

NYISO UCAP Definition

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NYISO UCAP Definition

Product:

“NYISO UCAP” means Unforced Capacity, as defined in the New York Independent System Operator (“NYISO”) Market Administration and Control Area Services Tariff (as amended from time to time, hereinafter referred to as the “Tariff”), subject to the following terms and conditions. Terms used in this definition which are not defined in the Master Agreement shall have the meaning ascribed to them in the Tariff.

Certification:

Seller shall be obligated to indicate the Contract Quantity and Delivery Point of NYISO UCAP to be sold to Buyer by submitting the appropriate certification to the NYISO no later than the relevant deadline for the applicable Capability Period. Buyer shall be obligated to indicate the Contract Quantity and Delivery Point of NYISO UCAP to be purchased from Seller by submitting the appropriate certification to the NYISO no later than the relevant deadline for the applicable Capability Period.

Buyer’s Damages Associated with Seller’s Failure to Timely Certify:

If Seller fails to certify the NYISO UCAP for an applicable Capability Period, such failure is not due to Force Majeure and Buyer has fulfilled its obligations under the Product which is the subject of this Transaction, then Seller shall pay to Buyer, on the date payment would otherwise be due to Seller hereunder, an amount equal to the positive difference, if any, obtained from subtracting the Contract Price from the Capacity Replacement Price. The remedy set forth herein shall be the sole remedy for Seller’s unexcused failure to perform and for the purposes of the Product which is the subject of this Transaction, shall supercede and replace the provisions of Section 4.1 of the Master Agreement.

Seller’s Damages Associated with Buyer’s Failure to Timely Certify:

If Buyer fails to certify the NYISO UCAP for an applicable Capability Period, such failure is not due to Force Majeure and Seller has fulfilled its obligations under the Product which is the subject of this Transaction, then Buyer shall pay to Seller, on the date payment would otherwise be due to Seller hereunder, an amount equal to the positive difference, if any, obtained from subtracting the Capacity Sales Price from the Contract Price. The remedy set forth herein shall be the sole remedy for Buyer’s unexcused failure to perform and for the purposes of the Product which is the subject of this Transaction, shall supercede and replace the provisions of Section 4.2 of the Master Agreement.

Both Parties Fail To Certify:

If both Parties fail to timely certify the Product on any one occasion, neither Party shall be entitled to any damages or remedies hereunder or the Master Agreement for such occasion.

Payments:

If Seller and Buyer enter into a Transaction with respect to the Product for a Delivery Period which exceeds one month, the Parties agree that Buyer shall be obligated to pay for such NYISO UCAP on a monthly basis for each month in the Delivery Period, which amount, in a given month, shall be equal to the Contract Quantity times Contract Price.

Additional Definitions:

“Capacity Replacement Price” means (a) the price at which Buyer, acting in a commercially reasonable manner, purchases a replacement for that amount of NYISO UCAP not delivered by Seller, plus costs reasonably incurred by Buyer in purchasing such substitute NYISO UCAP, or at Buyer’s option (b) the market price for that amount of NYISO UCAP which shall be exclusively determined by utilizing the Market-Clearing Price applicable to the ICAP Spot Market Auction for the relevant month; provided, however, **IN NO EVENT SHALL SUCH PRICE INCLUDE ANY PENALTIES OR SIMILAR CHARGES, NOR SHALL BUYER BE REQUIRED TO UTILIZE OR CHANGE ITS UTILIZATION OF ITS OWNED OR CONTROLLED ASSETS OR MARKET POSITIONS TO MINIMIZE SELLER’S LIABILITY.** For purposes of this Product, this definition of “Capacity Replacement Price” shall supercede and replace the definition of “Replacement Price” in the Master Agreement.

“Capacity Sales Price” means (a) the price at which Seller, acting in a commercially reasonable manner, resells that amount of NYISO UCAP not received by Buyer, deducting from such proceeds any costs reasonably incurred by Seller in reselling such NYISO UCAP, or at Seller’s option (b) the market price for that amount of NYISO UCAP which shall be exclusively determined by utilizing the Market-Clearing Price applicable to the ICAP Spot Market Auction for the relevant month; provided, however, **IN NO EVENT SHALL SUCH PRICE INCLUDE ANY PENALTIES OR SIMILAR CHARGES, NOR SHALL SELLER BE REQUIRED TO UTILIZE OR CHANGE ITS UTILIZATION OF ITS OWNED OR CONTROLLED ASSETS, INCLUDING CONTRACTUAL ASSETS, OR MARKET POSITIONS TO MINIMIZE BUYER’S LIABILITY.** For purposes of this Product, this definition of “Capacity Sales Price” shall supercede and replace the definition of “Sales Price” in the Master Agreement.

“ICAP Spot Market Auction” means the auction results for NYISO UCAP which are listed at www.nyiso.com/markets/icapinfo.html.



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