

Introduction

At the Price Responsive Load (PRL) Working Group meeting on December 12, 2005, NYISO presented multiple proposals for rule changes pertaining to the SCR Program. Many of these proposed changes were discussed for the very first time at this meeting.

At the conclusion of the meeting market participants were informed by NYISO that they had already started working on draft language for presentation to the ICAP working group in January. ECS, along with numerous other market participants, stated their intention to file comments with NYISO, and followed up with communications to NYISO, asking that comments from market participants be thoroughly reviewed and analyzed prior to drafting language for proposed changes. Otherwise, it might appear obvious that the “proposed” changes had been pre-ordained as “actual” rule changes, with little input from market participants involved in the SCR program.

ECS respectfully requests in general that NYISO act with caution when making such extensive changes to New York State’s Demand Response program. New York’s Demand Response program has, from the perspective of most market participants, set a great example for demand response programs in the United States. NYISO needs to be cautious not to jeopardize an entire program while trying to seek absolute perfection. The end result of these “proposed” rule changes would **most certainly** be the elimination of important curtailment resources, especially in the New York City and Long Island zones (Zones J and K) where curtailment is most needed.

ECS (and we presume the other RIP’s) have developed their programs under the auspices of the current rules. We have signed agreements from resources that extend well into the future in most cases. The rule changes proposed by NYISO impair those agreements and will cause us financial damage. NYISO’s legal department needs to initially review these rule changes and their contract-impairment nature. At the very least, if rule changes are indeed adopted, discussion would have to commence about grandfathering in existing resources under the current rules.

This said, ECS respectfully submits the following comments regarding issues discussed at the PRL working group meeting on December 12, 2005.

ICAP WG
01/24/06
DRAFT – For Discussion Only
General Comments

In accordance with the Installed Capacity Manual, NYISO Service Tariff, and the Reliability Rules, capacity is defined as a generator or load facility that is capable of supplying and/or reducing their demand for energy in the New York Control Area for the purpose of ensuring that sufficient energy and capacity are available; and Unforced Capacity is the methodology that determines the amount of capacity that each resource is qualified to supply. That being said, capacity is just that, a right to be called on. Capacity is not energy, only the amount that might be available when called upon to generate or curtail. Given the rule changes that are being proposed, it appears that NYISO is attempting to align rules for Special Case Resources (SCR's) as if they were generators. As will be discussed more later in this document, if rules are to be applied to SCR's as though they are the same as generators, certainly it follows that SCR's should also be allowed some of the benefits that are given to generators as well.

SCR Performance Analysis:

It is apparent that NYISO has based much of the rationale for the various SCR rule modifications upon the premise that SCR resources did not show up on July 27th. To strengthen this contention, NYISO has tried to identify the actual event performance on July 27th by measuring the SCR performance under the CBL approach. NYISO indicates that the event performance in Zone J was only 27% and in Zone K was only 11% (if measured against CBL). The following are just a few reasons why these indicators are low:

- (A.) NYISO's calculations are inaccurate and incomplete (the CBL methodology cannot be applied)
- (B.) The load on July 27th was much higher than the peak load from 2004
- (C.) Load trends on July 27th (event day) vs. load trends for the week leading up to the event show significant performance on July 27th
- (D.) Load trends on July 27th (event day) vs. load trends for the peak day for Summer 2004 confirm significant performance on July 27th
- (E.) NYISO is partially responsible for the failure of some resources to perform on July 27th

After further review and analysis of available data, it is clear that SCR performance during the July 27th event was much more favorable than was initially presented by NYISO. A discussion of each of the above points follows:

(A.) NYISO’s calculation of SCR performance is inaccurate and incomplete (the CBL methodology cannot be applied)

During the December 12th meeting, NYISO presented findings that purport to show poor performance by SCR’s if applied against the CBL methodology utilized to determine performance under the EDRP program (and the energy payments portion of the SCR program). Using the CBL method to compare results is flawed and reveals an inaccurate picture of what really happened on July 27th, for the following reasons:

- (1.) **The NYISO used a significantly incomplete data set.** From a quick analysis of the numbers presented at the PRL Working Group meeting, it appears as though less than 50% of the MW’s in the SCR program actually submitted for energy payments. This would mean that NYISO does not have complete data from the 10 prior days included in the CBL calculation. Did NYISO assume a performance against the CBL of zero (0) for resources that didn’t submit for energy payments? If NYISO is going to perform a calculation that will be significantly relied upon in proposing SCR rule changes, the calculation should be correct. In the case of July 27th this calculation has not and cannot be made. There is no way that NYISO can accurately determine what a particular resources’ performance is on July 27th against the CBL if in fact no CBL data was submitted.

- (2.) **The fact that five (5) day-ahead advisories were called by NYISO within the week prior to the event significantly skews any analysis measuring performance against the CBL.** There were several day-ahead advisories (“false alarms”) prior to the July 27th event day. Though the NYISO makes brief mention of this in their material, the true impact of these advisories has not been properly assessed. Our resources generally curtailed or attempted to curtail during those prior advisory calls even though an event was not confirmed. Our analysis clearly shows curtailment in fact did take place during advisory days (to be discussed later in this document). When there is a day-ahead advisory, ECS always stresses the significance of curtailing even if an event is not confirmed on the following day. Among other things, Con Ed has from time-to-time during these high demand times reduced voltage, which could cause problems in a facility¹. The fact remains that multiple prior day-ahead advisories significantly skewed calculations against the CBL (which included these days in its calculation-or at least limited the 10-day window to a 6-day window).

¹ A copy of one of the several postings on Con Edison’s website regarding the hot weather from late July 2005 is attached as Exhibit “A”. As you can see, they indicate that they will reduce voltage. We received reports of problems with fires, smoking equipment, etc by some of our customers in these Con Ed pockets on these days. Also, review the attached Exhibit “B”, which is just one example of what our customers were doing during the pre-event days indicating that they would be curtailing power with or without an event.

DRAFT – For Discussion Only

The more appropriate rule change would be a guideline as to when and how often day-ahead advisories are issued—including a provision that resources actually be paid for curtailing on those days.

- (3.) **The load on July 27th was much higher than the load on the CBL days. NYISO’s presentation on December 12th failed to account for the enormity of this difference.** Consider the following facts concerning Zone J load (14:00 to 18:00 time frame):
- a. ***The load on July 27th was approximately 9% higher than the load on the advisory days within the CBL window. See attached Exhibit “C”.***
 - b. ***The load on July 27th was approximately 18% higher than the load on the non-advisory days within the CBL window. See attached Exhibit “C”.***
 - c. ***The load on July 27th was approximately 13.5% higher than the average of all CBL days. See attached Exhibit “C”.***
- (4.) **In general, measuring an SCR against the CBL will almost always be lower than if measured against APMD.** Because the baseline used to calculate SCR performance consists of the average peak monthly demands (APMD), and the CBL method used in the EDRP program is based upon energy use over a 10 day window, it follows that the SCR methodology will almost always reveal significantly higher numbers than if measured by the CBL method. This is obvious and requires no further explanation.

In light of this analysis, it is not hard to imagine why performance measured against the CBL would appear lower than expected. It also may provide insight to NYISO as to why numerous resources didn’t choose to submit for energy payments. NYISO should refrain from using such an approach to justify rule change proposals as it appears to lack proper foundation.

(B.) The load on July 27th was much higher than the peak load from 2004

Another issue that has not been fully discussed when reviewing SCR performance on July 27th is the fact that the load on that day was much higher than the peak load from the summer 2004. This is an important comparison to review because an SCR’s capacity for summer 2005 is based upon their demands from summer 2004. In looking at this issue, we determined that the most appropriate day to compare the July 27th load to was

June 9th, 2004. After all, it was on this day that NYISO hit its system peak, and Con Edison and LIPA hit their peaks as well.

Performing this analysis reveals an interesting result: The combined loads of Zones J & K during the event hours² were more than 18% higher than the similar hours of June 9th, 2004. Thus, in theory, a “typical” SCR had to curtail 18% of their commitment before they even began getting credit for any performance at all.

Additional things to consider...

- Con Edison and LIPA recorded several record breaking days of electric demand, days when temperatures were in excess of 100 degrees³.
- Con Edison hit their highest all-time peak demand-13,059 MW- on July 27th
- Con Edison experienced their greatest 1 hour gas usage on July 27th
- Con Edison broke the record for consecutive weekday electricity consumption records on July 26th & July 27th
- In Con Ed territory, the Summer of 2005 had 7 of the top 10 days of most electricity used; the 5 highest days of peak demand ever; and 8 of the top 10 peak days ever

(C.) Load trends on July 27th (event day) vs. load trends for the week leading up to the event show significant performance on July 27th

Another clear indication that SCR’s curtailed on July 27th can be gleaned from a comparison of the load trends for Zone J on the event day versus the load trends on the several days leading up to the event. This is significant to look at because of the fact that during that prior week, Con Edison broke their demand record on several different occasions – it was intensely hot – and it seems very relevant to compare what the load trend was on the other like days versus the load trend on the day SCR’s were called to curtail. The Graph attached as Exhibit “F” shows the following:

² It was necessary to aggregate the loads of Zones J & K because the load data on NYISO’s site for June 9th groups the 2 zones together. We used the load from July 27th for Con Ed (their system peak) and added the July 26th load for LIPA (their system peak). Refer to the Graph attached as Exhibit “D”

³ A copy of the Press Release issued by Con Edison re: the events of July 27th is attached as Exhibit “E”.

ICAP WG

01/24/06

DRAFT – For Discussion Only

- The load from hour-to-hour on July 27th trended at a much lesser rate as compared to the load on July 26th (advisory day) and even more so as compared to the load on July 25th (non-advisory day)
- The load from like hours on the *non-advisory* days preceding the event trended much higher than on July 27th
- The load from like hours on the *advisory* days preceding the event also trended at a higher rate than was the case on July 27th (Note: the load on advisory days trended at a lesser rate than on non-advisory days, confirming that curtailment was occurring on the advisory days as well)

Applying the hourly load trend from the non-advisory days preceding July 27th, the projected load for Zone J on July 27th would have been....

	HB 13:00	HB 14:00	HB 15:00	HB 16:00	HB 17:00	HB 18:00
July 27th Actual Load	11,015.6	11,073.8	11,130	11,162.1	10,992.5	10,349.8
July 27th Projected Load*	11,036.2	11,176.4	11,313.7	11,395.5	11,420.7	11,227.1
Difference (MW)	20.6	102.6	183.7	233.4	428.2	877.3

**This is the projected load on July 27th had the load increased at the same pace / trend as it did during the several non-advisory days preceding July 27th*

NYISO should consider the ramifications had SCR resources NOT curtailed!

(D.) Load trends on July 27th (event day) vs. load trend on June 9th, 2004 confirms SCR performance on July 27th

An additional comparison to consider is the load trend on July 27th versus the load trend on the summer 2004 peak day (June 9th, 2004). The Exhibit “F” Graph shows that the hour-by-hour load on June 9th, 2004 increased at a much more significant rate than the hour-by-hour load on July 27th

Applying the hourly load trend from June 9th, 2004 to July 27th, 2005 the projected load for Zone J would have been....

	HB 13:00	HB 14:00	HB 15:00	HB 16:00	HB 17:00	HB 18:00
July 27th Actual Load	11,015.6	11,073.8	11,130	11,162.1	10,992.5	10,349.8
July 27th Projected Load*	11,191	11,471.7	11,520.6	11,715.5	12,155.8	12,037.3
Difference	175.4	397.9	390.6	553.4	1,163.3	1,687.5

**This is the projected load on July 27th had the load increased at the same pace / trend as it did during the peak day of 2004 (June 9th, 2004)*

(E.) NYISO is partially responsible for the failure of some resources to perform on July 27th

The performance problems, that were encountered by some resources, during the July 27th event is partly the responsibility of NYISO. The multiple day-ahead advisories without an actual event triggered a “boy that cried wolf” mentality amongst many resources. One of our customers replied simply: “Wolf! Wolf!”

Concluding Comments Regarding SCR Performance:

ECS suggests that if NYISO is relying upon performance in the July 27th event in proposing rule changes, the performance data should be more accurately portrayed. The data and results have been presented in the worst possible light, without acknowledgement of the numerous reasons for the “appearance” of a lower than anticipated SCR performance. The record-breaking demands and the extended intense heat wave during those several days in July 2005 presented an anomalous, once-in-a-lifetime, situation which, when benchmarked against a much milder 2004, produced an even more anomalous result when looking at the performance of resources. ECS submits that curtailment by the SCR resources on July 27th in actuality helped forestall blackouts or brownouts in the effected areas. NYISO needs to consider the benefits that the SCR program provides to New York State before they adopt changes that could lead to both unfavorable results this coming summer and potentially eliminating sectors of the community from participating in the program.

Discussion of Proposed Rule Changes

Modification to the APMD calculation:

NYISO proposes to limit the hours for which the APMD is considered (between 4:00 pm and 8:00 pm for the winter obligation period and between 2:00 pm and 6:00 pm for the summer obligation period). ECS submits the following:

(A.) **Generators perform tests during a capacity period window, but are not subject to time periods within that window.** A generator can choose which hours to perform their test, therefore resulting in higher DMNC values. The generator is allowed to sell this capacity even though under normal conditions they may or may not be able to provide it. If NYISO is attempting to align SCR rules with the rules for generators, this discretion that generators have should be included of course.

(B.) **Adopting this rule change will eliminate entire sectors of the community from the program.** For example, a winter baseline restriction to the 4:00 pm to 8:00 pm hours will entirely kick out schools (ECS has hundreds of Parochial, Jewish, Independent & other schools), Universities (several in the program), 1 shift manufacturers (hundreds in the program), and countless others. Will NYISO help us explain to the Roman Catholic Diocese of Brooklyn why their schools cannot participate in NYISO's Demand Response Programs? After that, we can talk to the Jewish School Association and save the best for last—the Manufacturers Association of New York City. It would be suicide for the program to lose very capable and proudly-participating resources.

(C.) **If the APMD baseline is limited to the indicated hours, then the event and test must also be limited to those same hours.** A resource cannot reasonably be expected to respond to an event or test outside of that window. Otherwise, the resource is being required to provide more capacity to the market than they are financially compensated for. At the very least, ECS suggests that this rule change be reviewed by NYISO's Legal Department prior to proceeding.

(D.) **NYISO's specific hourly window entirely fails to account for the fact that the events have historically fallen, to a significant extent, outside of that window.** Consider these facts for all events prior to 2005:

- i. There were 65 total event hours in Zones J & K (same hours for each zone). Of this, 34 of these hours (or 52.3%) occurred within NYISO's proposed window. **Unbelievably, 31 of these hours (or**

47.7%) fall outside of NYISO’s proposed window. So, nearly half of all event hours occurred at a time unaccounted for by NYISO in their methodology.

- ii. For the winter period, there has only been two (2) event days (April 17th & 18th in 2002), for a total of 12 hours. Of this, **8 hours (67%) were outside the proposed winter window of 16:00 – 20:00.**

(E.) **Capacity is based on demand. “Demand is Demand” has been the cry we have heard for the past several years from NYISO and we agree.** In Con Edison territory, only those resources having a demand of more than 900 kW for a period of 12 consecutive months enjoy the benefit of a reduced demand charge if they peak in the off-peak hours⁴. Any resource under this threshold (which is a significant majority of the resources and MW in the SCR program by the way) pays the same demand charge no matter when they hit their peak. Please see the letter from The New York Post (attached as Exhibit “G”) describing this sentiment from a resource’s perspective. Why would a resource not be credited in the same manner in this program (based on peak demand, no matter when it occurs)? Demand is Demand.

(F.) **Adopting the proposed method of calculating the APMD baseline will lead to serious gaming.** Resources could simply defeat the rule by spiking their demands once a month, for each baseline month, between the allowable hours. It is presumed that NYISO is trying to cut down on loopholes, not enable them.

(G.) **Another problem with the “proposed” baseline calculation modification is that many resources, especially larger ones, have random peaks.** If a resource coincidentally doesn’t peak in the four baseline months during the allowable 4:00 pm to 8:00 pm or 2:00 pm to 6:00 pm window, and their business operates in a manner where the peak could happen during that window, the resource will be seriously disadvantaged and the market will be getting more capacity than the resource is financially compensated for. ECS has multiple resources (most of significant size) that have indicated that they will get out of the program if this baseline rule is changed, for this very reason. In fact, one of those resources (Olin Corporation) currently commits 60 MW into

⁴ This threshold differs amongst the utilities. In Niagara Mohawk territory, for example, the threshold is 2 MW (anything < 2 MW may have a demand meter, but not an interval demand meter, so they are billed based on their peak demand, regardless of when that peak demand occurs).

the SCR program.⁵ Refer again to the letter from NY Post (Exhibit “G”) regarding this problem.

(H.) **The rule is unworkable for new resources that enroll without having interval history from the prior year.** Does NYISO propose to have resources install an interval meter, establish a peak demand, and then enroll a year later? This is impracticable. Alternatively, does NYISO propose to allow new resources a “pass” on their 1st year? If so, how does this help solve problems with the grid in 2007? Also, we could only imagine the tracking and other problems NYISO would be creating for themselves with this rule.

ECS respectfully suggests that NYISO hasn’t taken many of these problems into account when proposing this change to the baseline. NYISO must account for all these things at all presentation levels while promoting their proposed rule change.

Modification to Usage of Audit/Test Results:

In the summer 2005 obligation period NYISO called a test in May, during which a significant majority of resources apparently performed well. On July 27th resources didn’t perform as well as they did during the May test. Based on this one occurrence, NYISO proposes to eliminate the results of successful performance, by a resource, if an event is actually called subsequent to the test. ECS submits the following comments regarding this proposal:

(A.) There should be no surprise that performance during the May test, when the weather is much milder, would be significantly better than performance during a prolonged heat wave with temperatures in excess of 100 degrees and record-shattering demands.

(B.) The rule change is an unnecessary one. NYISO could simply wait to call an audit/test towards the end of the obligation period. Once it becomes apparent or very unlikely that an event will take place in the period, NYISO could then call for an audit / test.

(C.) Adoption of this rule change would require RIP’s to ask their resources to shut their facilities down, for what ***might mean absolutely nothing*** to them, ***but could mean everything*** if no event is called. Resources are already being asked to stand ready for multiple consecutive days and now we have to ask them to shut their facility down during a test call and maybe, just maybe satisfy their obligation as an SCR?

⁵ A letter from Olin Corporation previously sent by them to NYISO is attached as Exhibit “H”. Keep in mind that Olin Corporation is one of your longest-standing SCR’s and they have never failed in any single test or event called by NYISO.

DRAFT – For Discussion Only

(D.)ECS believes that a resource that has been registered in the program for an extended period of time should be exempt from an audit/test. The whole purpose of an audit/test is to make sure resources can perform when they are called upon. If a resource has performed in 2 or 3 consecutive periods this goal has already been obtained and resources should not be required to undergo an audit/test every capability period. During the December 12th PRL Working Group meeting this idea was presented to NYISO, and NYISO suggested that if a resource successfully performed over several periods, that resource could then be exempt from further testing.

For the above reasons, this rule change should not be made.

Assignment of Class Averages (new resources):

ECS would push for NYISO to have this “proposed” rule change evaluated by NYISO’s Legal Department. In any event, ECS submits the following additional comments concerning this proposal:

(A.) With such a rule, resources that are new to the program will be held to a potential de-rate based upon what others have done. A new, viable resource that wants to participate has a legitimate case to be included at a 100% value unless or until proven otherwise.

(B.) There has been no detailed explanation as to how this class average de-rating would be calculated. Is NYISO proposing that a resource registered in ECS’ program would potentially be de-rated based on the performance of resources registered with another RIP? ECS takes issue with this type of methodology, as it appears legally unsound and lacking in common sense and fairness within the program. ECS has invested a lot of time, effort, and money to develop a program in which its resources consistently perform. ECS should not be penalized by another RIP’s failure to do so. ECS makes it our top priority to train resources to perform well during event calls. Another RIP might care less about how well their resource performs during an event. Why would resources signed up in ECS’ program be penalized?

(C.) We suggest that the existing rule is perfectly fine and achieves its stated purpose. Nonetheless, if NYISO is adamant about proposing a rule change on the matter, and NYISO is trying to “weed out” the “bad” resources or “bad” RIP’s, there is a much better approach. NYISO needs to consider applying an average de-rating to a particular RIP’s pool of resources. For example, if ECS’ resources historically perform at a 99% level, a new resource entering our program should be given ECS’ class average rating of 99%. They should **not** be de-rated based on anything to do with another RIP’s program. The effect of our alternate rule change proposal would have resources choosing their RIP a little

DRAFT – For Discussion Only

more wisely. This change would also ensure that new resources entering the market will be more likely to perform successfully. If an RIP is threatened with a more significant de-rate of its resources, they would want their resources performing correctly.

Registration of all Generators:

NYISO proposed a rule which would require the registration of all generators, whether direct metered or not. ECS' has only one comment on this change: it appears unenforceable. There are many resources in the program that even the RIPs don't know if a generator is on the premises. How could NYISO ever police this and what would the penalty of non-compliance be? What's next? Will NYISO require RIP's to identify all resources that are shutting down an elevator during a curtailment event? Or, perhaps, designate all resources that are letting people go home when they have to curtail? ECS submits that whether a resource has a generator or not is confidential information that a resource may wish to keep private. Additionally, depending on the size of the generator and situation, resources are already under the obligation to other agencies to declare the existence of a generator.

Development of a 30 Minute SCR Market:

During the December 12th PRL meeting, Neenan Associates introduced the concept of a 30 minute SCR market. This has not been formally (or informally) proposed by NYISO as a change, but ECS would like to make the following comments regarding the improbability of such an SCR market at this time:

(A.) A 30 minute lead time is simply not feasible to most large resources in the SCR program. It would not be feasible, for instance, for a company like Alcoa who shuts down their 80 MW melting pots to simply "shut down" on 30 minutes or less notice. NYISO has specifically requested large resources, like Alcoa, to "step gradually" into their curtailment, meaning to begin curtailment over a longer period of time, so as to not affect the grid. Implementation of a 30 minute market will, among numerous other consequences, potentially cause grid instability.

(B.) Without a real time notification system, which is utilized by some other control areas, it is absolutely unimaginable that NYISO can notify all RIP's 30 minutes prior to an expected curtailment, and expect the RIP's to turn around notices instantaneously. NYISO has trouble at times under the current 2 hour notification program.

DRAFT – For Discussion Only

(C.) Implementing a 30 minute SCR market would cause a severe disadvantage, and detriment, for RIP's that have a large volume of resources. Notification to a large volume of resources obviously takes a longer time than notifying just a few resources.

(D.) It is ECS' impression that if a 30 minute market were developed it would "theoretically" be implemented as an *additional* market rather than supplant the current SCR program. However, as Neenan's presentation itself describes, this would likely not be the end result. Implementation of a 30 minute SCR market would potentially destroy, or at the very least significantly devalue, the current SCR market. This type of change could effectively leave NYISO with a very small percentage of its current SCR resources participating.

Concluding Comments:

NYISO is proposing to *substantively* change the SCR program. These are not minor technical changes that will have little impact. The rule changes appear, on the surface, to target somewhat reasonable objectives. In reality, however, they will have the opposite effect. Resources will flee the program – good resources that will not be available to curtail the next time the grid needs them. NYISO owes all RIP's and their resources a much broader opportunity to state their objections—and they need to be certain that their rule changes would have the desired effects. Most resources don't have the expertise or knowledge to know that the rule changes will affect them. RIP's will be forced to meet with every resource and explain that the agreement they entered into is no longer applicable. In general, there are legal impediments to simply adopting rules that impair agreements already in place between parties—the possibility that NYISO's proposed rules fall into this category should at least alert NYISO to proceed with caution.

ECS has developed what we believe to be the largest pool of curtailment resources in the market. We have expended millions of dollars to develop this program. In one brief stroke, and because of one perfectly understandable situation on July 27th, NYISO now wants to change everything. NYISO should acknowledge that their program is one of the best in the country, if not **the** best, with the most expansive participation. Without schools, universities, countless 1 shift manufacturers, commercial buildings, and hundreds of others currently in the program, we will most certainly *not* be advancing the cause for demand response.

Thank you for the opportunity to present these comments.