

## Attachment III

## **7.1 ISO as Counterparty; Right to Net or Set Off; ISO Clearing Account**

### **7.1.1 ISO as Counterparty**

The ISO shall be for all purposes the contracting counterparty, in its own name and right, to each Customer for any purchase or sale of any product or service, or for any other transaction, that is financially settled by the ISO under the ISO Tariffs.

### **7.1.2 Right to Net or Set Off Obligations Owed**

Unless otherwise specifically set forth in this ISO Services Tariff, if for any settlement period the ISO is required to pay any amount to the Customer and the Customer is required to pay any amount to the ISO under this ISO Services Tariff or the ISO OATT, such amounts shall be netted, and the party owing the greater aggregate amount shall pay to the other party the difference between the amounts owed. Additionally, all outstanding payment obligations under this ISO Services Tariff and the ISO OATT between the ISO and the Customer may be netted, offset, set off, or recouped, and payment shall be owed as set forth above.

### **7.1.3 ISO Clearing Account**

The ISO will establish one or more accounts (the "ISO Clearing Account") at a bank or other financial institution, and Customers shall make payments to the ISO or receive payments from the ISO through the ISO Clearing Account in accordance with their settlement information provided by the ISO as described in Section 7.2 of this ISO Services Tariff.

The funds held by the ISO in the ISO Clearing Account shall not be commingled with funds held by the ISO in any other ISO accounts.

#### **7.1.4 ISO Liability for Payment**

The obligation of the ISO to pay Customers for monies owed for a given settlement period shall be limited so that the aggregate liability of the ISO for such payments does not exceed the sum of (i) the aggregate amount paid to or recovered by the ISO from Customers (including by applying a defaulting Customer's financial security) for that settlement period, and (ii) the amount of funds held by the ISO in the Working Capital Fund. The process for declaring and recovering bad debt losses is set forth in Attachment U to the ISO OATT.

## **7.2 Billing and Payment Procedures**

For purposes of this Section 7.2:

- (i) the term “Complete Week Settlement Period” shall mean the seven day period between Saturday and Friday for which all of the days are in the same month; and
- (ii) the term “Stub Week Settlement Period” shall mean the six or fewer day period between Saturday and Friday for which all of the days are in the same month.

### **7.2.1 Billing and Settlement Information.**

The ISO shall provide settlement and billing information to Customers. The ISO shall inform each Customer that provides or is provided services furnished under this ISO Services Tariff or the ISO OATT of the payments due for such service. Such information shall be made electronically available to the Customer.

### **7.2.2 Invoicing and Payment**

#### **7.2.2.1 Weekly Invoice**

On or about each Wednesday, as set forth in ISO Procedures, the ISO shall submit an invoice to a Customer that indicates the net amount owed by or owed to the Customer for those services furnished under this ISO Services Tariff or the ISO OATT for the previous Complete Week Settlement Period or Stub Week Settlement Period that are designated as Weekly Invoice Components in ISO Procedures; *provided, however*, that the net amount owed by or owed to the Customer for those services furnished for a Stub Week Settlement Period that concludes a month shall be included in the next monthly invoice issued in accordance with Section 7.2.2.2 of this ISO Services Tariff.

#### **7.2.2.2 Monthly Invoice**

Within five (5) business days after the first day of each month, the ISO shall submit an invoice to a Customer that indicates the net amount owed by or owed to the Customer:

- (i) for those services furnished under this ISO Services Tariff or the ISO OATT for a Stub Week Settlement Period that concludes the previous month that are designated as Weekly Invoice Components in ISO Procedures;
- (ii) for any adjustments to amounts contained in the weekly invoices issued in the previous month pursuant to Section 7.2.2.1 of this ISO Services Tariff;
- (iii) for those services furnished under this ISO Services Tariff or the ISO OATT in the previous month that are designated as Monthly Invoice Components in ISO Procedures;
- (iv) for any adjustments to amounts contained in a previously issued monthly invoice that was issued on or about one hundred twenty (120) days prior to the issuance of this invoice; and
- (v) for any adjustments to amounts contained in a previously issued monthly invoice as part of the Close-Out Settlement of that monthly invoice pursuant to Section 7.4.1.2 of this ISO Services Tariff.

#### **7.2.2.3 Payment by the Customer**

A Customer owing payments on net in its weekly invoice or its monthly invoice shall make those payments to the ISO through the ISO Clearing Account by the second business day after the date on which the weekly invoice or monthly invoice is rendered by the ISO unless otherwise specified in ISO Procedures. In accordance with Section 7.1.2 of this ISO Services Tariff, the ISO may net any overpayment by the Customer for past estimated charges against current amounts due from the

Customer or, if the Customer has no outstanding amounts due, the ISO may pay to the Customer an amount equal to the overpayment.

#### **7.2.2.4 Payment by the ISO**

Except as provided in Section 7.1.4 of this ISO Services Tariff, the ISO shall pay all net monies owed to a Customer in its weekly invoice or its monthly invoice from the ISO Clearing Account by the second business day after the due date for Customer payments set forth in Section 7.2.2.3 of this ISO Services Tariff unless otherwise specified in ISO Procedures.

#### **7.2.3 Use of Estimated Data and Meter Data**

The ISO may use estimates, including estimated meter data, in whole or in part to settle a weekly or monthly invoice in accordance with ISO Procedures. The ISO shall use meter data submitted to the ISO in accordance with Article 13 of this ISO Services Tariff. Any charges based on estimates shall be subject to true-up in invoices subsequently issued by the ISO after the ISO has obtained the requisite actual information, provided that the ISO shall only true-up charges based on meter data prior to the deadline for finalizing meter data established in Section 7.4 of this ISO Services Tariff. A trued-up charge shall include interest amounts calculated at the rate set forth in Section 7.3 of this ISO Services Tariff from the weekly or monthly due date for the charge until the date of payment of the trued-up amount for that charge.

#### **7.2.4 Method of Payment**

All payments by the Customer shall be made by either (i) wire transfer in immediately available funds payable to the ISO through the ISO Clearing Account or (ii) any other method set forth in ISO Procedures. All payments by the ISO shall be made either (i) by wire transfer in immediately available

funds payable to the Customer by the ISO through the ISO Clearing Account or (ii) any other method set forth in ISO Procedures.

#### **7.2.5 TCC Auction Settlements**

Notwithstanding Sections 7.2.2.1 and 7.2.2.2 of this ISO Services Tariff, the ISO shall make settlements related to the Centralized TCC Auction and the Reconfiguration Auction as set forth in this Section 7.2.5.

7.2.6.1 The ISO shall submit invoices to, and make settlements with, Transmission Owners in connection with the allocation of Net Auction Revenues in accordance with the timeline set forth in ISO Procedures.

7.2.6.2 Customers owing payments to the ISO as a result of their activity in or related to a Centralized TCC Auction or Reconfiguration Auction, pursuant to an award notice or a comparable invoice rendered by the ISO, shall make those payments to the ISO through the ISO Clearing Account in accordance with the timeline set forth in ISO Procedures.

7.2.6.3 Except as provided in Section 7.1.4 of this ISO Service Tariff, the ISO shall pay all net monies owed to Customers as a result of their activity in or related to a Centralized TCC Auction or a Reconfiguration Auction, pursuant to an award notice or a comparable invoice rendered by the ISO, from the ISO Clearing Account in accordance with ISO Procedures.

7.2.6.4 Sections 7.2.1, 7.2.3, 7.2.4, and 7.2.6 of this ISO Services Tariff and Section 19.9.6 of Attachment M of the ISO OATT shall apply to settlements calculated in accordance with this Section 7.2.5.

#### **7.2.6 Verification of Payments**

The ISO shall verify that all payments owed by Customers in accordance with this ISO Services Tariff and the ISO OATT have been paid to the ISO in a timely manner. If a Customer fails to make a payment within the time period established in Sections 7.2.2.1, 7.2.2.2, and 7.2.5 of this ISO Services Tariff or pays less than the amount due, the ISO shall take measures pursuant to Section 7.5 of this ISO Services Tariff. Except as provided in Section 7.1.4 of this ISO Services Tariff, the ISO shall also ensure that monies owed to Customers in accordance with this ISO Services Tariff and the ISO OATT are paid through the ISO Clearing Account in a timely manner.

#### **7.2.7 Payments for TSCs**

Bills and payments for TSCs shall be issued in accordance with the ISO OATT. Accordingly, this Section 7 shall not apply to TSCs.

### **7.3 Interest on Unpaid Balances**

Interest on any unpaid amount whether owed to a Customer or to the ISO (including amounts placed in escrow) shall be calculated in accordance with the methodology specified for interest on refunds in the Commission's regulations at 18 C.F.R. § 35.19a (a)(2)(iii). Interest on unpaid amounts shall be calculated from the due date of the bill to the date of payment. Invoices shall be considered as having been paid on the date of receipt of payment by the ISO.

If the ISO is unable to provide settlement information on time due to the action or inaction of the Customer, in addition to any other remedies the ISO may have at law or in equity, the Customer shall pay interest on amounts due, as calculated above, from the first day of the Billing Period following the Billing Period in which charges are accrued to the time of payment of those charges.

## **7.4 Billing Disputes**

This Section 7.4 establishes the process and timeframe for review, challenge, and correction of Customer invoices. For purposes of this Section 7.4, any deadline that falls on a Saturday, Sunday, or holiday for which the ISO is closed shall be observed on the ISO's next business day.

For purposes of this Section 7.4, "finalized" data and invoices shall not be subject to further correction, including by the ISO, except as ordered by the Commission or a court of competent jurisdiction; *provided, however*, that nothing herein shall be construed to restrict any stakeholder's right to seek redress from the Commission in accordance with the Federal Power Act.

Challenges to charges and payments in awards rendered by the ISO to Customers buying or selling TCCs in Centralized TCC Auctions and Reconfiguration Auctions shall be governed by Section 19.10 of Attachment M of the ISO OATT and ISO Procedures and shall not be governed by this Section 7.4.

### **7.4.1 Settlement Cycle for Services Furnished On and After January 1, 2009**

#### **7.4.1.1 ISO Corrections or Adjustments and Customer Challenges to the Accuracy of Settlement Information**

Settlement information for services furnished beginning January 1, 2009, and thereafter shall be subject to review, comment, and challenge by a Customer and correction or adjustment by the ISO for errors at any time for up to five (5) months from the date of the initial invoice for the month in which service is rendered as set forth in Section 7.2.2.2 of this ISO Services Tariff and as further provided in Section 7.4.1.2, subject to the following requirements and limitations:

- 7.4.1.1.1 A Supplier or meter authority may review, comment on, and challenge Generator, tie-line, and sub-zone Load metering data for fifty-five (55) days from the date of the initial

invoice for the month in which service is rendered. Following this review period, the ISO shall then have five (5) days to process and correct Generator, tie-line, and sub-zone Load metering data, after which time it shall be finalized.

7.4.1.1.2 The meter authority shall provide to the ISO all LSE bus metering data then available within seventy (70) days from the date of the initial invoice and shall provide any necessary updates to the LSE bus metering data as soon as possible thereafter. The ISO shall post all available LSE bus metering data within approximately seventy-five (75) days from the date of the initial invoice and shall continue to post incoming LSE bus metering data as soon as practicable after it is received.

7.4.1.1.3 The ISO shall post advisory settlement information, including available LSE bus metering data, within ninety (90) days from the date of the initial invoice. Customers may review, comment on, and challenge this settlement information, except for Generator, tie-line, and sub-zone Load metering data, after which the ISO shall process and correct the data and issue a corrected invoice with the regular monthly invoice issued on or about one hundred twenty (120) days from the date of the initial invoice. Following the ISO's issuance of a corrected invoice, Customers may continue to review, comment on, and challenge their settlement information, excepting Generator, tie-line, and sub-zone Load metering data, until the end of the five-month review period.

7.4.1.1.4 The meter authority shall provide to the ISO any final updates or corrections to LSE bus metering data within one hundred thirty (130) days from the date of the initial invoice. The ISO shall then post any updated and corrected LSE bus metering data within one hundred thirty-five (135) days from the date of the initial invoice. Customers may then review, comment on, and challenge the LSE bus metering data for an additional ten (10) days.

Following this review period, the ISO shall have five (5) days to process and correct the LSE bus metering data, after which it shall be finalized.

The ISO shall use reasonable means to post metering revisions for review by Customers and to notify Customers of the approaching expiration of review periods. To challenge settlement information contained in an invoice, a Customer shall first make payment in full, including any amounts in dispute. Customer challenges to settlement information shall: (i) be submitted to the ISO in writing, (ii) be clearly identified as a settlement challenge, (iii) state the basis for the Customer's challenge, and (iv) include supporting documentation, if applicable. The ISO shall notify all Customers of errors identified and the details of corrections or adjustments made pursuant to this Section 7.4.1.1.

#### **7.4.1.2 Review and Correction of Challenged Invoices**

The ISO shall evaluate a settlement challenge as soon as possible within two (2) months following the conclusion of the challenge period specified in Section 7.4.1.1; *provided, however*, the ISO may, upon notice to Customers within this time of extraordinary circumstances requiring a longer evaluation period, take up to six (6) months to evaluate a settlement challenge. The ISO shall not be limited to the scope of Customer challenges in its review of a challenged invoice and may, at its discretion, review and correct any other elements and intervals of a challenged invoice, except Load and meter data as specified in Section 7.4.1.1. Corrections to a challenged invoice shall be applied to all Customers that were or should have been affected by the original settlement and shall not be limited to the Customer challenging the invoice; *provided, however*, that the ISO may recover *de minimis* amounts or amounts that the ISO is unable to collect from individual Customers through Rate Schedule 1 of this ISO Services Tariff.

Upon completing its evaluation, the ISO shall provide written notice to the challenging Customer of the ISO's final determination regarding the Customer's settlement challenge. If the ISO determines

that corrections or adjustments to a challenged invoice are necessary and can quantify them with reasonable certainty, the ISO shall provide all Customers with the details of the corrections or adjustments within the timeframe established in this Section 7.4.1.2. The ISO shall then provide a period of twenty-five (25) days for Customers to review the corrected settlement information and provide comments to the ISO regarding the implementation of those corrections or adjustments; *provided, however*, that in the event of a dispute resolution proceeding conducted in accordance with Section 7.4.2 of this ISO Services Tariff, this twenty-five (25) day period shall not start or, if it has already started, shall be suspended until the conclusion of the dispute resolution proceeding. Following the conclusion of the dispute resolution proceeding, the ISO shall make any corrections to Customers' settlement invoices that it determines to be necessary and shall then start or re-start the twenty-five (25) day Customer comment period.

If no errors in the implementation of corrections or adjustments are identified during the twenty-five (25) day Customer comment period, the ISO shall issue a finalized close-out settlement ("Close-Out Settlement"), clearly identified as such, in the next regular monthly billing invoice. If an error in the implementation of a correction or adjustment is identified during the twenty-five (25) day Customer comment period, the ISO shall have one (1) month to make such further corrections as are necessary to address the error and provide Customers with one additional period of twenty-five (25) days to review and comment on the implementation of those further corrections. If an error in the implementation of those further corrections is identified, the ISO shall then have one (1) month to make any final corrections that are necessary and shall issue a finalized Close-Out Settlement in the next regular monthly billing invoice.

## **7.4.2 Expedited Dispute Resolution Procedures for Unresolved Settlement Challenges**

### **7.4.2.1 Applicability of Expedited Dispute Resolution Procedures**

This Section 7.4.2 establishes expedited dispute resolution procedures applicable to address any dispute between a Customer and the ISO regarding a Customer settlement that was not resolved in the ordinary settlement review, challenge, and correction process; *provided, however*, that nothing herein shall restrict a Customer or the ISO from seeking redress from the Commission in accordance with the Federal Power Act.

A Customer may request expedited dispute resolution if it has previously presented a settlement challenge consistent with the requirements of Section 7.4.1.1 of this ISO Services Tariff and has received from the ISO a final, written determination regarding the settlement challenge pursuant to Section 7.4.1.2 of this ISO Services Tariff. The scope of an expedited dispute resolution proceeding shall be limited to the subject matter of the Customer's prior settlement challenge. Customer challenges regarding Generator, tie-line, sub-zone Load, and LSE bus metering data shall not be eligible for formal dispute resolution proceedings under this ISO Services Tariff. To ensure consistent treatment of disputes, separate requests for expedited dispute resolution regarding the same issue and the same service month or months may be resolved on a consolidated basis, consistent with applicable confidentiality requirements.

### **7.4.2.2 Initiation of Expedited Dispute Resolution Proceeding**

To initiate an expedited dispute resolution proceeding, a Customer shall submit a written request to the ISO Chief Financial Officer within eleven (11) business days from the date that the ISO issues a final, written determination regarding a Customer settlement challenge pursuant to Section 7.4.1.2 of this ISO Services Tariff. A Customer's written request for expedited dispute resolution shall

contain: (i) the name of the Customer making the request, (ii) an indication of other potentially affected parties, to the extent known, (iii) an estimate of the amount in controversy, (iv) a description of the Customer's claim with sufficient detail to enable the ISO to determine whether the claim is within the subject matter of a settlement challenge previously submitted by the Customer, (v) copies of the settlement challenge materials previously submitted by the Customer to the ISO, and (vi) citations to the ISO Tariffs and other relevant materials upon which the Customer's settlement challenge relies.

The ISO Chief Financial Officer shall acknowledge in writing receipt of the Customer's request to initiate an expedited dispute resolution proceeding. If the ISO determines that the proceeding would be likely to aid in the resolution of the dispute, the ISO shall accept the Customer's request and provide written notice of the proceeding to all Customers through the ordinary means of communication for settlement issues. The ISO shall provide written notice to the Customer in the event that the ISO declines its request for expedited dispute resolution.

#### **7.4.2.3 Participation by Other Interested Customers**

Any Customer with rights or interests that would be materially affected by the outcome of an expedited dispute resolution proceeding may participate; *provided, however*, that a Customer seeking or supporting a change to the NYISO's determination regarding a Customer settlement challenge must have previously raised the issue in a settlement challenge consistent with the requirements of Section 7.4.1.1 of this ISO Services Tariff. To participate, such Customer shall submit to the ISO Chief Financial Officer a written request to participate that meets the requirements for an initiating request for expedited dispute resolution within eleven (11) business days from the date that the ISO issues notice of the expedited dispute resolution proceeding. If the ISO determines that the Customer has met the requirements of this Section 7.4.2.3, the ISO will accept the Customer's request to participate in the dispute resolution proceeding.

#### **7.4.2.4 Selection of a Neutral**

As soon as reasonably possible following the ISO's acceptance of a Customer's request for expedited dispute resolution under Section 7.4.2.2, the ISO shall appoint a neutral to preside over the proceeding by randomly selecting from a list (i) provided to the ISO by the American Arbitration Association or (ii) developed by the ISO with input from the appropriate stakeholder committee, until an available neutral is found. To the extent possible, the neutral shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues and the financial settlement of electric markets.

No person shall be eligible to act as a neutral who is a past or present officer, employee, or consultant to any of the disputing parties, or of an entity related to or affiliated with any of the disputing parties, or is otherwise interested in the matter in dispute except upon the express written consent of the parties. Any individual appointed as a neutral shall make known to the disputing parties any such disqualifying relationship or interest and a new neutral shall be appointed, unless express written consent is provided by each party.

#### **7.4.2.5 Conduct of the Expedited Dispute Resolution Proceeding**

The neutral shall schedule the initial meeting of the disputing parties within five (5) business days of appointment. Except as otherwise provided in this Section 7.4.2, the neutral shall have discretion over the conduct of the dispute resolution process including, but not limited to: (i) requiring the disputing parties to meet for discussion, (ii) allowing or requiring written submissions, (iii) establishing guidelines for such written submissions, and (iv) allowing the participation of Customers that have requested an opportunity to be heard.

Within sixty (60) days of the appointment of the neutral, if the dispute has not been resolved, the neutral shall provide the disputing parties with a written, confidential, and non-binding

recommendation for resolving the dispute. The disputing parties shall then meet in an attempt to resolve the dispute in light of the neutral's recommendation. If the disputing parties have not resolved the dispute within ten (10) days of receipt of the neutral's recommendation, the dispute resolution process will be concluded.

Neither the recommendation of the neutral, nor statements made by the neutral or any party, including the ISO, or their representatives, nor written submissions prepared for the dispute resolution process, shall be admissible for any purpose in any proceeding.

#### **7.4.2.6 Allocation of Costs**

Each party to a dispute resolution proceeding shall be responsible for its own costs incurred during the process and for a pro rata share of the costs of a neutral.

## **7.5 Customer Default**

### **7.5.1 Events of Default**

An event of default ("Default") shall occur in the event a Customer (the "Defaulting Party") shall:

- (i) fail to comply with the ISO's creditworthiness requirements and receive notice of such failure;
- (ii) fail to comply with Section 8.4 of this Tariff;
- (iii) make an assignment or any general arrangement for the benefit of creditors;
- (iv) fail to timely make a payment due to the ISO, regardless of whether such payment is in dispute, and receive notice from the ISO of such failure;
- (v) fail to cure its default in another independent system operator/regional transmission organization market;
- (vi) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a case, petition, proceeding, or cause of action under any bankruptcy or insolvency law or similar law for the protection of debtors or creditors, or have such a petition, case, proceeding or cause of action filed or commenced against it and such case, petition, proceeding or cause of action is not withdrawn or dismissed within thirty (30) days after such filing or commencement;
- (vii) otherwise become bankrupt or insolvent (however evidenced);
- (viii) be unable or unwilling to pay its debts to third parties as they fall due;

- (ix) otherwise become adjudicated a debtor in bankruptcy or insolvent (however evidenced);
- (x) be unable (or admits in writing its inability) generally to pay its debts as they become due;
- (xi) be dissolved (other than pursuant to a consolidation, acquisition, amalgamation or merger);
- (xii) have a resolution passed for its winding-up official management or liquidation (other than pursuant to a consolidation, acquisition, amalgamation or merger);
- (xiii) seek or become subject to the appointment of an administrator, provisional liquidator, conservator, assignee, receiver, trustee, custodian or other similar entity or official for all or substantially all of its assets;
- (xiv) have a secured party take possession of all or substantially all of its assets or has a distress, levy, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within thirty (30) days thereafter;
- (xv) cause or subject to any event with respect to which, under the applicable laws of any jurisdiction, said event has an analogous effect to any of the events specified in clauses (iv) to (xii) (inclusive);
- (xvi) take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

- (xvii) fail to perform any material covenant set forth in the Tariff or a Service Agreement (other than the events that are otherwise specifically covered in this Section as a separate Event of Default), and such failure is not excused by Force Majeure or cured within five (5) business days after written notice thereof to the Defaulting Party;

#### **7.5.2 Cure**

Unless otherwise provided in Attachment K to this Services Tariff:

- (i) A Defaulting Party shall have one (1) business day to cure a Default resulting from its failure to timely make a payment due to the ISO.
- (ii) A Defaulting Party shall have two (2) business days to cure a Default resulting from its failure to comply with the ISO's creditworthiness requirements; *provided, however*, that a Customer shall have one (1) business day to cure a default resulting from its failure to comply with the ISO's creditworthiness requirements following termination of a Prepayment Agreement.

#### **7.5.3 ISO Remedies**

In addition to any and all other remedies available under the ISO Tariffs or pursuant to law or equity, the ISO shall have the following remedies:

- (i) **Default.** Upon an event of Default and expiration of any cure period, the ISO shall have the right to suspend and/or terminate service to the Defaulting Party and the Service Agreement between the ISO and the Defaulting Party immediately upon notice to the Commission. In addition, in the event of a payment default, the ISO shall have the sole and exclusive right to initiate debt collection procedures against a Customer on account

of any such default. The process for declaring and recovering bad debt losses is set forth in Attachment U to the ISO OATT.

- (ii) **Financial Distress.** In the event of a reduction in the amount of a Customer's Unsecured Credit (a) by fifty percent (50%) or more as determined in accordance with Section 26.5 of Attachment K to the ISO Services Tariff, or (b) as a result of a material adverse change as determined in accordance with Section 26.12 of Attachment K to the ISO Services Tariff, then the ISO shall have the right to: (1) immediately issue an invoice to such Customer requiring payment within two (2) business days from the invoice date for initial settlements representing the sum of that Billing Period's daily billing data available as of the invoice date, and/or (2) require such Customer to prepay estimated charges weekly for up to twelve months in accordance with ISO Procedures.
- (iii) **Default in Another ISO/RTO.** In the event a Customer fails to cure its default in another independent system operator/regional transmission organization market, then the ISO shall have the right to: (1) demand immediate payment by the Customer to the ISO for any amounts owed as of the date of the demand, and/or (2) require the Customer to prepay estimated charges weekly for a minimum of twelve months in accordance with ISO Procedures, and/or (3) reduce or eliminate the amount of the Customer's Unsecured Credit.
- (iv) **Two Late Payments.** In the event a Customer fails to pay its invoice when due on two occasions within a rolling twelve (12) month period, then the ISO shall have the right to: (1) require the Customer to prepay estimated charges weekly, based on the charges incurred by the Customer in the previous week, for up to twelve months, and/or (2)

reduce or eliminate the amount of the Customer's Unsecured Credit for up to twelve (12) months.

#### **7.5.4 Forward Contracts**

By entering into Transactions under this Tariff, the Customer agrees that its Service Agreement and Transactions under this Tariff shall constitute a "forward contract" within the meaning of the United States Bankruptcy Code.

#### **7.5.5 Notice to Customers**

The ISO shall notify all Customers in the event that a Customer is in default and shall also notify all Customers in the event that the Customer subsequently cures the default or the ISO terminates the Customer due to the default. In the event of a payment default or creditworthiness default, the ISO will disclose in its notice to Customers the approximate amount of the default as follows:

Default Amount	Type of Default	
Range	Payment	Creditworthiness
\$0 to \$100,000		
\$100,001 to \$500,000		
\$500,001 to \$1,000,000		
\$1,000,001 to \$5,000,000		
\$5,000,001 to \$10,000,000		
> \$10,000,000		

In addition, in the event of a payment default, unless otherwise precluded, the ISO will also disclose the amount and type of collateral, if any, held by the ISO to secure the defaulting Customer's obligations to the ISO.

## **26.6 Collateral Requirements**

As security for the prompt payment of a Customer's obligations to the ISO arising under the Services Tariff or the OATT, including without limitation an obligation to (i) satisfy any credit requirement for bidding on or holding TCCs, and (ii) to the extent that its Operating Requirement and/or Bidding Requirement exceed(s) the total of its Unsecured Credit plus any posted collateral, Customer shall provide to the ISO collateral in an acceptable form in accordance with Section 26.6.1 hereof.

### **26.6.1 Acceptable Collateral**

#### **26.6.1.1 Cash deposit**

A cash deposit shall be held in escrow by the ISO, with actual interest earned on the deposit accrued to the Customer's account.

#### **26.6.1.2 Letter of credit**

A letter of credit shall be in a form acceptable to the ISO and issued or guaranteed by an approved U.S. or Canadian commercial bank, or an approved U.S. or Canadian branch of a foreign bank, with a minimum "A" rating from Standard & Poor's, Fitch, Moody's, or Dominion. A Customer's failure to provide acceptable collateral in an amount sufficient to secure its obligations to the ISO fifty (50) days prior to the termination of a letter of credit, which collateral shall be guaranteed to remain in effect for a period of not less than one (1) year, shall be a condition of default enabling the ISO to immediately draw upon the full value of the letter of credit.

#### **26.6.1.3 Surety Bonds**

A surety bond shall be in a form acceptable to the ISO, payable immediately upon demand without prior demonstration of the validity of the demand, and issued by a U.S. Treasury-listed surety

with a minimum “A” rating from A.M. Best. A Customer’s failure to provide acceptable collateral in an amount sufficient to secure its obligations to the ISO fifty (50) days prior to the termination of a surety bond, which collateral shall be guaranteed to remain in effect for a period of not less than one (1) year, shall be a condition of default enabling the ISO to immediately demand payment of the full value of the surety bond.

#### **26.6.1.4 Netting of Amounts Receivable**

A Customer may elect to treat as cash collateral the amount that the ISO determines will be owed to the Customer as of the day after the next regular weekly payment to the Customer and that will be payable to the Customer in the following regular weekly payment; *provided, however*, that (i) any such payment to the Customer may be adjusted by the ISO as necessary to correct for any error in this determination, and (ii) the Customer first enter into a security agreement with the ISO in a form acceptable to the ISO. At a minimum, the security agreement must grant to the ISO a continuing, first priority security interest in the Customer’s ISO receivables and authorize the ISO to file financing statements, as necessary, at Customer’s expense, to protect the ISO’s interest.

### **26.6.2 Cash Collateral Investment Alternatives**

#### **26.6.2.1 Investment Alternatives**

A Customer may elect to deposit some or all of its cash collateral it has posted with the ISO to satisfy its Operating Requirement into one or both of two bond funds: a short-term bond fund (“Short-Term Bond Fund”) and an intermediate-term bond fund (“Intermediate-Term Bond Fund”) (each a “Bond Fund”). A Customer’s election shall be in writing and shall not be changed more than twice each year.

#### **26.6.2.2 Additional Premium**

A Customer electing to deposit cash collateral into a Bond Fund shall be required to also deposit a premium above the base amount of cash collateral to protect against fluctuations in the value of the Bond Fund. A 5% premium shall be required for investments in the Short-Term Bond Fund. A 10% premium shall be required for investments in the Intermediate-Term Bond Fund.

#### **26.6.2.3 ISO Monitoring**

The ISO shall monitor the value of the Bond Funds at least once each week. If at any time the value of the Customer's account in a Bond Fund reduces by an amount equal to fifty percent (50%) of the premium required for participation in that Bond Fund, or more, the ISO shall provide the Customer with a notice requesting additional cash collateral to restore the required balance in the Bond Fund. If a Customer fails to provide the additional collateral by 4:00 p.m. on the business day following the NYISO's notice requesting additional cash collateral, the ISO may immediately liquidate the Customer's Bond Fund deposit and transfer the balance to a standard cash collateral deposit account.

#### **26.6.2.4 Example**

Assume a Customer has an Operating Requirement of \$300 and elects to place \$100 in the standard cash collateral deposit account; \$100 in the Short-Term Bond Fund; and \$100 in the Intermediate-Term Bond Fund. As such, the Customer would be required to place \$100 in the standard cash collateral deposit account. The Customer would be required to place \$100 plus \$5 (the 5% required premium) for a total of \$105 to participate in the Short-Term Bond Fund. The Customer would be required to place \$100 plus \$10 (the 10% required premium) for a total of \$110 to participate in the Intermediate-Term Bond Fund. Assume further that upon the ISO monitoring, it discovers that the value of the Customer's Short-Term Bond Fund decreased to \$102.50 while the value of the Intermediate-

Term Bond Fund remained unchanged. The ISO would then notify the Customer to provide an additional \$2.50 of collateral such that the 5% premium would be met for the Short-Term Bond Fund. If the Customer failed to timely provide the additional collateral, the ISO may then liquidate the \$102.50 balance in the Short-Term Bond Fund and place it in a standard cash collateral deposit account. The Intermediate-Term Bond Fund would remain unaffected.

### **26.6.3      Alternative Security Arrangements**

Alternative security arrangements substantially similar to the credit requirements set forth in this Attachment K may be made in exigent circumstances to protect the financial position of the ISO if proposed by the Customer and approved by the ISO.