

June 14, 2019

By Electronic Delivery

Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

**Re: *New York Independent System Operator, Inc.*, Docket No. ER19-____-000;
Proposed Tariff Revisions to Modify the Requirements for the Provision of
Cash Collateral**

Dear Secretary Bose:

In accordance with Section 205 of the Federal Power Act (“FPA”)¹ and Part 35 of the regulations of the Federal Energy Regulatory Commission (“Commission”), the New York Independent System Operator, Inc. (“NYISO”) respectfully submits proposed amendments to its Market Administration and Control Area Services Tariff (“Services Tariff”).² Through these amendments, the NYISO seeks to bolster its credit rules by requiring that entities providing cash collateral be formed or incorporated in, be residents of, and have operations located primarily in the United States or Canada. In addition, the proposed changes clarify that a Market Participant’s delivery of cash collateral to the NYISO constitutes the grant of a first-priority security interest in the funds.

The NYISO Management Committee unanimously approved the proposed tariff revisions on May 20, 2019. The NYISO respectfully requests that the tariff revisions proposed in this filing become effective the day immediately following the end of the statutory sixty-day notice period under FPA Section 205 (*i.e.*, August 14, 2019).

I. Documents Submitted

The NYISO respectfully submits the following documents with this filing letter:

1. A clean version of the proposed revisions to the Services Tariff (“Attachment I”);
and

¹ 16 U.S.C. § 824d.

² Capitalized terms not otherwise defined herein shall have the meaning specified in the Services Tariff.

2. A blacklined version of the proposed revisions to the Services Tariff (“Attachment II”).

II. Background

Each participant in the NYISO-administered markets must satisfy credit requirements based on the Market Participant’s expected financial obligations to the NYISO.³ A Market Participant may meet its credit requirements using Unsecured Credit if the NYISO has determined that the Market Participant meets the tariff requirements to do so. Otherwise, Market Participants must provide collateral to satisfy such obligations.

Attachment K of the Services Tariff sets forth the following acceptable forms of collateral: a cash deposit, letter of credit, or surety bond. Cash deposits are held in escrow by the NYISO in an account opened by the NYISO, and customers earn interest on their deposits.⁴ Letters of credit must be in a form acceptable to the NYISO and issued by an approved United States or Canadian commercial bank, or an approved United States or Canadian branch of a foreign bank with a credit rating meeting the requirement set forth in Section 26.6.1.2 of the Services Tariff. Surety bonds must be in a form acceptable to the NYISO and issued by a United States Treasury-listed surety with a minimum acceptable credit rating as set forth in Section 26.6.1.3 of the Services Tariff.

III. Description of Proposed Tariff Revisions

The NYISO proposes to modify Section 26.6.1.1 of the Services Tariff to require that entities providing cash collateral be formed or incorporated in, be residents of, and have operations located primarily in the United States or Canada.⁵ The proposed change will protect the NYISO’s ability to use the cash collateral provided by the Market Participant to offset the obligations owed by the participant in the event of a Market Participant bankruptcy. Under the United States Bankruptcy Code (“Bankruptcy Code”), filing a petition for bankruptcy operates as a stay of any action to obtain possession of or exercise control over property of the petitioner’s estate.⁶ If the stay applies to the cash collateral held by the NYISO, the NYISO must seek relief from the stay from the bankruptcy court to use the collateral to offset amounts owed to the NYISO by the petitioner. Obtaining relief from stay requires the NYISO to demonstrate that its request meets the statutory requirements for obtaining stay relief under the Bankruptcy Code. For example, stay relief can be based upon “cause” generally, which can include a debtor’s failure to satisfy obligations to the NYISO that arise from a debtor’s purchases in the NYISO’s market after the commencement of the bankruptcy (including a debtor’s failure to satisfy post-

³ See Services Tariff Section 26.4.

⁴ See Services Tariff Section 26.6.1.1.

⁵ The proposed change affects only four active Market Participants. The affected Market Participants would need to provide either an acceptable letter of credit or surety bond as replacement collateral to satisfy their respective security requirements.

⁶ See United States Bankruptcy Code § 362(a).

petition collateral calls). The NYISO must also be able to establish that it holds a first-priority, fully-perfected interest in the collateral.

If a Market Participant is not formed or incorporated in, is not a resident of, or does not have operations located primarily in the United States or Canada, it could choose to file a bankruptcy petition in a jurisdiction outside the United States or Canada. In that case, the Bankruptcy Code and its requirements related to perfecting an interest in collateral and a creditor's ability to use cash collateral may not apply. Even if the foreign entity files a bankruptcy petition in the United States, foreign jurisdictions may have laws regarding the perfection of security interests and a creditor's ability to use cash collateral that the NYISO must comply with to ensure that the NYISO has the right to use that cash collateral. Given the potential number of jurisdictions where a Market Participant could be located, it is not feasible for the NYISO to evaluate laws in all jurisdictions to ensure the NYISO's interest in the cash collateral would be adequately protected in the event of a bankruptcy.⁷ In addition, participating in bankruptcy litigation in a jurisdiction outside the U.S. or Canada would be burdensome and potentially costly for the NYISO and its Market Participants.

The NYISO's proposed treatment for cash collateral provides for consistency with the existing requirements for the other allowable forms of collateral. Letters of Credit can be issued only by an approved United States or Canadian commercial bank, or an approved United States or Canadian branch of a foreign bank.⁸ Similarly, a surety bond can only be provided by an eligible United States Treasury-listed surety. In addition, Market Participants who use affiliate guarantees to meet minimum capitalization requirements⁹ or as unsecured credit¹⁰ must provide a guarantee from an acceptable United States or Canadian affiliate.¹¹

The NYISO also proposes to clarify that a Market Participant's delivery of cash collateral to the NYISO constitutes the grant of a first-priority security interest in the funds. While the NYISO believes that its possession of cash collateral in NYISO accounts meets the requirements for a first priority security interest under bankruptcy law, the proposed clarifying language expressly states this fact.

Finally, the NYISO proposes a ministerial revision to insert a subsection,¹² reserved for future use, to correct the numbering sequence.

⁷ Because Canadian rules relating to security and perfection are similar to those found in the Uniform Commercial Code, and Canadian courts, including in insolvency proceedings, typically defer to the application of United States law to parties' relationships, the NYISO believes that it can adequately protect its interest in cash collateral received from Canadian entities.

⁸ See Services Tariff Section 26.6.1.2.

⁹ See Services Tariff Section 26.5.4.2.

¹⁰ See Services Tariff Section 26.5.

¹¹ See Services Tariff Section 26.5.4.3.

¹² See Services Tariff Section 26.6.2.

IV. Effective Date

The NYISO respectfully requests that the Commission accept the tariff revisions proposed in this filing to become effective on August 14, 2019.

V. Stakeholder Process

The proposed amendments were unanimously approved by the NYISO Management Committee on May 20, 2019. The NYISO's Board of Directors approved the proposed revisions on June 4, 2019.

VI. Communications and Correspondence

All communications and service in this proceeding should be directed to:

Robert E. Fernandez, Executive Vice President, General Counsel and Chief Compliance Officer

Raymond Stalter, Director, Regulatory Affairs

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VII. Service

The NYISO will send an electronic link to this filing to the official representative of each of its customers, each participant on its stakeholder committees, the New York State Public Service Commission, and the New Jersey Board of Public Utilities. In addition, the complete filing will be posted on the NYISO's website at www.nyiso.com.

VIII. Conclusion

The NYISO respectfully requests that the Commission accept the tariff revisions proposed in this filing to become effective on August 14, 2019.

Respectfully submitted,

/s/ Amie Jamieson

Amie Jamieson, Senior Attorney/Registered In-
House Counsel
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