

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL REGULATORY COMMISSION**

**New York Independent System Operator, Inc.        )**

**Docket No. ER20-483-000**

**REQUEST FOR LEAVE TO ANSWER AND ANSWER OF  
THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rule 213 of the Federal Energy Regulatory Commission (the “Commission” or “FERC”) Rules of Practice and Procedure, 18 C.F.R. § 385.213, the New York Independent System Operator, Inc. (“NYISO”),<sup>1</sup> respectfully submits this request for leave to answer and answer (“Answer”). The Answer responds to certain issues raised in the protest of the Energy Trading Institute (“ETI Protest”) submitted in response to the NYISO’s November 26, 2019 filing (“November 26 Filing”) in this proceeding.<sup>2</sup> The November 26 Filing proposed tariff amendments to enhance the NYISO’s ability to prevent or mitigate the risk of credit defaults in the NYISO-administered markets. The tariff amendments proposed in the November 26 Filing were passed unanimously, with no abstentions, by the NYISO’s stakeholders, and no member of ETI voted against the amendments.<sup>3</sup> For the reasons described below, the Commission should reject the ETI Protest in its entirety. The Commission should accept the

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<sup>1</sup> Capitalized terms not defined in this Answer have the meaning set forth in the NYISO Open Access Transmission Tariff (“OATT”) and Market Administration and Control Area Services Tariffs (“Services Tariff”).

<sup>2</sup> *New York Indep. Sys. Operator, Inc., Proposed Tariff Revisions to Enhance Credit Reporting Requirements and Remedies*, Docket No. ER20-483 (Nov. 26, 2019) (“November 26 Filing”).

<sup>3</sup> ETI is a trade group that states that it represents members with interests in wholesale electricity transactions, some of whom are NYISO Market Participants, but is not itself a NYISO Market Participant.

November 26 Filing and find that the NYISO's proposed tariff revisions are just, reasonable, and not unduly discriminatory and require no modifications or additional procedures.

## **I. REQUEST FOR LEAVE TO ANSWER**

The NYISO may answer pleadings that are styled as motions as a matter of right.<sup>4</sup> The Commission also has discretion to accept, and routinely accepts, answers to protests where they help to clarify complex issues, provide additional information, are helpful in the development of the record in a proceeding, or otherwise assist in the decision-making process.<sup>5</sup> The NYISO's Answer to the ETI Protest satisfies those standards and should be accepted because it corrects misplaced assertions and provides additional information that will help the Commission fully evaluate the November 26 Filing. The NYISO, therefore, respectfully requests that the Commission accept this Answer.

## **II. ANSWER**

### **A. The NYISO's Proposed Tariff Revisions to Enhance Credit Reporting Requirements and Remedies Are Just and Reasonable and Consistent with the Commission's "Rule of Reason"**

The tariff revisions proposed in the November 26 Filing are important enhancements that improve the NYISO's situational awareness regarding counterparty credit risks and augment its ability to protect against financial losses in the NYISO-administered markets. The proposed tariff revisions help ensure that Market Participants will have the ability to timely satisfy

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<sup>4</sup> See 18 C.F.R. § 385.213(a)(3).

<sup>5</sup> See, e.g., *Southern California Edison Co.*, 135 FERC ¶ 61,093, at P 16 (2011) (accepting answers to protests "because those answers provided information that assisted [the Commission] in [its] decision-making process"); *New York Indep. Sys. Operator, Inc.*, 134 FERC ¶ 61,058, at P 24 (2011) (accepting the answers to protests and answers because they provided information that aided the Commission in better understanding the matters at issue in the proceeding); *New York Indep. Sys. Operator, Inc.*, 140 FERC ¶ 61,160, at P 13 (2012); and *PJM Interconnection, LLC*, 132 FERC ¶ 61,217, at P 9 (2010) (accepting answers to answers and protests because they assisted in the Commission's decision-making process).

payment obligations to the NYISO as they come due and allow the NYISO to take appropriate actions to protect against unreasonable credit risks. ETI, however, asks that the Commission direct the NYISO to amend not just its proposals, but also previously accepted NYISO tariff provisions, based on ETI's preferences. Alternatively, ETI would have the Commission reject NYISO's proposals outright. ETI misunderstands or ignores the procedural context of the proposed revisions, the applicable standard of review, and relevant Commission precedent, as discussed further below. Further, ETI fails to reflect the engagement of its own member organizations within the NYISO's shared governance process. The NYISO's proposed enhancements were approved unanimously by stakeholders, and no member of ETI voted against them.<sup>6</sup> The Commission should reject ETI's requests.

Section 205 of the Federal Power Act ("FPA")<sup>7</sup> requires only that the NYISO show that its proposed tariff revisions are just and reasonable, not what ETI considers to be the *most optimal*.<sup>8</sup> The NYISO fully satisfied the requirements of Section 205 in its November 26 Filing. There is therefore no basis for the Commission to consider ETI's alternative revisions in this proceeding, regardless of the supporting rationale offered. If ETI wishes to amend or modify NYISO credit requirements, it may, through its member organizations, propose those changes

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<sup>6</sup> The voting summary from the relevant Management Committee meeting can be found at: [https://www.nyiso.com/documents/20142/8907970/MC\\_Final\\_Motions.pdf/0f6ee167-410c-1161-26ed-f69f60f36261](https://www.nyiso.com/documents/20142/8907970/MC_Final_Motions.pdf/0f6ee167-410c-1161-26ed-f69f60f36261)

<sup>7</sup> 16 U.S.C. § 824d.

<sup>8</sup> *Id.* See, e.g., *Cities of Bethany v. FERC*, 727 F.2d 1131 (D.C. Cir. 1984) ("FERC has interpreted its authority to review rates under the FPA as limited to an inquiry into whether the rates proposed by a utility are reasonable-and not to extend to determining whether a proposed rate schedule is more or less reasonable than alternative rate designs"), *cert denied*, 469 U.S. 917 (1984); *Midwest Indep. Transmission Sys. Operator, Inc.*, 127 FERC ¶ 61,109, at P 20 (2009) ("[i]t is well established that there can be more than one just and reasonable rate").

through the NYISO stakeholder process or make its own filing under FPA Section 206. It is not permitted to do so through a protest.<sup>9</sup>

The Commission cannot, as ETI suggests, effectively rewrite the NYISO's proposed revisions to suit ETI's particular preferences.<sup>10</sup> The Commission must therefore accept or reject the substance of the NYISO's proposed enhancements as submitted.

Section 205 of the FPA requires the NYISO to file provisions regarding practices that *significantly* affect the rates, terms, and conditions of service with the Commission, not every detail of implementation, as ETI suggests. The Commission has long recognized that the “infinite of practices affecting rates and services” requires that the determination of what practices “affect or relate to” service be judged by the Commission's “rule of reason” policy.<sup>11</sup> Under that rule, only those practices that “significantly” affect the rates, terms, and conditions of service must be on file in the tariff.<sup>12</sup> Technical implementation details and non-material

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<sup>9</sup> 16 U.S.C. § 824e.

<sup>10</sup> See *NRG Power Marketing, LLC v. FERC*, 862 F.3d 108 (D.C. Cir. 2017). See also *PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,237 at P 8 (2019) (denying rehearing of remand order in the *NRG* proceeding and explaining that “while the Commission may suggest “minor deviations” from the proposed rate, the Commission may not suggest modifications that result in an “entirely different rate design” under section 205.”) *Id.* at n. 14, citing *NRG*, 862 F.3d at 115 (quoting *Western Resources, Inc. v. FERC*, 9 F.3d 1568, 1578 (D.C. Cir. 1993)). The limits on FERC's authority to to propose modifications to Section 205 filings apply even when the filing party consent to the modifications. See e.g. *City of Winnfield v. FERC*, 744 F.2d 871 (D.C. Cir. 1984).

<sup>11</sup> See, e.g., *Southwest Power Pool, Inc.*, 161 FERC ¶ 61,261 at P. 50. (2017); *PacifiCorp*, 127 FERC ¶ 61,144, at P 11 (2009); *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985) (*City of Cleveland*) (finding that utilities must file “only those practices that affect rates and service significantly, that are reasonably susceptible of specification, and that are not so generally understood in any contractual arrangement as to render recitation superfluous”); *Public Serv. Comm'n of N.Y. v. FERC*, 813 F.2d 448, 454 (D.C. Cir. 1987) (holding that the Commission properly excused utilities from filing policies or practices that dealt with only matters of “practical insignificance” to serving customers).

<sup>12</sup> *Id.*

requirements, like certain of those related to the November 26 Filing, can be set forth in manuals and procedures.<sup>13</sup>

Contrary to ETI's claim, the November 26 Filing is consistent with Section 35.1 of the Commission's regulations.<sup>14</sup> The NYISO's proposed tariff language is at a level of detail comparable to what the Commission has accepted in other credit-related tariff provisions.<sup>15</sup> It strikes an appropriate balance between the flexibility necessary for the NYISO to fulfill its administrative responsibilities with the transparency and clarity to which market participants are entitled. For the foregoing reasons and those detailed below, the Commission should reject the ETI Protest in its entirety and accept the NYISO's November 26 Filing without modification.

**B. Responses to ETI's Protest Concerning Particular Features of NYISO's Proposal**

***1. The NYISO's Proposed Addition of the Minimum Participation Criterion Related to Financial Capabilities is Unambiguous and Reasonable***

Section 26.1.1 of the Services Tariff requires Market Participants to satisfy, and remain in compliance with, minimum participation requirements regarding: (i) risk management, (ii) training, (iii) operational capabilities, and (iv) capitalization.<sup>16</sup> As the Commission noted in Order No. 741, requiring ISO/RTOs to establish minimum participation criteria can help "minimize the dangers of mutualized defaults posed by inadequately prepared or under-

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<sup>13</sup> *Id.*

<sup>14</sup> ETI Protest at 3; 16 U.S.C § 824d(c) (2012). Section 35.1(a) of the Commission's regulations implements section 205(c) of the FPA. *See* 18 C.F.R. § 35.1(a) (2016).

<sup>15</sup> *See e.g., New York Indep. Sys. Operator, Inc.*, 143 FERC ¶ 61229 (June 11, 2013) (accepting the NYISO's proposed tariff language to align certain credit requirements as sufficiently clear and denying protest requesting clarifying language); *New York Indep. Sys. Operator, Inc.*, 140 FERC ¶ 61110, 61556 (Aug. 6, 2012) (accepting NYISO's proposed tariff revisions and denying market participant protests requesting more transparency regarding its methods of assessing and modeling the creditworthiness of NYISO members).

<sup>16</sup> Services Tariff Section 26.1.1.

capitalized participants.”<sup>17</sup> The November 26 Filing proposed to include an additional minimum participation requirement that a Market Participant certify that it has the appropriate experience and resources to satisfy its obligations to the NYISO as they become due.<sup>18</sup> ETI protests this revision as unreasonable, arguing that the NYISO should have to describe exactly what “resources and experience” are adequate and to define precisely how the NYISO will make that determination.<sup>19</sup>

The requirement proposed by the NYISO is unambiguous and reasonable. Furthermore, the NYISO’s proposed requirement is expressed in a level of detail similar to other requirements in the NYISO tariffs that have been accepted and applied without controversy. The operational capabilities requirement in Section 26.1.1 of the Services Tariff, for example, requires “appropriate personnel resources and technical abilities” to respond to NYISO communications and the training requirement mandates “appropriate training and/or experience to transact on behalf of Customer in the ISO-administered markets.”<sup>20</sup> These minimum participation requirements have been in the Services Tariff for years without any questions being raised concerning the NYISO’s adherence to the FPA or Section 35.1.

The NYISO’s proposed financial capability requirement is comparable. It provides a similar level of detail about what is expected of Market Participants and does not, as ETI argues,

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<sup>17</sup> *Credit Reforms in Organized Wholesale Electric Markets*, Order No. 741, FERC Stats. & Regs. ¶ 31,317 at para. 123 (2010), *order on reh’g*, Order No. 741-A, FERC Stats. & Regs. ¶ 31,320 (2011), *order denying reh’g*, Order No. 741-B, 135 FERC ¶ 61,242 (2011) (“Order No. 741”).

<sup>18</sup> November 26 Filing, proposed revisions to Include Minimum Participation Criterion on Financial Capabilities at 3-4.

<sup>19</sup> ETI Protest at 4.

<sup>20</sup> Services Tariff Section 26.1.1.

hinder a Market Participant's ability to comply with tariff requirements.<sup>21</sup> To the contrary, it provides flexibility that benefits both the NYISO and the Customer. The NYISO's proposal allows Customers to certify to their compliance while affording the NYISO reasonable discretion to evaluate individual facts and circumstances presented as necessary. That discretion is not without limit, of course, as the Commission stands as the ultimate arbiter of whether the NYISO has acted within the bounds of its tariffs in applying customer qualification requirements.

**2. *The Proposed Revisions to Allow the NYISO to Request Additional Information and to Reject an Applicant that Presents an Unreasonable Credit Risk Are Just, Reasonable, and not Unduly Discriminatory***

The NYISO proposes to require that an applicant seeking to become a customer in the NYISO-administered markets must submit such additional information or documentation as the NYISO may reasonably request in the evaluation of the customer application. In addition, the NYISO proposes to allow the rejection of a customer application in the event that the NYISO determines that the customer's participation in the NYISO-administered markets would present an unreasonable credit risk. In that event, the NYISO would be required to provide the applicant with a written explanation of the reasons why the application was rejected.

ETI objects to the proposed revisions, arguing that they do not adequately explain the types of information that the NYISO may request or ensure that the NYISO will request the same information from similarly situated entities.<sup>22</sup> ETI also asserts that the proposed revisions do not

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<sup>21</sup> ETI Protest at 4.

<sup>22</sup> ETI Protest at 6.

give applicants adequate protection against arbitrary or discriminatory decision-making by the NYISO.<sup>23</sup> These objections are without merit and should be rejected.

The proposed revisions complement the NYISO's other customer registration and minimum participation requirements by requiring an applicant to submit "information or documentation reasonably required for the NYISO to evaluate its experience and resources."<sup>24</sup> The universe of relevant information or documentation is not unlimited, but it is not practical or desirable to attempt to establish an exhaustive and detailed list of such information in advance. The proposed provisions appropriately allow the NYISO to assemble the information needed to effectively evaluate the facts and circumstances surrounding a new customer application and, when appropriate, to prevent entry into the NYISO-administered markets by an applicant that would present an unreasonable credit risk based on factors indicating that it may be unable to meet associated financial obligations.

The requirement that the NYISO provide a written explanation of the reasons for the rejection of any application on these grounds provides an important safeguard against arbitrary or discriminatory decision-making by the NYISO. Contrary to ETI's claim that applicants are afforded no recourse if the NYISO rejects their application, the requirement of a written explanation ensures transparency and accountability in the NYISO's administration of the new customer application process. NYISO customer registration staff are available to assist with customer inquiries. Furthermore, an applicant may seek redress at the Commission if it believes

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<sup>23</sup> *Id.*

<sup>24</sup> Section 26.1.4 of the Services Tariff already requires Market Participants to submit "any information or documentation reasonably required for the ISO to monitor and evaluate Customer's creditworthiness and compliance with requirements set forth in the ISO Tariffs, ISO Procedures, and/or ISO Agreements related to settlements, billing, credit requirements, and other financial matters."



the NYISO's written explanation demonstrates that the NYISO has misapplied the tariff or engaged in unduly discriminatory conduct.

**3. *The NYISO's Proposed Revision to its Material Adverse Change Clause is Just and Reasonable***

The NYISO proposes to modify the Material Adverse Change clause in Section 26.14 of the Services Tariff by adding "an event or circumstance indicating that the Customer may present an unreasonable credit risk to the ISO Administered Markets" to the list of illustrative examples described in the provision.<sup>25</sup> ETI objects to this proposed revision because it does not define "unreasonable credit risk."

The plain meaning of this phrase is more than sufficiently clear in the context of the NYISO's invocation of the Material Adverse Change clause. It would be impractical and counterproductive to attempt to enumerate in the NYISO tariffs every example of what would constitute an unreasonable credit risk. In requiring ISOs and RTOs to specify in their tariffs the conditions under which they would request additional collateral due to a material adverse change, the Commission specifically allowed that the list of adverse changes not be exhaustive, because it is important that ISOs and RTOs be able to use reasonable discretion to request additional collateral in response to "unusual or unforeseen circumstances."<sup>26</sup> Nevertheless, as required by Order No. 741, the NYISO is required pursuant to the terms of Section 26.14 to provide a written explanation for any invocation of the Material Adverse Change clause. This provides an important check and safeguard against arbitrary or discriminatory decision-making in the use of the Material Adverse Change clause.

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<sup>25</sup> November 26 Filing, proposed revisions to Clarify Material Adverse Change Clause.

<sup>26</sup> Order No. 741 para. 147.

**4. *The NYISO's Existing Reporting Requirement for Investigations Is Beyond the Scope of this Proceeding***

ETI takes issue with the current language in Section 26.2.1.3 of the Services Tariff, rather than the NYISO's proposed revisions, requesting that the NYISO provide a more precise definition of "material impact" and limit the scope of the reporting requirement to investigations of the customer.<sup>27</sup> This proceeding is not an appropriate forum for ETI's objection. The Commission has long held that complaints regarding currently effective tariffs must be filed separately from protests regarding proposed revisions to those tariffs.<sup>28</sup>

Beyond the procedural infirmity of ETI's objection, the substance of its position is misplaced and meritless. A materiality standard need not include a precise quantification of what constitutes a "material" impact.<sup>29</sup> Instead, FERC has allowed a reasonable, good faith application by both the Customer and the NYISO of the flexibility needed to address specific facts and circumstances in real time that cannot be defined with mathematical precision in advance.

Additionally, it is reasonable to require a Customer to report to the NYISO an investigation of *which it is aware* and that *could have a material impact on the Customer's financial position* even if the Customer is not known to be the target of that investigation. This

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<sup>27</sup> ETI Protest at 7.

<sup>28</sup> See e.g., *California Indep. Sys. Operator Corp.*, 168 FERC ¶ 61,199, at P. 102 (Sept. 27, 2019) (holding that a complaint should not be submitted as part of a motion to protest in an ongoing proceeding because such filing does not allow interested parties sufficient notice of the complaint); *Midcontinent Indep. Sys. Operator, Inc.*, 155 FERC ¶ 61,040 at P. 18 (citing Commission precedent regarding the necessity of filing a complaint separately from a motion to intervene or protest); *Yankee Atomic Elec. Co.*, 60 FERC ¶ 61,316, at 62,096-97 n.19 (1992) (explaining the importance of filing a complaint separately from a motion for clarification); *Entergy Servs., Inc.*, 52 FERC ¶ 61,317, at 62,270 (1990) (stating that complaints must be filed separately from motions to intervene and protests).

<sup>29</sup> See e.g., *New York Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61057, at P. 60 (Jan. 30, 2015) (finding that the word "materiality" does not lack any meaningful specificity); *Avista Corp. Puget Sound Energy, Inc. Matl LLP Bonneville Power Admin.*, 148 FERC ¶ 61212 (Sept. 18, 2014) (denying clarification request on the specific criteria that will be used to determine "material" adverse impacts); *Quarterly Fin. Reporting & Revisions to the Annual Reports*, 106 FERC ¶ 61113 (Feb. 11, 2004) (denying clarification requests on the definition of materiality for filed reports).

requirement is structured to promote the situational awareness of the NYISO through reasonable reporting obligations on the part of the Customer.

#### **5. *Market Re-Entry After Bad Debt Loss***

ETI objects to the NYISO's proposed revisions that would explicitly allow it to evaluate whether an entity should be treated as the same Transmission Customer that caused a previous default when determining whether to grant the entity's application to participate in the NYISO-administered markets. ETI argues that this proposed amendment would "circumvent well-established principles of corporate and insolvency law." ETI goes on to engage in unfounded speculation as to whether the NYISO "intends to respect insolvency laws" and might "try to seek recovery from another entity formed by former employees of [a] bankrupt entity that defaulted."

ETI is speculating about scenarios that do not pertain to the provision proposed by the NYISO. The purpose of the provision proposed by the NYISO is to indicate factors that the NYISO will consider in determining whether to treat separate entities as the same entity for purposes of applying Section 27.4 of the OATT, which requires that a Transmission Customer must cure a previous default before reentering the NYISO-administered markets. The proposed provision does not purport to allow the NYISO to recover monies owed by one entity from another, to contravene protections afforded to an entity in bankruptcy, or to modify other insolvency related laws.

The proposed revisions are submitted, in part, in response to the Commission's recent order in which it encouraged the NYISO to add language to its tariff that sets forth the factors it

will consider to determine whether to treat two separate entities as the same entity.<sup>30</sup> In *LPGNY*, the Commission looked to relevant precedent regarding “single entity theory” to inform its decision and found that “[c]orporations may be regarded as one entity for the purposes with which the agency is immediately concerned even though they are legitimately distinct for other purposes.”<sup>31</sup> The NYISO’s proposed language would simply create a clearer, explicit tariff basis in the event that it is ever necessary for the NYISO to apply this principle in the future.

#### **6. *The Substance of the NYISO Credit Requirements is Established in the Tariffs***

ETI asserts that the NYISO appears to be implementing its credit policy through forms and states that this is unjust and unreasonable because the forms are not part of the tariff. This is not the case. The forms referenced by ETI are simply an administrative tool used to collect information from the Customer that relates to minimum participation criteria and other requirements clearly established in the NYISO tariffs.

Section 26.1 of the Services Tariff establishes minimum criteria for participating in the NYISO - in over six pages of detail. The final provision, Section 26.1.4, establishes a broad authorization for the NYISO to collect customer information, stating that “each Customer shall submit to the ISO, upon request, any information or documentation reasonably required for the ISO to monitor and evaluate Customer’s creditworthiness and compliance with requirements set forth in the ISO Tariffs, ISO Procedures, and/or ISO Agreements related to settlements, billing, credit requirements, and other financial matters.” The forms ETI references are simply one of the means by which the NYISO administers requirements established in the tariffs - designed in

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<sup>30</sup> *Light Power & Gas of NY LLC v. New York Independent System Operator Inc.*, Order Denying Complaint, 167 FERC ¶ 61,232 at P. 46 (June 20, 2019) (“*LPGNY*”).

<sup>31</sup> *Id.* at P. 40 citing *Town of Highlands*, 37 FERC at 61,356 (footnotes omitted); *see also Transcontinental Gas Pipe Line Corp.*, 58 FERC ¶ 61,023, at 61,045 (1992), *aff’d sub nom. Transcontinental Gas Pipe Line Corp. v. FERC*, 998 F.2d at 1320.

accordance with Commission policy - to ensure that Customers have the minimum qualifications to participate in the NYISO-administered markets.

While the information collected in the NYISO customer registration and credit forms is directly related to requirements established in the NYISO tariffs, as discussed above, it is common for forms and manuals to contain additional detail that is consistent with the substantive terms established in the tariffs. Provisions regarding practices that *significantly* affect the rates, terms, and conditions of service with the Commission must be on file with the Commission, but the Commission has long recognized that technical implementation details and non-material requirements can be set forth in manuals and procedures.<sup>32</sup> The particular information collected in the NYISO's credit questionnaire clearly fits into this category.

ETI also asserts, in a single sentence, that some of the NYISO's requests for information are "unlawful," because the Commission did not require the submission of this information in its "Connected Entities Order."<sup>33</sup> This is simply wrong. The Connected Entities Order established Commission-imposed reporting requirements intended to facilitate the Commission's market surveillance activities and its evaluation and granting of market based rate authority. The Connected Entities Order has no bearing on what information an ISO/RTO may reasonably collect for purposes of administering its minimum participation and customer credit requirements.

#### **7. *The Commission Should Deny ETI's Motion to Consolidate***

ETI requests that the Commission consolidate this proceeding with the rulemaking that it recently asked the Commission to initiate in Docket No. AD20-6. It claims that the NYISO

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<sup>32</sup> *Id.*

<sup>33</sup> ETI Protest at 1, 6.

credit enhancement proposed in this docket overlaps with issues that ETI has asked the Commission to address generically.<sup>34</sup> Overlapping issues alone, however, is not the standard by which the Commission determines consolidation. Rather, the Commission consolidates matters with common issues of law or fact only when consolidation will ultimately result in greater administrative efficiency.<sup>35</sup> As detailed below, docket consolidation here will produce no such result and would needlessly delay the implementation of credit enhancements in New York.

The November 26 Filing under Section 205 requests the Commission accept the NYISO's proposal to enhance its ability to mitigate against credit defaults. ETI's Rulemaking Petition requests a forum in which industry experts share information with ISOs and Commission Staff to "explore a fruitful path forward to enhanced credit policies."<sup>36</sup> The ultimate objective appears to be developing standardized credit support requirements and other rules that would apply to all FERC-jurisdictional ISOs and RTOs.<sup>37</sup> That both proceedings involve some aspect of credit and risk management should not outweigh the fact that the proposed rulemaking would address many more issues and involve a far larger number of stakeholders than this proceeding. The November 26 Filing requires Commission action within 60 days. There is no timetable associated with ETI's Rulemaking Petition, which has not yet been noticed for comment. ETI envisions that there would be a lengthy rulemaking process to commence with a technical conference that would be held by March 30, 2020 (which is already

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<sup>34</sup> ETI Protest at 10; ETI's Request for Technical Conference and Petition for Rulemaking to Update Credit and Risk Management Rules and Procedures in the Organized Markets, Docket No. AD20-6, filed Dec. 16, 2019 ("ETI Rulemaking Petition").

<sup>35</sup> See e.g., *Sw. Power Pool, Inc.*, 125 FERC ¶ 61,001, at P 26 (2008); *Startrans IO L.L.C.*, 122 FERC ¶ 61,306, at P 64 (2008); *PP&L Resources, Inc.*, 90 FERC ¶ 61,203, at 61,653 (2000).

<sup>36</sup> ETI Rulemaking Petition at 4.

<sup>37</sup> *Id.* at 4-11.

after the statutory deadline for action in this proceeding.)<sup>38</sup> Nor is there any deadline for Commission action in Docket No. AD20-6. Additionally, ETI's Rulemaking Petition requires ongoing discussion and input from Commission Staff, the ISOs, the RTOs, and all relevant stakeholders, while the NYISO's Section 205 filing has already passed stakeholder muster and received unanimous stakeholder approval.

Contrary to ETI's assertion, the procedural differences here make consolidation inappropriate. There is no reason to delay acceptance of the enhancements proposed in this docket and doing so will not limit the Commission's ability to act in Docket No. AD20-6.<sup>39</sup> Moreover, it would ignore Commission precedent, waste administrative time and resources, and prolong timely adjudication of the relevant issues in their respective proceedings. The Commission should therefore maintain separate proceedings and deny ETI's motion to consolidate.

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<sup>38</sup> The ETI Rulemaking Petition states, at 2, that ETI "does not wish to delay" ongoing ISO/RTO credit enhancement initiatives, explicitly including the November 26 Filing. Yet its motion to consolidate would substantially (and needlessly) delay the credit enhancements that the NYISO has proposed in this proceeding.

<sup>39</sup> The NYISO is not addressing the merits of ETI's proposals in Docket No. AD20-6 in this Answer but reserves the right to do so in a future filing in Docket No. AD20-6.

### III. CONCLUSION

WHEREFORE, the New York Independent System Operator, Inc. respectfully requests the Commission accept this Answer and accept the November 26 Filing in the above-referenced docket.

Respectfully submitted,

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Dated January 2, 2020

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## **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. §385.2010.

Dated at Rensselaer, NY this 2<sup>nd</sup> day of January 2020.

/s/ Joy A. Zimmerlin

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