

November 26, 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. ER20-\_\_\_\_-000;*  
**Proposed Tariff Revisions to Enhance Credit Reporting Requirements and Remedies****

Dear Secretary Bose:

In accordance with Section 205 of the Federal Power Act (“FPA”)<sup>1</sup> 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”) and its Open Access Transmission Tariff (“OATT”).<sup>2</sup> Through these amendments, the NYISO seeks to enhance its ability to take action to prevent or mitigate the risk of credit defaults in the NYISO-administered markets.

The NYISO respectfully requests that the tariff revisions proposed in this filing become effective on the first business day following the end of the statutory sixty-day notice period under FPA Section 205 (*i.e.*, January 27, 2020).

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

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<sup>1</sup> 16 U.S.C. § 824d.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meaning specified in the Services Tariff and the OATT.

3. A clean version of the proposed revisions to the OATT (“Attachment III”); and
2. A blacklined version of the proposed revisions to the OATT (“Attachment IV”).

## **II. Background**

### **A. Changes to Enhance Credit Requirements**

In the NYISO-administered markets, credit is collectively extended by all market participants to each individual market participant, so that if one market participant defaults on its obligations to the NYISO, the remaining participants must make up the shortfall.<sup>3</sup> As a FERC-approved independent system operator, the Commission views the NYISO as “gatekeeper for the integrity of the markets they administer.”<sup>4</sup> In this role, the NYISO is expected to “implement [its] credit policies in a manner created to limit, as much as possible, the risk of credit defaults.”<sup>5</sup>

In 2018, certain NYISO Market Participants defaulted on their payment and credit obligations to the NYISO market. Some of these Market Participants filed for Chapter 11 bankruptcy protection. Such defaults ultimately resulted in the NYISO terminating some of the entities from ongoing participation in its markets. In response to these events, and those observed by the NYISO in other wholesale electricity markets, the NYISO proposes revisions to its tariffs to enhance its ability to prevent or mitigate the risk of credit defaults in the NYISO-administered markets. Specifically, the NYISO proposes to revise its tariffs to: (1) include an additional minimum participation criterion requiring Market Participants to have sufficient experience and resources to satisfy their obligations to NYISO as they become due; (2) allow the NYISO to reject a new applicant that presents an unreasonable credit risk to the ISO Administered Markets; (3) include an event or circumstance indicating that the Customer may present an unreasonable credit risk to the ISO Administered Markets as a specific example of a material adverse change in financial condition; and (4) clarify the requirement for Market Participants to report on certain regulatory investigations. These changes will augment the tools at the NYISO’s disposal to act as gatekeeper in protecting Market Participants from bearing the cost of other participants’ credit defaults.

### **B. FERC Order on Light Power & Gas of NY Complaint**

On January 29, 2019, Light Power & Gas of NY LLC (“LPGNY”) filed a complaint against the NYISO. LPGNY alleged that the NYISO violated its tariff by declining to approve LPGNY’s pending customer registration application until unpaid obligations of North Energy Power LLC (“North Energy”) were satisfied. The complaint was based on the NYISO’s decision that LPGNY is in effect the same entity as North Energy. North Energy was terminated from participation in the NYISO-administered markets in October 2018 with amounts owing to the

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<sup>3</sup> Policy Statement on Electric Creditworthiness, 109 FERC ¶ 61,186 P. 5 (2004).

<sup>4</sup> *Id.* P. 17.

<sup>5</sup> *Id.*

NYISO remaining unpaid. Under Section 27.4 of the OATT, a Transmission Customer may not reenter the market unless all outstanding and unpaid obligations to the NYISO are met. Based on the facts and circumstances at issue, the NYISO rejected LPGNY's application based on OATT Section 27.4 and its determination that LPGNY and North Energy constituted the "same entity" for purposes of administering this provision.<sup>6</sup>

On June 20, 2019, the Commission denied LPGNY's complaint in its entirety.<sup>7</sup> The Commission determined that the NYISO's decision to treat LPGNY and North Energy as the same Transmission Customer was reasonable.<sup>8</sup> The Commission, however, encouraged the NYISO to augment the tariff to include the factors it will consider to determine whether to treat two entities as the same for purposes of administering the requirements of Section 27.4 of the OATT.<sup>9</sup>

### **III. Description of Proposed Tariff Revisions**

#### **A. Include Minimum Participation Criterion on Financial Capabilities**

Section 26.1.1 of the Services Tariff requires Market Participants to satisfy, and remain in compliance with, four minimum participation requirements. To become a Customer, each applicant must: (1) maintain risk management policies and procedures that address the risks that could materially and adversely affect a Market Participant's ability to pay amounts owed to the NYISO; (2) ensure that each employee that bids or schedules in the ISO Administered Markets has appropriate training and/or experience; (3) have appropriate personnel, resources and technical abilities to respond to communications and directions from the NYISO related to settlements, billing, credit requirements, and other financial matters; and (4) meet minimum capitalization criteria or post additional security as set forth in the tariff.<sup>10</sup> In addition to initially demonstrating satisfaction of these requirements upon application, existing Market Participants must annually submit a notarized certificate, signed by an officer of the Market Participant, certifying that it remains in compliance with each of the minimum participation criteria.<sup>11</sup>

The NYISO proposes to include an additional minimum participation criterion requiring a Market Participant to certify that it has the appropriate experience and resources to satisfy its

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<sup>6</sup> *Light Power & Gas of NY LLC v. New York Independent System Operator, Inc.*, Docket EL19-39-000, NYISO Answer at 6-10 (February 19, 2019).

<sup>7</sup> *Light Power & Gas of NY LLC v. New York Independent System Operator, Inc.*, 167 FERC 61,232 (2019) ("Order Denying Complaint").

<sup>8</sup> Order Denying Complaint ¶¶ 40-42.

<sup>9</sup> *Id.* ¶ 46.

<sup>10</sup> Services Tariff Section 26.1.1.

<sup>11</sup> Services Tariff Section 26.1.2.

obligations to the NYISO as they become due.<sup>12</sup> Including this criterion seeks to ensure that Market Participants retain the necessary capability to timely satisfy all payment obligations to the NYISO.

**B. Protect Against Applicants That Present an Unreasonable Credit Risk**

To bolster the NYISO's ability to protect the ISO Administered Markets from potential defaults, the NYISO proposes adding a new section to the Services Tariff providing the NYISO express authority to reject an application from an entity seeking to become a Customer if the NYISO determines that the applicant's participation in the ISO Administered Markets presents an unreasonable credit risk.<sup>13</sup> This section will also include a requirement for the applicant to submit information or documentation reasonably required for the NYISO to evaluate its experience and resources.<sup>14</sup> If the NYISO determines, based on the information required under Services Tariff Section 26.1.4 or other relevant information, that the applicant's participation in the ISO Administered Markets presents an unreasonable credit risk, the NYISO may reject the application.<sup>15</sup> The NYISO will provide the applicant with a written explanation of the reasons why the NYISO rejected its application.<sup>16</sup> Adding these requirements allows the NYISO to take appropriate, proactive measures to help protect its markets from the risk of credit defaults that could arise from an applicant that presents unreasonable credit risks.

**C. Clarify Material Adverse Change Clause**

Section 26.14 of the Services Tariff protects the ISO Administered Markets by allowing the NYISO to change the amount of Unsecured Credit granted to a Market Participant and the amount of a Market Participant's Operating Requirement in the event there is a material adverse change affecting the risk of nonpayment by the Market Participant. Section 26.14 includes several illustrative examples of events that constitute a "material adverse change."<sup>17</sup> The NYISO proposes to add to the list of examples of material adverse changes "an event or circumstance indicating that the Customer may present an unreasonable credit risk to the ISO Administered Markets."<sup>18</sup> One source of information for detecting such events or circumstances may be the

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<sup>12</sup> The proposed change would require ministerial changes in Section 26.5 to change references to subsections Section 26.1.1, as set forth in the Section 26.5 included in Attachment II.

<sup>13</sup> See Attachment II, Services Tariff Section 9.3.

<sup>14</sup> See Attachment II, Services Tariff Section 26.1.4. This requirement would also apply to existing Market Participants.

<sup>15</sup> See Attachment II, Services Tariff Section 9.3.

<sup>16</sup> See Attachment II, Services Tariff Section 26.1.4.

<sup>17</sup> See Services Tariff Sections 26.2.1.4 and 26.14. The examples include events such as the filing of a bankruptcy petition, and failure to timely cure a default under the NYISO's tariffs or the tariffs of another ISO/RTO.

<sup>18</sup> See Attachment II, Services Tariff Section 26.14.

information provided to the NYISO pursuant to Section 26.1.4 of the Services Tariff, as described above.

Although Section 26.14 already provides the NYISO authority to declare a material adverse change under such circumstances, the additional example helps to provide greater transparency to Market Participants as to how the NYISO may use information requested under Services Tariff Section 26.1.4.

**D. Clarify Reporting Requirement for Investigations**

The Services Tariff requires Market Participants to inform the NYISO of certain ongoing investigations that could have a material impact on the Market Participant's financial condition.<sup>19</sup> The NYISO proposes to clarify this requirement to recognize that some investigations may be confidential, and the Market Participant may therefore be prohibited from disclosing the existence thereof to the NYISO. The proposed language clarifies that a Market Participant is required to inform the NYISO of an investigation unless prohibited by law. The clarifying revisions also require that a Market Participant take reasonable measures to obtain permission to disclose information related to a non-public investigation to the NYISO.

**E. Clarify the Evaluation of Entities for Purposes of Reentry After Bad Debt Loss**

As described above, in its recent order denying a complaint filed by LPGNY, the Commission encouraged the NYISO to supplement its tariffs to identify factors it will consider to determine whether to treat two entities as the "same entity" for purposes of OATT Section 27.4.<sup>20</sup> In response, the NYISO proposes to add language to OATT Section 27.4 to explain that it will evaluate relevant factors to determine if an applicant should be treated as the same Transmission Customer that had caused a previous default, in order to prevent the purpose of the provision from being circumvented by the use of separate entities. Such factors "include but are not limited to, the interconnectedness of the business relationships, overlap in relevant personnel, similarity of business activities, overlap of customer base, if any, and the business engaged in prior to the attempted re-entry."<sup>21</sup> The NYISO's proposed language identifies key factors the NYISO will evaluate, while providing flexibility to evaluate the specific circumstances of each situation.

**IV. Effective Date**

The NYISO respectfully requests that the Commission accept the tariff revisions proposed in this filing to become effective on January 27, 2020.

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<sup>19</sup> See Services Tariff Section 26.2.1.3.

<sup>20</sup> Order Denying Complaint ¶ 46.

<sup>21</sup> See Attachment IV, OATT Section 27.4.

**V. Stakeholder Process**

The proposed amendments were unanimously approved by the NYISO Management Committee on October 30, 2019. The NYISO's Board of Directors approved the proposed revisions on November 19, 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

\*Amie Jamieson, Senior Attorney/Registered In-House Counsel

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\*Person designated for receipt of service.

**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](http://www.nyiso.com).

**VIII. Conclusion**

The NYISO respectfully requests that the Commission accept the tariff revisions proposed in this filing to become effective on January 27, 2020.

Respectfully submitted,

/s/ Amie Jamieson

Amie Jamieson, Senior Attorney/Registered In-House Counsel

New York Independent System Operator, Inc.

cc: Anna Cochran  
James Danly

Honorable Kimberly D. Bose

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