

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

New York Independent System Operator, Inc.)

Docket No. ER20- -000

**REQUEST OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
FOR TARIFF WAIVER**

Pursuant to Rule 207(a)(5) of the Federal Energy Regulatory Commission (“Commission” or “FERC”) Rules of Practice and Procedure, 18 C.F.R. § 385.207(a)(5), the New York Independent System Operator, Inc. (“NYISO”), hereby respectfully requests a temporary waiver of restrictions set forth in the definition of “Public Power Entity” in the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”) to allow the NYISO to continue its current practice of providing unsecured credit in the amount of up to \$1 million to government entities that are not “municipally owned electric systems” irrespective of whether they own or control distribution facilities and provide electric service. This practice is reasonable because a government entity’s status as a municipally owned electric system that owns or controls distribution facilities and provides electric service does not materially affect the credit risks presented by a government entity.

Presently only ten government entities will be affected by this waiver, receiving a total of up to \$10 million in unsecured credit as a result. The NYISO does not expect that many, if any, additional government entities would seek to qualify for unsecured credit on this basis if

the waiver is granted. The NYISO requests that the waiver remain in place for a temporary period, not to exceed nine months, from the date of a waiver order.¹

Granting the request would allow the NYISO to engage with stakeholders through the NYISO's shared governance process to develop proposed revisions to the definition of Public Power Entity to allow the NYISO to extend up to \$1 million of unsecured credit to government entities that participate in the NYISO-administered wholesale markets regardless of whether they own or control distribution facilities and provide electric service.

I. Background

The NYISO Services Tariff establishes various credit requirements for customers participating in the NYISO-administered wholesale markets, including the criteria for a customer to qualify for a grant of unsecured credit.² Section 26.5.3 of the Services Tariff sets forth the process by which the NYISO determines eligibility for unsecured credit. The starting point for calculating the amount of unsecured credit granted to a customer is a percentage of its tangible net worth.³ The NYISO then makes adjustments to that starting point based upon conventional credit assessment indicators including market indicators, financial performance, debt coverage, and liquidity.⁴

Section 26.5.3.6 of the Services Tariff establishes that a "Public Power Entity" may qualify for approval of up to \$1 million in unsecured credit without demonstrating a qualifying

¹ The NYISO also requests that the Commission excuse any instances of past non-compliance with the provision at issue. As detailed in the petition, the past practices that the requested waiver will address cannot be corrected or reversed, and no entity has been or will be harmed.

² See Services Tariff Section 26.2.2.

³ See Services Tariff Section 26.5.3.1.

⁴ See Services Tariff Sections 26.5.3.2 and 26.5.3.3.

tangible net worth or submitting to the credit assessment required for other entities. The NYISO established this \$1 million unsecured credit starting point in recognition that municipal entities “generally do not present a significant risk of nonpayment, but are unable to demonstrate creditworthiness through conventional indicators[.]”⁵

The Services Tariff defines a Public Power Entity as:

An entity which is either (i) a public authority or corporate municipal instrumentality, including a subsidiary thereof, created by the State of New York that owns or operates generation or transmission and that is authorized to produce, transmit or distribute electricity for the benefit of the public, or (ii) a *municipally owned electric system that owns or controls distribution facilities and provides electric service*, or (iii) a cooperatively owned electric system that owns or controls distribution facilities and provides electric service (emphasis added).⁶

In the course of an administrative review related to customer credit requirements, the NYISO discovered an inconsistency between its practices regarding the granting of unsecured credit to certain government entities and the definition in subsection (ii) quoted above.

Specifically, the NYISO has extended up to \$1 million in unsecured credit to government entities, treating them as Public Power Entities, although these entities are not municipally owned electric systems that own or control distribution facilities and provide electric service. The NYISO began extending the \$1 million in unsecured credit to certain of these entities at

⁵ See *New York Indep. Sys. Operator, Inc.’s Filing of Tariff Revisions Regarding Customer Creditworthiness Requirements*, Docket No. ER03-552-000 (Feb. 21, 2003). The NYISO proposed the defined term “Public Power Entity” to encompass other government owned electric systems in 2009. See *New York Indep. Sys. Operator, Inc.’s Proposed Tariff Revisions to Enhance Customer Creditworthiness Standards*, Docket No. ER09-1612-000 (Aug. 20, 2009) (the “August 2009 Filing”).

⁶ Services Tariff Section 2.16.

least as early as 2004 when FERC approved NYISO tariff provisions extending up to \$1 million in unsecured credit to municipal electric systems.⁷

The inclusion of language in the definition of “Public Power Entity” requiring entities to be municipally owned electric systems that own or control distribution facilities and provide electric service does not serve a meaningful credit risk management purpose.⁸ Not all government entities that participate in the NYISO-administered wholesale markets own or control the facilities that they use to serve their customers, and the ownership or control of such facilities is not relevant to the rationale for granting a Public Power Entity up to \$1 million of unsecured credit.

The risk profile presented by a government entity is not materially different on the basis of whether or not it is a municipally owned electric system that owns or controls distribution facilities and provides electric service. In either case, these government entities operate to serve their loads without a profit-seeking interest and they have the ability to raise revenues through taxation and other sources of revenue not available to private sector entities. These factors generally result in a lower risk profile that supports the extension of up to \$1 million unsecured credit to government entities without subjecting them to the same review criteria applied to private sector entities that have different commercial objectives and different counterparty credit risk profiles. The NYISO believes that a government entity should qualify for up to \$1 million in unsecured credit pursuant to Section 2.16(ii) of the Services Tariff even if it does not

⁷ *New York Indep. Sys. Operator, Inc.’s Filing of Tariff Revisions Regarding Customer Creditworthiness Requirements*, Docket No. ER03-552-000, *Order Conditionally Accepting Tariff Filing* (September 22, 2003).

⁸ Following a review of records, stakeholder materials, and prior filings, the NYISO has been unable to determine why the definition of Public Power Entity was drafted to include only municipally owned electric systems that own or control electric facilities and provide electric service.

constitute a municipally owned electric system that owns or controls distribution facilities and provides electric service.

In addition to generally posing a lower credit risk, government entities sometimes lack access to credit support more readily available to other entities.⁹ For example, legal restrictions placed on government entities may inhibit their ability to obtain letters of credit or surety bonds, which limits options to provide collateral. Moreover, government administrative processes can make satisfying collateral obligations with cash very difficult and time-consuming. NYISO customers must provide collateral as security for payment of their obligations to the NYISO within two business days of the collateral request.¹⁰ Customers that cannot meet this requirement will be in default under the NYISO's tariffs and subject to suspension or termination if they cannot timely cure the default.¹¹

The NYISO believes that a government entity's status as a municipally owned electric system that owns or controls distribution facilities and provides electric service is unrelated to creditworthiness and the risk of nonpayment, and therefore considers its current practice of extending up to \$1 million of unsecured credit to government entities irrespective of whether they own or control distribution facilities and provide electric service to be appropriate. Accordingly, the NYISO respectfully seeks the waiver described here while it engages with stakeholders through its shared governance process to develop proposed tariff revisions to remedy the inconsistencies at issue.

⁹ The August 2009 Filing explained (at 7) that it was proposing a new mechanism through which Public Power Entities could obtain unsecured credit because "certain legal restrictions occasionally make it difficult for these entities to access conventional forms of credit support."

¹⁰ Services Tariff Section 26.12. The acceptable forms of collateral under the NYISO's tariffs are a cash deposit, letter of credit, surety bond, or netting of accounts receivable. Services Tariff Section 26.6.

¹¹ Services Tariff Sections 7.5.1-7.5.3, 26.12

II. Request for Waiver

To ensure full compliance with the Services Tariff, the NYISO seeks a waiver of the language in the Public Power Entity definition that limits the scope of that definition to a “municipally owned electric system that owns or controls distribution facilities and provides electric service.” Under the waiver requested by the NYISO, the Public Power Entity definition would extend to any government entity, regardless of whether it owns or controls distribution facilities and provides electric service.

The Commission traditionally grants a “waiver of tariff provisions where: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.”¹² The NYISO respectfully submits that the circumstances here are fully consistent with these criteria.

The NYISO has acted in good faith in its administration of Section 26.5.3.6 of the Services Tariff, and has not intentionally disregarded the limitations set forth in the current definition of Public Power Entity. Rather, the NYISO extended unsecured credit under Section 26.5.3.6 to government entities, regardless of whether they own or control distribution facilities and provide electric service, because that was the NYISO’s good faith understanding of how Section 26.5.3.6 should be administered in light of the credit profiles of government entities. When the NYISO recognized the discrepancy between the NYISO’s administration of Section 26.5.3.6 and the language of the Public Power Entity definition, it took action to address the issue, which has prompted this filing.

¹² *Citizens Sycamore-Pensaquitos Transmission LLC*, 169 FERC ¶ 61,263 at P 14 (2019).

The waiver is of limited scope because it involves a single tariff provision. Specifically, the waiver is intended only to eliminate the requirement in Section 2.16(ii) of the Services Tariff that requires that a government entity eligible to receive unsecured credit pursuant to Section 26.5.3.6 be a “municipally owned electric system that owns or controls distribution facilities and provides electric service.” The scope of the waiver should thus be clearly understandable to all NYISO Market Participants. In addition, the NYISO has identified only ten municipalities or other government entities that would be affected by the requested waiver, resulting in an extension of up to \$10 million in unsecured credit among them. The NYISO does not expect many, if any, additional municipalities or other government entities to seek unsecured credit pursuant to the requested waiver. The NYISO is requesting that the waiver remain in place just as long as will be practicably necessary for it to develop proposed amendments to the Public Power Entity definition through its shared stakeholder governance process and receive an order on them from the Commission. Accordingly, the NYISO requests that the waiver remain in place for nine months from the date of a Commission order granting this waiver request.¹³

The requested waiver is necessary to address a concrete problem – *i.e.*, the fact that there is no reasoned basis for discriminating against municipalities or other government entities that do not own or control distribution facilities and provide electric service. The waiver is required to allow the NYISO to continue to extend relatively small amounts of unsecured credit to such government entities. Depriving them of access to that credit could needlessly create practical business difficulties for such entities that Section 26.5.3.6 was intended to avoid.

¹³ The NYISO plans to expedite its presentation of tariff changes to stakeholders and will attempt to obtain a Commission order on such changes in less than nine months. If the NYISO requires longer than nine months to implement the amendment, it will seek from the Commission an extension of the waiver.

Finally, the waiver will not have adverse consequences for any party. The effect of the waiver is to allow a small number of government entities to qualify for up to \$1 million of unsecured credit pursuant to Section 26.5.3.6. The NYISO has engaged in this practice for years without it materially increasing the financial risks to the NYISO or other Market Participants or adversely affecting any other party. The NYISO does not anticipate that continuing this practice will increase financial risks or harm third parties. By contrast, denying the waiver could needlessly harm government entities that do not own or control distribution facilities and provide electric service.

III. Communications

Communications regarding this proceeding should be sent to:

Robert E. Fernandez, Executive Vice President
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IV. Conclusion

WHEREFORE, for the reasons specified above, the New York Independent System Operator, Inc., respectfully requests the Commission grant this request for a temporary waiver of the language in the Public Power Entity definition that limits the scope of that definition to municipally owned electric systems that own or control distribution facilities and provide electric service to allow the NYISO to continue extending up to \$1 million of unsecured credit to government entities.

Respectfully submitted,

/s/ Amie Jamieson

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