

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

**New York Independent System Operator, Inc.     )                   Docket No. ER20-   -000**

**REQUEST FOR TARIFF WAIVER, SHORTENED COMMENT PERIOD  
AND EXPEDITED COMMISSION ACTION  
OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

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 waiver of requirements in the Market Administration and Control Area Services Tariff (“Services Tariff”) and Open Access Transmission Tariff (“OATT”) that certain documents provided to the NYISO by Customers be notarized. The waiver is necessary in light of restrictions enacted in response to the Novel Coronavirus Disease (COVID-19) emergency that make notarization difficult or practically impossible in many cases. Consistent with the recent *Notice Granting Extension of Time* in Docket No. AD20-11-000 in Docket No. AD20-11, the NYISO asks that the Commission act “as expeditiously as possible” on this request.

**I.     BACKGROUND**

The NYISO’s Services Tariff and OATT specify that certain documents submitted to the NYISO must be notarized. For instance, Section 26.1.2 of the Services Tariff requires notarization of a document related to the minimum requirements that Customers must satisfy, and remain in compliance with, in order to participate in the ISO-Administered Markets.<sup>1</sup> These

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<sup>1</sup> The NYISO has identified other notarization requirements in Sections 31.2.4 and 31.4.4 of the OATT and Sections 8.1 and 23.4.5.7.9.2 of the Services Tariff. The NYISO requests waiver of these notarization requirements and any others that may be contained in the Tariffs.

requirements relate to maintaining risk management policies and procedures, training employees and agents, having appropriate operational capabilities to respond to ISO communications and directions, having appropriate financial capabilities to satisfy obligations to the ISO as they become due, and meeting minimum capitalization requirements.<sup>2</sup>

Under Section 26.1.2 of the Services Tariff, each Customer must submit to the NYISO on or before April 30 of each year “a *notarized* officer’s certificate, signed by an authorized officer of Customer with signatory authority, in a form acceptable to the ISO, certifying that Customer is in compliance with each of the minimum participation requirements.”<sup>3</sup> In addition, each NYISO applicant must submit an initial “notarized” officer’s certificate with its application.<sup>4</sup>

The NYISO has received requests from Customers to waive the notarization requirement of Section 26.1.2 given the federal proclamation and New York State executive order declaring national and state emergencies concerning COVID-19 and steps taken by state and local governments and regulated entities to protect public health and safety to help mitigate or slow the transmission of COVID-19. Such steps have made fulfilling the notarization requirement difficult or practically impossible for some entities. While some states allow for remote notarization through technology, not all states do. For example, in light of the COVID-19 emergency, New York recently authorized performing notarizations using audio-video technology through Executive Order No. 202.7, but Customers may not be able to meet certain requirements of the order<sup>5</sup> or may not be equipped with the technology to accomplish remote notarization. Other tariff notarization requirements raise the same concerns.

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<sup>2</sup> Services Tariff Section 26.1.

<sup>3</sup> Services Tariff Section 26.1.2 (emphasis added).

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

<sup>5</sup> For example, the person must be physically situated in the State of New York at the time of notarization and the person must have the ability to transmit by fax or electronic means the signed document to the notary on the same date it was signed. N.Y. Exec. Order No. 202.7 (Mar. 19, 2020) <https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO%20202.7.pdf>.

## II. WAIVER REQUEST

The NYISO requests a waiver of requirements in the Services Tariff and OATT that certain documents submitted to the NYISO be notarized and that the waiver apply to any documents submitted as of the date of this filing and for so long as the COVID-19 emergency is declared by New York State. In particular, and most timely given the tariff's April 30 deadline, the NYISO requests a waiver of the requirement in Section 26.1.2 that the officer certification be notarized for the annual certification due on April 30, 2020. The NYISO requests this waiver consistent with the Commission's invitation that "entities may seek waiver of the Commission's orders, regulations, tariffs and rate schedules, as appropriate, to address needs resulting from steps they have taken in response to the coronavirus."<sup>6</sup> 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."<sup>7</sup> The NYISO respectfully submits that the circumstances here are fully consistent with these criteria.

The NYISO has acted in good faith in evaluating the notarization requirement in light of steps that government and entities have taken to respond to COVID-19. As the Commission has noted, it may be necessary to grant waivers of Commission regulations requiring that certain filings be supported by sworn declarations because of COVID-19 related complications.<sup>8</sup> Similarly, steps taken by Customers and state and local governments necessitate a waiver of the notarization requirements. The requested waiver is of limited scope because the NYISO seeks only to waive the requirements for notarization of documents, and seeks a waiver only for

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<sup>6</sup> *Extension of Non-Statutory Deadlines*, AD20-11-000, Notice Granting Extension of Time (Mar. 19, 2020).

<sup>7</sup> *Citizens Sycamore-Pensaquitos Transmission LLC*, 169 FERC ¶ 61,263 at P 14 (2019).

<sup>8</sup> *Extension of Non-Statutory Deadlines*, AD20-11-000, Notice Granting Extension of Time (Mar. 19, 2020).

documents that may be filed during the COVID-19 emergency. The waiver addresses the concrete problem that Customers may find it difficult or practically impossible to obtain a notarization in light of steps taken to protect public health and safety. Customers should not be found to be in noncompliance of the NYISO's Tariffs or unable to enter the market because their documents cannot practicably be notarized. Finally, the waiver will not have undesirable consequences and will not harm third parties. Waiving the notarization requirements will not eliminate Customers' obligations to provide accurate information to the NYISO and to comply with substantive requirements of the NYISO's Tariffs. In the case of the minimum participation criteria, Customers still must comply with the criteria and provide an officer certification stating that the Customer complies with the criteria. There is thus no reason for concern that waiving the notarization requirements would result in violations of minimum participation requirements or other substantive rules set forth in the NYISO's Tariffs.

### **III. REQUEST FOR EXPEDITED COMMISSION ACTION AND FOR PROCEDURAL WAIVERS**

The NYISO respectfully requests the Commission act expeditiously and grant the requested waiver by April 12, 2020. The NYISO also requests the Commission either waive or shorten to the maximum extent possible any notice and comment periods that would otherwise apply to this request, so that it may issue an order by that date and make the temporary waiver effective on the dates specified above.

#### IV. COMMUNICATIONS

Communications regarding this proceeding should be sent to:

Robert E. Fernandez, Executive Vice President  
& General Counsel

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## V. CONCLUSION

WHEREFORE, for the reasons specified above, the New York Independent System Operator, Inc., respectfully requests the Commission grant this request for a waiver of Tariff requirements for notarization of documents and that this waiver be effective as of the date of this filing and last for so long an emergency related to COVID-19 is in effect in the State of New York.<sup>9</sup>

Respectfully submitted,

/s/ Amie Jamieson

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Dated March 27, 2020

cc: Anna Cochrane  
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John C. Miller  
David Morenoff  
Daniel Nowak  
Larry Parkinson  
Douglas Roe  
Frank Swigonski  
Eric Vandenberg  
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<sup>9</sup> Proclamation N.Y. Exec. Order No. 202 (Mar. 7, 2020) (declaring a state of emergency in New York State until September 7, 2020).