

## **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or cause of action filed or commenced against it and such case, petition, proceeding or cause of action is not withdrawn or dismissed within thirty (30) days after such filing or commencement;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 the Service Agreement between the ISO and the Defaulting Party immediately upon notice to the Commission.
- (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 Article 26.54

of Attachment K to the ISO Services Tariff, or (b) as a result of a material adverse change as determined in accordance with Article 26.129 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 ~~b~~Billing ~~p~~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 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 ISO Setoff Rights**

The ISO shall have the right to apply any amounts owed a Customer pursuant to this Tariff against any amounts owed to the ISO by a Customer.