

October 23, 2020

By Electronic Delivery

Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426**Re: *New York Independent System Operator, Inc.*, Docket No. ER21-____-000;
Proposed Tariff Revisions to Address Unsecured Credit Requirements for
Public Power Entities and Government Entities**

Dear Secretary Bose:

In accordance with Section 205 of the Federal Power Act (“FPA”)¹ and Part 35 of the regulations of the Federal Energy Regulatory Commission (“Commission”), the New York Independent System Operator, Inc. (“NYISO”) respectfully submits proposed amendments to its Market Administration and Control Area Services Tariff (“Services Tariff”).² Through these amendments, the NYISO seeks to allow government entities to be eligible for up to \$1 million in Unsecured Credit for their participation in the NYISO’s wholesale electricity markets. The NYISO also proposes requiring that both Public Power Entities and government entities meet Investment Grade Customer requirements to be eligible for Unsecured Credit. Taken together, the NYISO believes these modifications strike a just and reasonable balance between making Unsecured Credit accessible to such entities, while also protecting the marketplace from the potential risk of default.

The NYISO respectfully requests that the tariff revisions proposed in this filing become effective the day immediately following the end of the statutory sixty-day notice period under FPA Section 205 (*i.e.*, December 23, 2020).

I. Documents Submitted

The NYISO respectfully submits the following documents with this filing letter:

1. A clean version of the proposed revisions to the Services Tariff (“Attachment I”);
and
2. A blacklined version of the proposed revisions to the Services Tariff (“Attachment II”).

¹ 16 U.S.C. § 824d.

² Capitalized terms not otherwise defined herein shall have the meaning specified in the Services Tariff.

II. Background

A. Unsecured Credit for Public Power Entities

The Services Tariff establishes various credit requirements for Customers participating in the NYISO-administered wholesale markets, including the criteria for a Customer to qualify for Unsecured Credit.³ Entities eligible for Unsecured Credit may only use it to satisfy certain credit requirements in lieu of providing collateral.⁴ 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 the Customer's Tangible Net Worth.⁵ The NYISO then conducts a Credit Assessment through which the NYISO adjusts that starting point amount based upon conventional credit assessment indicators including market indicators, financial performance, debt coverage, and liquidity.⁶

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 Tangible Net Worth or submitting to the Credit Assessment required for all other entities seeking Unsecured Credit. The NYISO established this \$1 million Unsecured Credit starting point in recognition that state power authorities and municipal electric utilities "generally do not present a significant risk of nonpayment, but are unable to demonstrate creditworthiness through conventional indicators[.]"⁷

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

³ See Services Tariff Section 26.2.2.

⁴ For example, Unsecured Credit may not be used to satisfy credit requirements for bidding on or holding Transmission Congestion Contracts. Services Tariff Section 26.5.

⁵ See Services Tariff Section 26.5.3.1.

⁶ See Services Tariff Sections 26.5.3.2 and 26.5.3.3.

⁷ 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").

cooperatively owned electric system that owns or controls distribution facilities and provides electric service.⁸

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 of Public Power Entity as set forth in the Services Tariff. Specifically, the NYISO has extended up to \$1 million in Unsecured Credit to certain government entities, treating them as Public Power Entities, despite the fact these entities do not own or control generation, transmission, or distribution facilities. The NYISO began extending up to \$1 million in Unsecured Credit to certain of these entities at least as early as 2004 when the Commission approved the tariff provisions extending up to \$1 million in Unsecured Credit to municipal electric systems.⁹

B. Temporary Waiver

On January 30, 2020, the NYISO submitted a request for a temporary 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” as it relates to eligibility for Unsecured Credit.¹⁰ Under the waiver requested by the NYISO, the Public Power Entity definition would extend to any government entity for purposes of eligibility to request Unsecured Credit, regardless of whether the government entity owns or controls distribution facilities and provides electric service. The NYISO requested that such waiver remain in effect for nine months from the date granted by the Commission. The NYISO stated its intent to use this time to develop proposed amendments to the Services Tariff through its shared governance process. On April 16, 2020, the Commission granted the NYISO’s requested waiver.¹¹ As contemplated in its waiver request, the NYISO has collaborated with its stakeholders to develop proposed tariff revisions that include provisions to govern the granting of Unsecured Credit to government entities.

III. Description of Proposed Tariff Revisions

A. Unsecured Credit Eligibility for Government Entities

The NYISO proposes to add Section 26.5.3.7 to the Services Tariff to establish the eligibility for government entities to obtain up to \$1 million in Unsecured Credit. Section 26.5.3.7 provides for consistent treatment among government entities and Public Power

⁸ Services Tariff Section 2.16.

⁹ *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).

¹⁰ *New York Indep. Sys. Operator, Inc.’s Request for Waiver*, Docket No. ER20-922-000 (January 30, 2020).

¹¹ *New York Indep. Sys. Operator, Inc.’s Request for Waiver*, Docket No. ER20-922-000, *Order Granting Waiver* (April 16, 2020).

Entities with respect to eligibility for Unsecured Credit. The credit risk profile presented by a government entity is substantially similar to that of a Public Power Entity and is not materially differentiated by whether the entity owns or controls distribution facilities and provides electric service. Government entities, like Public Power Entities, operate without a profit-seeking interest and may 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 in Unsecured Credit to government entities without subjecting them to the same review criteria applied to private sector entities that may have different commercial objectives or different counterparty credit risk profiles.

Government entities may also lack access to credit support more readily available to other entities. For example, legal restrictions placed on government entities may inhibit their ability to obtain letters of credit or surety bonds, limiting their options to provide collateral. Moreover, government administrative processes can make satisfying collateral obligations with cash difficult and time-consuming. Customers must provide collateral as security for payment of their obligations within two business days of the collateral request by the NYISO.¹² Customers that cannot meet this requirement will be in default and subject to suspension or termination if they cannot timely cure the default.¹³ Given these challenges and the lower credit risk posed by government entities, the NYISO believes that extending up to \$1 million in Unsecured Credit to such entities is appropriate.

Section 26.5.3.7 includes a new definition of “Government Entity”¹⁴ and allows such entities to qualify for up to \$1 million in Unsecured Credit without demonstrating a qualifying Tangible Net Worth or submitting to the Credit Assessment. The provision allows affiliations of government entities that operate through a joint action agency or a similar municipal affiliation agreement acceptable to the ISO to aggregate the Unsecured Credit amounts granted to the members thereof. This permits the joint action agency (or similar, acceptable municipal affiliation construct) to have an Unsecured Credit amount equal to the sum of the Unsecured Credit amounts provided to each individual member. Section 26.5.3.7 further permits a government entity to request Unsecured Credit based on its Tangible Net Worth and Credit Assessment in lieu of the \$1 million in Unsecured Credit. Subject to the required review of credit assessments by the NYISO, this provides a government entity to seek approval for Unsecured Credit in an amount greater than \$1 million.

¹² Services Tariff Section 26.12. Services Tariff Section 26.6 establishes that the acceptable forms of collateral are a cash deposit, letter of credit, surety bond, or netting of accounts receivable.

¹³ Services Tariff Sections 7.5.1-7.5.3, and 26.12.

¹⁴ “Government Entity” is defined in proposed Services Tariff Section 26.5.3.7 as “(1) a state government and any administrative unit thereof or (2) the government of a locality, including special-purpose districts or authorities, and any administrative unit thereof.”

B. Requiring Public Power Entities and Government Entities to Be Investment Grade Customers to Be Eligible for Unsecured Credit

In its evaluation of extending Unsecured Credit to government entities, the NYISO conducted a general review of its Unsecured Credit policies. Based on that review, the NYISO proposes adding a requirement that both Public Power Entities and government entities meet Investment Grade Customer requirements to qualify for up to \$1 million in Unsecured Credit. This requirement currently applies to all other entities receiving Unsecured Credit.

An Investment Grade Customer is defined in Section 26.3 of the Services Tariff as a Customer that meets certain senior long-term unsecured debt or issuer ratings thresholds.¹⁵ If a Customer has not received a senior long-term unsecured debt rating or an issuer rating from the ratings agencies listed in Section 26.3 of the Services Tariff, the Customer may request that the NYISO assign it an Equivalency Rating.¹⁶ The NYISO determines an Equivalency Rating using Moody's KMV RiskCalcTM.¹⁷ A Customer with an Equivalency Rating meeting the rating threshold in Section 26.3.3 is deemed an Investment Grade Customer.¹⁸ Customers requesting an Equivalency Rating must comply with the reporting requirements in Section 26.2.2, including providing the NYISO with audited financial statements.¹⁹

Currently, all entities other than Public Power Entities must be deemed an Investment Grade Customer to be eligible to receive Unsecured Credit.²⁰ While Public Power Entities and government entities generally present a lower risk of default than other entities, their risk of default is not zero. Extending the Investment Grade Customer requirement to Public Power Entities and government entities does not affect the current exemption for such entities to receive up to \$1 million of Unsecured Credit without the need to demonstrate a qualifying Tangible Net Worth or submitting to the Credit Assessment. If a Public Power Entity or government entity satisfies the Investment Grade Customer requirement, such entity will continue to be eligible to receive up to \$1 million of Unsecured Credit without further evaluation. The NYISO therefore believes that requiring Public Power Entities and government entities to meet the threshold for Investment Grade Customers before receiving Unsecured Credit is a reasonable balance between making credit accessible to such entities and protecting the marketplace from the potential risk of defaults.

¹⁵ Services Tariff Sections 26.3.1, 26.3.2.

¹⁶ Services Tariff Section 26.3.3.

¹⁷ Services Tariff Section 26.3.3.

¹⁸ Services Tariff Section 26.3.3.

¹⁹ Services Tariff Section 26.3.3.

²⁰ Services Tariff Section 26.5.1.

IV. Effective Date

The NYISO respectfully requests that the Commission accept the tariff revisions proposed in this filing to become effective on December 23, 2020 (*i.e.*, the day following the end of the statutory 60-day notice period).

V. Stakeholder Process

The proposed amendments were approved by the NYISO Management Committee on September 23, 2020 by a show of hands vote with eleven votes in opposition²¹ and several abstentions. The NYISO's Board of Directors approved the proposed revisions on October 20, 2020.

VI. Communications and Correspondence

All communications and service in this proceeding should be directed to:

Robert E. Fernandez, Executive Vice President & General Counsel
Karen G. Gach, Deputy General Counsel
Raymond Stalter, Director, Regulatory Affairs
*Amie Jamieson, Senior Attorney/Registered In-House Counsel
10 Krey Boulevard
Rensselaer, NY 12144
Tel: (518) 356-6000
Fax: (518) 356-7678
Email: ajamieson@nyiso.com

*Person designated for receipt of service.

VII. Service

The NYISO will send an electronic link to this filing to the official representative of each of its customers, each participant on its stakeholder committees, the New York State Public Service Commission, and the New Jersey Board of Public Utilities. In addition, the complete filing will be posted on the NYISO's website at www.nyiso.com.

²¹ The votes in opposition were from municipal electric utilities.

VIII. Conclusion

The NYISO respectfully requests that the Commission accept the tariff revisions proposed in this filing to become effective on December 23, 2020.

Respectfully submitted,

/s/ Amie Jamieson

Amie Jamieson, Senior Attorney/Registered In-
House Counsel
New York Independent System Operator, Inc.

cc: Jignasa Gadani
Jette Gebhart
Kurt Longo
John C. Miller
David Morenoff
Larry Parkinson
Douglas Roe
Frank Swigonski
Eric Vandenberg
Gary Will