-Clearing Price of Installed Capacity established in that Deficiency Procurement Auction.

If an Installed Capacity Supplier is found, at any point during an Obligation Procurement Period, to have been deficient for any prior portion of that Obligation Procurement Period, *e.g.,* when the amount of Installed Capacity that it sells is found to be less than the amount it was authorized to sell,

the Installed Capacity Supplier shall be retrospectively liable to pay the ISO the monthly deficiency charge, calculated pursuant to Section 5.14.1 of this Tariff.

Any deficiency charges collected by the ISO pursuant to this Section will be applied to reduce the Rate Schedule 1 charge under this Tariff.

5.15 Payment and Allocation of Installed Capacity Auction Rebates

The ISO shall rebate to all LSEs with Locational Installed Capacity requirements in the New York City Locality any Excess Amount that remains after the completion of an auction. Such rebates shall be allocated among all New York City LSEs in proportion to their share of the locational New York City Installed Capacity requirement, regardless of whether they actually took part in the first phase of the relevant auction. The ISO shall allocate such rebates among In-City LSEs on a monthly basis. Rebates shall include interest accrued between the time they were collected and the time that they are paid.

Attachment II

Attachment III

Attachment IV

Attachment IV

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc.	)	
	)	
Central Hudson Gas & Electric Corp.	)	Docket Nos. ER97-1523-012
Consolidated Edison Company of New York, Inc.	)	OA97-470-011
New York State Electric & Gas Corporation	)	ER97-4234-009
Niagara Mohawk Power Corporation	)	(not consolidated)
Orange & Rockland Utilities, Inc.	)	
Rochester Gas & Electric Corp.	)	

NOTICE OF COMPLIANCE FILING

Take notice that on February 1, 2000 the New York Independent System Operator, Inc. ("NYISO") submitted a Transitional Installed Capacity market design in the above-referenced proceeding consisting of a series of revisions to the Installed Capacity provisions of the NYISO's Market Administration and Control Area Services Tariff and an accompanying Installed Capacity auction description document. The NYISO requests an effective date of March 15, 2000.

A copy of this filing was served upon all persons on the Commission's official service lists in Docket Nos. ER97-1523-000, OA97-470-000 and ER97-4234-000 (not consolidated), and the respective electric utility regulatory agencies in New York, New Jersey and Pennsylvania.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure 385.211 and 385.214). All such motions or protests should be filed on or before _____. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

David P. Boergers
Secretary

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 1st day of February, 2000.

Arnold H. Quint
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