



and a one-month Obligation Procurement Period.<sup>1</sup> The change in procedure was supported by an overwhelming number of Market Participants.

The NYISO filed its *Request to Implement a Stage II ICAP Market with an Unforced Capacity Methodology and One-Month Obligation Procurement Period, and Request for an Expedited, 10 Business Day Period for Filing on the Issue of the Translation of the \$105 Price Cap for In-City Mitigated Units* on July 6, 2001 (the “July 6 Filing”). In the July 6 Filing, the NYISO requests that the Commission approve a Stage II ICAP Market, reflected in the proposed Tariff changes submitted as part of the July 6 Filing. The requested changes, with the key components of an Unforced Capacity methodology and a One-Month Obligation Procurement Period (“OPP”), have been under development for some time (the Commission noted in a March 29, 2000 Order that the NYISO anticipated moving to a one-month OPP). The Stage II design will integrate the Northeastern ICAP Markets -- the NYISO’s UCAP methodology mirrors PJM’s, and the one-month OPP mirrors New England ISO’s recent filing restructuring its ICAP Market. The one-month OPP is also more compatible than the NYISO’s old six-month OPP with PJM’s seasonal intervals, recently approved for an interim period by the Commission while PJM reconsiders the design of its ICAP market. As noted in the July 6 Filing (page 8), the

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<sup>1</sup> As noted in NYISO’s July 6, 2001 *Request to Implement a Stage II Market Design and One-Month OPP* (page 23), the ICAP Working Group proposed these revisions on April 30, 2001, after almost two years of work on them; the Business Issues Committee approved them on May 24, 2001, with an affirmative vote of 84%; the Management Committee approved them on June 6, 2001 by an affirmative vote of 83.1%; and the NYISO Board of Directors unanimously approved them after carefully considering and rejecting, also unanimously, a NYSEG appeal of the Management Committee’s decision that mirrored the issues NYSEG and NRG raise in their Motions to Intervene in response to the NYISO’s July 6 Filing.

NYISO, New England ISO, and PJM are currently working together to further refine the ICAP Markets to eliminate any remaining seams issues.<sup>2</sup>

The move from ICAP to UCAP requires the translation of many numerical requirements to reflect the change from the old Installed Capacity methodology to Unforced Capacity, which estimates the probability that a Resource is available to serve Load taking into account forced outages. In developing the UCAP market design, the Market Participants successfully navigated a number of necessary translations, including translation of the UCAP requirements applicable to load-serving entities, translation of the In-City and Long Island locational capacity requirement, and translation of the In-City, Long Island, and rest-of-state deficiency penalties. The one remaining translation that the Market Participants were unable to agree upon is the narrow issue of translating the bid/price cap of \$105/kW/year set by the Commission in its September 22, 1998 *Order Accepting Market Power Mitigation Measures, as Modified, for Filing*, 84 FERC ¶ 61,287.

As described in the NYISO's July 6 Filing (pp. 19-21), the Market Participants, unable to reach consensus, suggested and approved a procedure directing NYISO to request on behalf of the Market Participants that the Commission resolve the translation of the \$105 bid/price cap under an expedited schedule, to support the proposed implementation of Stage II in early

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<sup>2</sup> About 20 parties have filed motions to intervene, protests or comments, in response to the NYISO's July 6 Filing. No party opposes a move to UCAP. Only three filings question the move to a one-month OPP -- the four parties (in the July 20 pleading that the NYISO responds to here); NYSEG (in a July 26 *Motion to Intervene and Comment*), whose appeal on this issue was carefully considered and rejected by the NYISO's Board of Directors prior to the July 6 Filing; and NRG (in a July 27 pleading entitled *Comments of NRG Power Marketing Inc. and its Affiliated New York Generating Companies*). The arguments regarding a one-month OPP are addressed at length in NYISO's July 6 Filing and so the NYISO does not repeat those points here. As described in the NYISO's July 6 Filing, the UCAP methodology and one-month OPP are inextricably linked in the proposed market design. July 6 Filing at 5-7, and 12-19.

September. The process conceived by the Market Participants included filings with the Commission by interested parties on an expedited schedule, outlining the arguments in support of various translation factors; and a summary of various parties' positions, drafted by the interested parties themselves and edited by the NYISO for inclusion in the July 6 Filing solely to lay out the various issues.

As clearly stated in the July 6 Filing, “[n]othing in [that] description is intended to limit in any way any party’s filing of its position on the cap translation issue.” From the beginning, the NYISO took no position on what the translation factor ought to be, and the Market Participants intended that the process they devised would allow the Commission to resolve the translation issues based on their filings on the expedited schedule that they requested.

Discussions of this process were had at the ICAP Working Group, the Business Issues Committee, and the Management Committee, and were formally noticed and voted on by the Market Participants in accordance with the NYISO procedures, as part of the proposed Stage II Tariff approval process. ConEd, one of four parties filing the July 20 Protest, participated at every meeting where the cap translation issue and the process to resolve it were discussed. Others among the four parties also participated in some of those meetings. ConEd also participated in drafting parts of the description of the positions included in the July 6 Filing, which was intended to simply define the issues in a neutral way prior to the individual parties’ filings with the Commission (although, to avoid further controversy, the NYISO noted in the July 6 Filing that the final choice of words was its own).

The four parties are thus well aware of the purpose, intent, and process contemplated by the Market Participants in bringing this remaining limited translation issue before the Commission. The four parties’ characterizations in the July 20 Protest that “the NYISO filing is

plainly a rate filing without any rates” and that the NYISO has “offered at least five alternatives...equally unsupported,” is inaccurate at best, disingenuous at worst, and borders on the ridiculous. Nothing about the translation of the single number from ICAP to UCAP makes the filing into a rate filing. Should the Commission determine that a rate filing would have been appropriate here, however, the NYISO respectfully requests a waiver of Section 35.13 of the Commission’s Regulations as nothing more needs to be submitted to the Commission.

Nor does the appropriate translation factor for the cap require a hearing. There are no disputed facts, but merely a difference of opinion about the appropriate factor to be used in translating a single number. The four parties, and other interested Market Participants, have had the opportunity to make their arguments to the Commission regarding their views, as contemplated by the process requested by the Market Participants.

The NYISO agrees with the four parties that the translation of the cap “presents a simple question.” July 20 Protest at 1. It is a question that, unfortunately, the four parties and other interested Market Participants were unable to agree upon. The four parties should not be allowed to obtain a hearing in an effort to thwart implementation of a complex, highly-developed market design that furthers the elimination of seams issues in the Northeast and strengthens reliability in the NYCA, but on which one policy issue remains for resolution by the Commission.

For all these reasons, and for the reasons laid out in the NYISO's July 6 Filing, the NYISO respectfully requests that the Commission resolve the translation issue for the Market Participants and approve the Stage II ICAP filing for implementation in September.

Respectfully submitted,

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**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 the above-captioned proceedings in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure 18 C.F.R. § 2010 (1999).

Dated at Washington, D.C. this 21st day of August, 2001.

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