

**COMMENTS OF NEW YORK TRANSMISSION OWNERS, LIPA
NYPA AND MEUA MEMBERS ON REQUEST TO CONSIDER
NEW DATA RELATED TO THE ICAP DEMAND CURVES**

SUMMARY

Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Rochester Gas and Electric Corporation, Orange and Rockland Utilities, Inc., Niagara Mohawk Power Corporation, a National Grid Company, (“New York Transmission Owners”), LIPA, New York State Power Authority and the members of the Municipal Electric Utilities Association of New York (“MEUA”)¹ hereby submit the following comments in response to the New York Independent System Operator's (“NYISO”) request for comments concerning the possible use of 2005 Gold Book data to reconsider the installed capacity (“ICAP”) demand curves recently approved by the Federal Energy Regulatory Commission (“Commission”).

It is our position that there is no justification for the reconsideration of the ICAP demand curves in order to consider data contained in the 2005 Gold Book, for the following reasons.

First, no market participant had any reasonable expectation that the data contained in the 2005 Gold Book would be used in setting the demand curves. No market participant ever asserted the need for these data until after the Commission approved the NYISO’s demand curve proposal. The fact that some of these data were published on the NYISO’s website before the technical conference that the Commission convened in this docket is of no relevance, since there

¹ The members of MEUA that participate in NYISO governance are the Village of Arcade, the Bath Electric, Gas and Water System, the Municipal Commission of Boonville, the Fairport Municipal Commission, Lake Placid Village, Inc., the Plattsburgh Municipal Lighting Department, the Village of Solvay, and the Village of Westfield.

was never any intention or expectation that these data would be used in establishing the demand curves.

Second, the process contained in the NYISO's Market Administration and Control Area Services Tariff ("Tariff") for the development of ICAP demand curves does not envision continual revision of these curves whenever new information that might be favorable to one party or another may come to light. Instead, it sets forth a procedure for assessing these curves on a triennial basis, on a timetable set forth in the Tariff. In accordance with that timetable, the NYISO developed its proposal last year, ultimately filing it with the Commission in January of 2005. Interested market participants were then afforded an opportunity to respond, which was supplemented when the Commission elected to hold a technical conference in this docket. The demand curves should not be modified based on data that were not available until long after the time that the NYISO developed its demand curves, the time that the NYISO filed its proposal, and the time that intervenors filed their responses. Furthermore, opening just this one aspect of the demand curves for further review would be manifestly unfair to other market participants. If the NYISO decides to propose evaluating the effect of these data on the recently approved demand curves, the process for determining the demand curves would need to be restarted in its entirety. We note, however, that such an approach would never permit the demand curves to reach finality, as a precedent would be established that new data warrant a reanalysis of the ICAP demand curves, which is completely contrary to both the intent and the letter of the Tariff.

Third, continued revision of the demand curves would add uncertainty to the market. As generator representatives have noted in the past, continued uncertainty deters investment. In addition, uncertainty is harmful to loads. The potential for increases in the amounts that would

be paid by loads that could result from reassessment of the demand curves would adversely affect loads.

Fourth, even if the new data had been available during development of the recently approved demand curves, using the new 2005 Gold Book data to determine the ICAP demand curves would have had virtually no impact on the demand curves. This is because the procedure that the NYISO used to develop the demand curves included the winter revenue benefit. The purpose of the winter revenue benefit is to correct for differences between the published seasonal difference in generating capacity and actual market conditions, since the actual differences in the amount of ICAP offered into the NYISO's summer and winter ICAP markets have been less than would have been forecasted based on published seasonal differences in generating capacity. The winter revenue benefit is intended to *eliminate* the impact of the published data on seasonal differences in generating capacity, recognizing that there is only a very loose linkage between the published data and actual market behavior. The Gold Book data does not reflect actual market behavior and, therefore, would have little or no effect on the level of the ICAP demand curve. The winter revenue benefit would adjust the seasonal differences based on the Gold book data to reflect market conditions.

DISCUSSION

1. There Is No Reason to Revise the ICAP Demand Curves to Reflect 2005 Gold Book Data Because There Was Never Any Intention or Expectation that They Would Be Based on Those Data

The process of developing an ICAP demand curves was long and laborious—and was supposed to have been complete some months ago. Most of the development work was performed in the summer and fall of 2004. Following a timeline laid out in the NYISO's Tariff, the NYISO Staff made its recommendations to the NYISO's Board of Directors in September 2004; interested market participants filed comments in October 2004 and oral argument before the Board occurred in November 2004. The NYISO filed its proposal with the Commission on January 7, 2005, and intervenors filed comments in late January, 2005, long before the 2005 Gold Book was scheduled to be published. There was never any intention or expectation that the development of ICAP demand curves for the 2005-06 through 2007-08 capability years should be delayed until release of the 2005 Gold Book; instead, the timeline set forth in the NYISO's Tariff, required the ICAP demand curves to be developed long before the April 2005 release date of the 2005 Gold Book.

The Commission, initially finding the record before it insufficient to render a final decision on ICAP demand curves, accepted the NYISO's proposal but made it subject to refund, and scheduled a technical conference in March 2005,² still preceding the scheduled release date of the 2005 Gold Book. At that technical conference, no one suggested that final determination of the demand curves should be delayed until data on seasonal capacity differences from the 2005 Gold Book was available. Again, there was no expectation, nor even a suggestion, that those data were needed in order to determine the appropriate levels of the ICAP demand curves.

² *New York Independent System Operator, Inc.* 110 FERC ¶ 61,201 (2005).

Nor did any market participants' filings following that technical conference suggest a need to wait until the 2005 Gold Book was available.

However, some market participants now claim that it is vital to use data from the 2005 Gold Book in order to derive the ICAP demand curves properly.³ Clearly, this is simply a collateral attack on a feature of the demand curves which they opposed but which has been approved by the Commission. They never indicated a need to use those data, nor did they have any reason to expect those data to be available for derivation of these demand curves, given the schedule for development of the ICAP demand curves set forth in the NYISO Tariff. Consequently, market participants' argument that the availability of the data justifies a reconsideration of the Commission's order setting the demand curves is without merit.

2. It Would Be Unjust to Reconsider One Aspect of the Demand Curves and Not Reconsider All Other Aspects

If the NYISO were to support reopening the process of setting ICAP demand curves to deal with this issue, then the NYISO must also support reopening that process to reexamine other components of the demand curves in light of more recent data. For example, the Pennsylvania-New Jersey-Maryland Interconnection ("PJM") recently performed additional work on calculating the cost of developing new generation, that may have relevance in New York markets as well. That work could be introduced in an attempt to lower the development cost estimate upon which the NYISO's ICAP demand curve proposal was based. This is but one example of many that would have to be considered. As was demonstrated at the technical conference, a list of those issues would be long. It would essentially entail reopening the process for setting the demand curves, which has already taken more than a year.

³ See, e.g., IPPNY Petition for Rehearing at 4.

The simple fact of the matter is that the NYISO Tariff requires that the demand curves be determined once every three years, stating:

A periodic independent review of the ICAP Demand Curves will be performed every three (3) years in accordance with the ISO Procedures to determine whether the parameters of the ICAP Demand Curves should be adjusted. Among other criteria, the review will determine the current localized levelized embedded cost of gas turbines in each NYCA Locality and the Rest of State and associated Energy and Ancillary Services revenues. Each periodic independent review, which will include stakeholder input in accordance with the ISO Procedures, will be completed by September 1 of the applicable Capability Year, in time to determine the ICAP Demand Curves to be applied for the three subsequent Capability Years in accordance with the ISO Procedures.⁴

The requirements of the NYISO Tariff imply the need for a cutoff date, beyond which additional data or arguments in support of one position or another will no longer be entertained, until the next time the ICAP demand curves are revised. There may be some uncertainty regarding just when this cutoff date was, but it seems clear that the cutoff date must occur before the NYISO Board's decision and the issuance of the Commission's order.

3. Revising the ICAP Demand Curves Would Inject Additional Uncertainty Into the Markets

When arguing other aspects of the ICAP demand curves, both the NYISO and other market participants have argued the importance of certainty in the ICAP demand curves. For example, the NYISO argued, in its March 24 emergency filing with the Commission, that it was important to eliminate the subject-to-refund provision in the Commission's March 2005 order, because "the prospect of a refund condition [will] create uncertainty and deter participation in the ICAP Auctions..."⁵ IPPNY agreed, stating, "making the ICAP demand curves effective subject

⁴ Tariff, Fourth Revised Sheet No. 157.

⁵ NYISO "Emergency Motion for Expedited Action" at p.1.

to refund imposes uncertainty on what suppliers will ultimately be paid for ICAP. This uncertainty will distort the auction results....” [6].

This was not the first occasion on which the NYISO or market participants emphasized the need to approve a set of ICAP demand curves in order to reduce uncertainty. For example, the NYISO and the staff of the New York State Department of Public Service have argued that the zero-crossing point (i.e., the point at which the ICAP demand curves reach a price of zero) proposed by the NYISO should be adopted, even though the analysis that was supposed to have been performed to support that zero-crossing point was never performed, due to the effect that continued uncertainty over the ICAP demand curves would have on incentives for investment in generating facilities.

The NYISO should also note that uncertainty harms loads, as well as generators, and continual reassessment of the parameters of the demand curves would adversely affect the ability of loads to hedge their positions.

If concerns about uncertainty were considered valid prior to the issuance of the Commission's approval of the demand curves, they are just as valid now.

4. Using 2005 Gold Book Data Would Result in Little or No Change to the ICAP Demand Curves
 - A. The Winter Revenue Benefit Would Adjust Seasonal Differences Assumed in the Translation Procedure to Offset the Impact of Revised Gold Book Data

Attacks upon the winter revenue benefit have focused on the effect of imports of UCAP into the New York ICAP market and the effect of changes in the amount of imported UCAP on UCAP prices. However, it is important to realize that changes between imports in the winter and

⁶ "Answer of IPPNY to Emergency Motion for Expedited Action," *supra*, note 10 at 3 (footnote in original omitted).

imports in the summer are only part of a larger picture. As the original document that NYISO Staff issued explaining the proposed winter revenue benefit stated, the “winter-to-summer difference in supplies from external control areas is the relative availabilities of import rights” was merely a “confirmation”⁷ of the need for a winter revenue benefit.

Instead, as the joint affidavit submitted by the NYISO’s Belinda Thornton and John Charlton in advance of the Technical Conference explained (at ¶¶ 37-40), the need for the winter revenue benefit was driven by the fact that the method that the NYISO uses to translate Annual Reference Values⁸ into Monthly Reference Points⁹ must make an assumption regarding the amount of ICAP that will be sold into the New York ICAP market in the winter, relative to the amount sold into the New York ICAP market in the summer. The assumption that is implicit in the translation method is that the amount of ICAP sold into the New York ICAP market in the winter, as compared to the amount sold into that market during the summer, will be consistent with the difference between summer DMNCs and winter DMNCs reported in the Gold Book.

However, there is no reason to expect this ratio to apply to the actual ICAP markets in New York, since generators in New York can sell their ICAP elsewhere (or elect not to sell ICAP in some months at all), entities outside New York can elect to sell ICAP into New York, and non-generator entities can qualify to sell ICAP. In actuality, considerably less ICAP has been sold into the New York market during the winter than one would have anticipated based solely on the Gold Book data. For example, in the 2004 Gold Book the sum of winter DMNCs

⁷ “Clarification of Proposed ICAP Demand Curves,” Sept. 30, 2004, [add URL].

⁸ The Annual Reference Value is the ICAP revenue that each ICAP provider would receive for each MW of ICAP it provides over the course of the year, if the amount of ICAP provided in the NYCA (or, in the case of the New York City and Long Island Localities, the amount provided in that Locality) was equal to the minimum ICAP requirement for the NYCA (or that Locality).

⁹ The Monthly Reference Point is the price of ICAP that would prevail in each month’s ICAP Spot Market Auction if the amount of ICAP provided in that auction in the NYCA (or a Locality) was equal to the minimum ICAP requirement for the NYCA (or that Locality).

of NYCA generation was about 1400 MW above the sum of the summer DMNCs for those resources,¹⁰ but the actual difference between the amount of unforced capacity (“UCAP”) sold in the New York ICAP market during the winter months and the amount of UCAP sold in the New York market during the summer months was much less than 1400 MW.¹¹ As a result, winter ICAP prices have been depressed by a smaller amount than was anticipated when the translation of Annual Reference Values into Monthly Reference Points was performed.

The NYISO has indicated that it expects this discrepancy to persist. The winter revenue benefit adjusts the seasonal difference assumed by the translation procedure, which is based on the Gold Book data, to reflect the actual seasonal difference the NYISO expects to occur.

If the 2005 Gold Book data had been available to the NYISO at the time that it performed the translation of Annual Reference Values into Monthly Reference Points, and the NYISO had used those data instead of the 2004 Gold Book data, the increase in the difference between the sum of winter DMNCs of generators in the NYCA and the sum of summer DMNCs of generators in the NYCA from 1400 MW to 2100 MW would have led to a higher Monthly Reference Point than would have been obtained using 2004 Gold Book data, because the

¹⁰ Per the 2004 Gold Book, the sum of the winter DMNCs of generators in the NYCA was 39,503,674 kW, while the sum of the summer DMNCs of generators in the NYCA was 38,110,808 kW, a difference of 1,392,866 kW. The ratio of winter DMNCs to summer DMNCs is $39,503,674 / 38,110,808 = 1.0365$.

¹¹ While the Minimum ICAP Requirement for the NYCA is constant over the course of a Capability Year, the Minimum UCAP Requirement for the NYCA can vary slightly between the summer and winter in a given Capability Year. Given this, the proper method for comparing the amount by which winter prices are being depressed, relative to summer prices, is to compare the average excess winter supply in the NYCA (*i.e.*, the amount by which the average supply of UCAP in the NYCA during winter months exceeds the Minimum UCAP Requirement for the NYCA for that winter) to the average excess summer UCAP supply in the NYCA (*i.e.*, the amount by which the average supply of UCAP in the NYCA during summer months exceeds the Minimum UCAP Requirement for the NYCA for that summer). As was shown in the Affidavit of Michael D. Cadwalader (“Cadwalader Affidavit”), which was appended to the April 5, 2005 filing by the Indicated NY Entities in Docket No. ER05-428-000, the average excess UCAP supply during the winter of the 2003-04 Capability Year exceeded average excess UCAP supply during the summer of that Capability Year by only a little over 600 MW.

additional winter capacity would have suppressed winter prices by a larger amount, making it necessary to raise the Monthly Reference Point by a larger amount.

The winter revenue benefit is intended, however, to correct for differences between the summer/winter capacity difference derived from the Gold Book that is implicitly used by the NYISO in its procedure for translating Annual Reference Values into Monthly Reference Points, and the summer/winter difference that the NYISO expects to observe in future markets. The 2004 Gold Book indicated a summer/winter capacity difference of 1400 MW, but the NYISO expects that, in future markets, the amount of UCAP supplied during the winter would only exceed summer UCAP supply by only 900 MW, necessitating the need to correct the ICAP demand curves for the NYCA to account for this $1400 - 900 = 500$ MW difference. If data from the 2005 Gold Book had been used instead, then it would have been necessary to make a *larger* correction, because the Gold Book data would not have affected the NYISO's expectations of future market behavior. Consequently, use of 2005 Gold Book data would have resulted in an increase to the winter revenue benefit.

The net impact of using 2005 Gold Book data, instead of 2004 Gold Book data, on Monthly Reference Points would have been virtually zero, because the larger winter revenue benefit that would have resulted from the use of 2005 Gold Book data, as compared to 2004 Gold Book data, would have been almost exactly offset by the use of a 2100 MW difference, instead of 1400 MW, in the translation procedure itself.¹² This is the reasonable and expected outcome: if the purpose of the winter revenue benefit is to correct for discrepancies between the winter/summer difference reported in the Gold Book and the actual winter/summer difference

¹² The only reason why there is any difference at all is because the NYISO rounds the winter revenue benefit to the nearest dollar per kW-year. As a result, use of 2005 Gold Book data might have resulted in a change in Monthly Reference Points of two or three cents per kW-month.

one expects to observe in the ICAP market, so that the ICAP demand curves reflect the latter, then it should not make any difference what data are reported in the Gold Book, if the winter revenue benefit is being calculated correctly. That is, in fact, what would have occurred if 2005 Gold Book data had been used. The 2005 Gold Book data would have been farther away from actual market behavior (and, more importantly, expectations regarding future market behavior), and the winter revenue benefit would have adjusted accordingly to ensure that the ICAP demand curves continued to be consistent with anticipated future market behavior.

B. Actual Market Experience During the Same Period in Which Data for the 2005 Gold Book Was Compiled Supports the Winter Revenue Benefit.

The NYISO estimated that additions of temperature-sensitivity generating capacity expected in the near future would add another 300 MW to the difference between summer UCAP supply and winter UCAP supply. This additional 300 MW increased the forecasted future difference from 600 MW to 900 MW. The period over which DMNCs reported in the Gold Books are collected is six months out of phase with the NYISO's Capability Years, as the summer DMNCs contained in the 2005 Gold Book were obtained during the summer of 2004, while the winter DMNCs contained therein were obtained during the winter of 2003-04. In other words, half of those data were obtained during the 2003-04 Capability Year (which includes the summer of 2003 and the winter of 2003-04), with the other half obtained during the 2004-05 Capability year (which includes the summer of 2004 and the winter of 2004-05). Nevertheless, if something had happened during the time period covered by the 2005 Gold Book that brought about a significant increase in the amount of UCAP that would be offered into the winter market, as compared to the summer market, there should have been some sign of it in the ICAP market in either the 2003-04 Capability Year, or the 2004-05 Capability Year. There was no such sign.

As noted above, the Cadwalader Affidavit included calculations demonstrating that the average excess UCAP supply during the winter of the 2003-04 Capability Year exceeded average excess UCAP supply during the summer of that Capability Year by only a little over 600 MW. The Cadwalader Affidavit also included calculations demonstrating that the average excess UCAP supply during the winter of the 2004-05 Capability Year exceeded average excess UCAP supply during the summer of that Capability Year by only a little over 500 MW. In other words, during the period in which the difference between the sum of winter DMNCs in the NYCA and the sum of summer DMNCs in the NYCA grew from 1400 MW to 2100 MW according to the Gold Book, the difference between the actual amount of UCAP actually supplied into the NYCA during the winter to the amount of UCAP supplied into the market during the summer of the same Capability Year decreased slightly, and never approached 2100 MW. Consequently, the 2005 Gold Book data does not invalidate the NYISO's assumptions regarding the difference between the amount of UCAP that would be provided during the winter and the amount of UCAP that would be provided during the summer used in developing its ICAP demand curve proposal.

CONCLUSION

While we object to a number of the components of the ICAP demand curves that the Commission approved in its April Order, we did not request rehearing of that order because we recognize that it is time to move on. Unfortunately, some other market participants refuse to move on, attempting to eliminate the winter revenue benefit, a part of the April Order that they opposed. They are using the availability of revised seasonal DMNC data prior to the publication of the 2005 Gold Book as a basis to request reconsideration of one aspect of the demand curves

without the reconsideration of all other aspects of the demand curves. The NYISO should not support such an unfair and arbitrary reconsideration of the ICAP demand curves.

The difference between the conclusions one would reach regarding the performance of the summer and winter ICAP markets based on the 2005 Gold Book data and the actual performance of those markets during the last two Capability Years vividly demonstrates why it would be inappropriate simply to eliminate the winter revenue benefit. Eliminating it would be tantamount to assuming that the Gold Book summer/winter difference will reflect actual market performance, an assumption that is belied by the large discrepancy between the summer/winter difference reported in the 2005 Gold Book and actual (not projected) market performance during that same time period. Consequently, the contentions raised by market participants cannot justify the revision or elimination of the winter revenue benefit.

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Respectfully Submitted,

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On Behalf of the New York Transmission Owners,
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