

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

) )  
New York Independent ) Docket No. ER20-483  
System Operator, Inc. ) )

**ENERGY TRADING INSTITUTE PROTEST OF NYISO TARIFF AMENDMENTS TO  
ENHANCE CREDIT REPORTING REQUIREMENTS AND REMEDIES  
AND MOTION TO CONSOLIDATE**

Pursuant to Rule 211 of the Commission’s Rules of Practice and Procedure, the Energy Trading Institute (“ETI”) respectfully submits its protest of the proposed tariff amendments filed by the New York Independent System Operator (“NYISO”) to enhance its credit reporting requirements and remedies.<sup>1</sup> ETI protests NYISO’s proposed credit amendments as unjust and unreasonable because they are vague, unduly burdensome, potentially discriminatory and inconsistent with the Commission’s precedent in Order Nos. 741<sup>2</sup> and the Commission’s final rule in the connected entities proceeding.<sup>3</sup>

**I. PROTEST**

NYISO proposes to make five changes to its tariff related to credit:

- Add a minimum participation standard that would require “Market Participants to have sufficient experience and resources to satisfy their obligations to NYISO as they become due”;<sup>4</sup>

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<sup>1</sup> See, e.g., *New York Indep. Sys. Operator, Inc.*, Proposed Tariff Amendments to Enhance Credit Reporting Requirements and Remedies, Docket No. ER20-483 (filed Nov. 26, 2019) (“*NYISO Amendment*”). The Commission set a comment date of December 17, 2019. Combined Notice of Filings #1 (issued Nov. 27, 2019). ETI intervened in this docket on December 13, 2019.

<sup>2</sup> *Credit Reforms in Organized Wholesale Electric Markets*, 75 Fed. Reg. 65942 (2010), FERC Stats. & Regs. ¶ 31,317 (2010) (*Order No. 741*); *order on reh’g*, 76 Fed. Reg. 10492 (2011), FERC Stats. & Regs. ¶ 31,320 (2011) (*Order No. 741-A*); *order on reh’g*, 135 FERC ¶ 61,242 (2011) (*Order No. 741-B*).

<sup>3</sup> *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes*, 168 FERC ¶ 61,039 (2019) (“*Connected Entity Order*”).

<sup>4</sup> *NYISO Amendment* at 2, 3-4.

- Allow NYISO to “reject a new applicant that presents an unreasonable credit risk” to the markets it administers;<sup>5</sup>
- Update the material adverse change provision applicable to those with unsecured credit to require such a market participant to report “an event or circumstance indicating that the Customer may present an unreasonable credit risk to the ISO Administered Markets”;<sup>6</sup>
- Clarify when Market Participants must report regulatory investigations;<sup>7</sup> and
- Clarify the factors NYISO will consider when assessing market entry by an applicant with ties to a prior market participant with uncured defaults.<sup>8</sup>

NYISO explains that it is proposing these amendments to augment its ability to protect market participants from defaults and in response to the Commission’s order addressing the complaint filed by Light Power & Gas of NY LLC (“LPGNY”) in Docket No. EL19-39.<sup>9</sup> ETI agrees that Commission-jurisdictional independent system operators (“ISOs”) and regional transmission operators (“RTOs”) must enhance their credit provisions, but not in the way proposed by NYISO.<sup>10</sup>

The proposed tariff amendments are vague and do not set clear guidelines for NYISO or its existing market participants or potential new market participants. The Commission’s regulations require NYISO to file “full and complete rate schedules and tariffs ... that clearly and specifically” set forth the rates, terms and conditions of service, including “the

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<sup>5</sup> NYISO Amendment at 2, 4.

<sup>6</sup> NYISO Amendment at 2, 4-5.

<sup>7</sup> NYISO Amendment at 2, 5.

<sup>8</sup> NYISO Amendment at 2, 5.

<sup>9</sup> NYISO Amendment at 2-3 (citing *Light Power & Gas of NY LLC v. New York Indep. Sys. Operator, Inc.*, 167 FERC ¶ 61,232 (2019)). The *Light Power & Gas of NY LLC* order is the subject of ongoing litigation. Consequently, it is premature for NYISO to be changing its tariff.

<sup>10</sup> On December 16, 2019, ETI filed its *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, outlining how ISOs and RTOs should update their credit policies to protect market participants. (“*ETI Petition*”).

classifications, practices, rules and regulations affecting such rates, charges, classifications, services, rules, regulations or practices.”<sup>11</sup> These requirements apply to credit practices.<sup>12</sup> The Commission should require NYISO to amend its tariff or alternatively reject the proposed amendments for failing to comply with these requirements, including because the proposed amendments are vague, are not adequately addressed in the tariff, are discriminatory or otherwise inconsistent with Section 35.1.<sup>13</sup>

Further, the requested changes do not actually protect the market as they do not implement continuous, standard know-your-customer protocols or adequate collateral rules.<sup>14</sup> Instead, the changes proposed by NYISO unreasonably burden market participants by requiring them to comply with nebulous credit rules or to report more information in other instances, neither of which are truly “enhancements” to NYISO’s credit policy as they simply are not enough to protect the market from the effects of defaults. NYISO should be required to adopt credit rules and practices that require it to conduct its own continuous due diligence and require market participants to post sufficient collateral to cover risk exposure.

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<sup>11</sup> 18 C.F.R. § 35.1; *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,986, *order on reh’g*, 65 FERC ¶ 61,081 (1993).

<sup>12</sup> *See Midwest Indep. Transmission Sys. Operator, Inc.*, 105 FERC ¶ 61,145, at P 129 (2003) (finding that “the Midwest ISO should file detailed creditworthiness procedures as a part of their tariff, not in their business practices manuals.”); *Outback Power Marketing, Inc. v. PJM Interconnection, L.L.C.*, 104 FERC ¶ 61,079, at P 13 (2003) (finding that PJM’s tariff was unjust and unreasonable because it did not contain PJM’s creditworthiness provisions and noting that “credit requirements can have a significant impact on the overall operation of the market and the ability of market participants to compete on a fair and equal basis” so they should be reflected in PJM’s tariff); *New York Indep. Sys. Operator, Inc.*, 98 FERC ¶ 61,282, at p. 5 (2002) (instructing NYISO that “all matters affecting rates, terms and conditions of jurisdictional transactions must be on file with the Commission....”).

<sup>13</sup> 18 C.F.R. § 35.5; *see also Westar Energy, Inc.*, 131 FERC ¶ 61,183, at PP 30-33 (2010), *order denying reh’g*, 134 FERC ¶ 61,176, at PP 7, 24 (2011) (rejecting rate schedules as impermissibly vague).

<sup>14</sup> *ETI Petition* at 4-5, 11-12.

For the reasons stated below, the Commission should require NYISO to amend its tariff to address the shortcomings ETI has identified, or alternatively, reject the amendments.

**A. Changes to Minimum Participation Criteria**

NYISO proposes to add another minimum participation criterion related to financial capabilities. Section 26.1.1(d), as proposed by NYISO, states:

To participate in the ISO-Administered Markets, in addition to satisfying any other eligibility requirements set forth in the ISO Tariffs, each Customer must satisfy, and at all times remain in compliance with, the following requirements: ...**(d) Financial Capabilities. Customer shall have appropriate experience and resources to satisfy its obligations to the ISO as they become due.**<sup>15</sup>

ETI protests this amendment because NYISO has not defined what constitutes “appropriate experience and resources.” Market participants cannot know what experience or resources are required under this provision. For example, are the resources financial, operational, or human? What level of resources or experience are appropriate (*e.g.*, one year of experience in the relevant market, \$1M cash on hand, one incremental compliance training)? The lack of notice impairs the ability of a market participant to know what they need to do to satisfy – and stay in – compliance with the requirements of the tariff. Furthermore, NYISO has not explained how it will ensure that it will apply this provision in a non-discriminatory manner.<sup>16</sup> In order for these provisions to be just and reasonable, NYISO should have to define in its tariff what resources and experience it will consider and the standard by which it will evaluate whether those resources or experience are “appropriate.”

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<sup>15</sup> *NYISO Amendment* at Attachment II, Section 26.1.1. Throughout this document, NYISO’s tariff amendments are in **blue**. ETI’s mark-up of any tariff provision is shown in **red**.

<sup>16</sup> *Order No. 741-A* at P 2 (“As noted in Order No. 741, the Commission must ensure that all rates charged for the transmission or sale of electric energy in interstate commerce are just, reasonable, and not unduly discriminatory or preferential, and clear and consistent credit policies are an important element in ensuring rates that are just, reasonable, and not unduly discriminatory or preferential.”).

## **B. Applicant Rejection if it Poses Unreasonable Credit Risk**

NYISO proposes to give itself authority to reject an application to become a Customer if it determines, in its sole discretion, that the applicant's participation in the NYISO markets "presents an unreasonable credit risk."<sup>17</sup> The proposed tariff amendment would also require applicants to provide information and documents to enable NYISO to make such an assessment.<sup>18</sup>

NYISO proposes to modify Section 9.3 to provide:

The ISO will promptly review the Application, [including the information provided pursuant to Section 26.1.4 of Attachment K of the ISO Services Tariff](#), and may request additional information to determine whether the applicant meets the ISO's minimum financial and technical requirements. The ISO will notify the applicant within thirty (30) days of receipt of a Completed Application. If the ISO rejects an Application, the ISO shall provide a written explanation within fourteen (14) days of the rejection. The ISO will attempt to remedy minor deficiencies in the Application through informal communications with the applicant. If such efforts are unsuccessful, the ISO shall return the Application. [As set forth in Section 26.1.4 of Attachment K of the ISO Services Tariff, the ISO may reject an application if the ISO determines that the applicant's participation in the ISO Administered Markets presents an unreasonable credit risk.](#)

NYISO proposes to modify Section 26.1.4 to provide:

[A Customer or applicant seeking to become a Customer shall submit to the ISO any information or documentation reasonably required for the ISO to evaluate its experience and resources. If the ISO determines, based on its review of relevant information, that the applicant's participation in the ISO Administered Markets presents an unreasonable credit risk, the ISO may reject applicant's application, notwithstanding applicant's ability to meet other minimum participation criteria, registration requirements, and creditworthiness requirements. The ISO will provide the affected applicant with a written explanation of the reasons the ISO rejected the application. No action by the ISO pursuant to this Section 26.1.4 shall limit in any way the ISO's rights or authority under any other provisions of the ISO Tariffs or applicable law.](#)

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<sup>17</sup> *NYISO Amendment* at Attachment II, Section 9.3.

<sup>18</sup> *NYISO Amendment* at Attachment II, Section 26.1.4.

As drafted by NYISO, the revisions to Sections 9.3 and 26.1.4 do not give applicants adequate protection from arbitrary or discriminatory decision-making by NYISO. More specifically, Section 9.3 fails to give notice to market participants of what will constitute “unreasonable credit risk.” It also does not provide the applicant with any recourse if NYISO rejects the application for creditworthiness reasons. Section 9.3 also should be modified to include Applicants’ rights to challenge the basis for the rejection to a NYISO committee comprised of industry representatives<sup>19</sup> with expertise on credit risk as well as an express ability to appeal to the Commission.

As drafted, Section 26.1.4 does not explain the types of information or documentation NYISO can request, whether NYISO will ask all similarly situated applicants for the same information, or the criteria NYISO will apply to determine that an applicant “presents unreasonable credit risk.” It also preserves NYISO’s authority under its tariff and the law, but does not recognize that an applicant has similar rights. These flaws make Sections 9.3 and 26.1.4 unlawful as proposed.

### **C. Material Adverse Change Clause**

NYISO proposes to amend Section 26.14 of its Tariff to define a material adverse change as including “an event or circumstance indicating that the Customer may present an unreasonable credit risk to the ISO Administered Markets.”<sup>20</sup> ETI protests this tariff amendment as unjust and unreasonable because NYISO does not define what constitutes an “unreasonable credit risk.” Market participants have no way of knowing what NYISO may believe makes them present as a credit risk, what steps they could take to stay in compliance with the tariff provisions or what

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<sup>19</sup> This panel would not be comprised of New York ISO employees but rather be a dynamic list of industry experts that can be rotated through to avoid any potential conflicts.

<sup>20</sup> *NYISO Amendment* at Attachment II, Section 26.14.

constitutes reasonable versus unreasonable credit risk. NYISO should be required to define these concepts and explain how they intend to apply this requirement on a non-discriminatory basis.

#### **D. Reporting Investigations**

NYISO proposes to amend Section 26.2.1.3 to require market participants to inform NYISO of an investigation unless prohibited by law.<sup>21</sup> The provision as revised by NYISO states:

*Unless prohibited by law, a Customer shall inform the ISO of the existence of any ongoing investigations of which the Customer is aware by the Securities and Exchange Commission, the Department of Justice, the Federal Energy Regulatory Commission, or the New York Public Service Commission which could have a material impact on the Customer's financial condition. Customer must take reasonable measures to obtain permission to disclose information related to a non-public investigation.*

ETI urges NYISO to define what constitutes a “material impact.” NYISO should provide quantifiable standards for measuring materiality (*e.g.*, a measurable ratio or percentage change in a stated benchmark).

In addition, the reporting requirement should only apply to investigations of the Customer. This requirement should not apply when the customer is not the subject of the investigation by the enumerated agencies but is aware of an investigation of another customer (*e.g.*, where one market participant is asked to provide information about another pursuant to a third-party subpoena, through an interview, or in grand jury testimony). ETI recommends the following revisions to Section 26.2.1.3 to make it clear that any reporting is limited to disclosing the Customer's own investigation:

*Unless prohibited by law, a Customer shall inform the ISO of the existence of any ongoing investigations of the Customer, and of which the Customer is aware, by the Securities and Exchange Commission, the Department of Justice, the Federal Energy Regulatory Commission, or the New York Public Service Commission*

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<sup>21</sup> *NYISO Amendment* at Attachment II, Section 26.2.1.3.

which could have a material impact on the Customer's financial condition. Customer must take reasonable measures to obtain permission to disclose information related to the existence of a non-public investigation of the Customer by the governmental agencies identified herein.

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

NYISO proposes to add language to the end of OATT Section 27.4 to allow it to evaluate whether “an applicant should be treated as the same Transmission Customer that had caused a previous default.”<sup>22</sup> NYISO's proposed amendment to Section 27.4 would add:

To prevent the purpose of this provision being circumvented by the use of separate entities, the ISO will evaluate relevant factors to determine if an entity seeking to participate in the ISO markets should be treated as the same Transmission Customer that experienced the previous default under this provision. Such factors may include, but are not limited to, the interconnectedness of the business relationships, overlap in relevant personnel, similarity of business activities, overlap of customer base, if any, and the business engaged in prior to the attempted re-entry.<sup>23</sup>

ETI protests this amendment as it would circumvent well-established principles of corporate and insolvency law.

At this outset, ETI supports efforts that would allow an ISO or RTO to recover default amounts before allowing a market participant to reenter a market. This is already covered by the default and cure provisions in NYISO's tariff.<sup>24</sup> NYISO's amendment goes a step further by essentially giving itself authority to pierce the corporate veil between entities (customers/market participants, applicants) and to do so based on a vague set of factors set out in its proposed tariff amendments. Instead, NYISO should have to follow the law of the state of incorporation of the particular applicant (*e.g.*, Delaware, New York) when assessing whether an applicant is one and

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<sup>22</sup> NYISO Amendment at 5.

<sup>23</sup> NYISO Amendment at Attachment IV, Section 27.4.

<sup>24</sup> NYISO Tariff at Section 7.5.2.



the same as a prior defaulting market participant.<sup>25</sup> The Commission has approved this approach in other default situations.<sup>26</sup> This approach will ensure that NYISO and its Customers are protected by a well-developed body of law on corporate separateness.

ETI is also concerned about whether NYISO intends to respect insolvency laws when assessing how to address prior uncured defaults. For example, if the debt of a NYISO Customer has been lawfully extinguished through bankruptcy, does NYISO intend to try to seek recovery from another entity formed by former employees of the bankrupt entity that defaulted and whose losses were socialized to other NYISO market participants? It is not clear that such an approach by NYISO would be lawful or enforceable under corporate or insolvency laws.

**F. NYISO Imposes Unjust and Unreasonable Credit Requirements in its Forms**

NYISO appears to be implementing its credit policy through forms such as the Officer Certification Form and the Credit Questionnaire Form. ETI has included the new Credit Questionnaire Form reflecting these changes as Appendix A to this protest. This practice is unjust and unreasonable because the forms are not part of the tariff despite the fact that they impose obligations on market participants. Section 35.1 requires ISOs and RTOs to reflect all material obligations in the tariff and not the forms.<sup>27</sup> For example, the Credit Questionnaire

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<sup>25</sup> There is a well-developed body of state law that addresses when two entities should be treated as one, including on veil piercing.

<sup>26</sup> See, e.g., *PJM Interconnection, L.L.C.*, 129 FERC ¶ 61,010, at P 26, 32 (2009) (granting request for clarification allowing PJM to pursue veil piercing in civil litigation based on common and corporate law principles applicable to its contract with the Tower Companies and declining to assert primary jurisdiction under the *Arkla* doctrine).

<sup>27</sup> *Order No. 741* at PP 131-33 (noting that “each ISO and RTO should include in its tariff language to specify minimum participation criteria to be eligible to participate in the organized wholesale electric market, such as requirements related to adequate capitalization and risk management controls”); *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,076, at P 656 (2007) (citing *ANP Funding I, LLC v. ISO New England, Inc.*, 110 FERC ¶ 61,040, at P 22 (2005); *Prior Notice and Filing Requirements under Part II of the FPA*, 64 FERC ¶ 61,139, at 61,986-61,989 (1993), *order on reh’g*, 65 FERC ¶ 61,081 (1993)).

seeks far more information than is referenced in NYISO's tariff, including information on litigation, regulatory sanctions and investor information. Some of these requests are also unlawful (*e.g.*, collecting information on passive investors) because the Commission ruled in the Connected Entities order against having ISOs/RTOs collect such information.<sup>28</sup>

NYISO's forms are also inconsistent with the tariff. For example, the forms seek information related to investigations that differs from what NYISO is allowed to request in Section 26.2.1.3. The NYISO tariff creates the legal obligation, not the form. NYISO needs to align the forms with the tariff provisions applicable to credit support.

## **II. MOTION TO CONSOLIDATE**

As a matter of administrative efficiency, ETI respectfully requests that the Commission consolidate Docket Nos. AD20-6 and ER20-483. The Commission consolidates proceedings where the proceedings raise common issues of law and fact, and for administrative efficiency.<sup>29</sup> The credit enhancement policies that are the subject of NYISO's filing in this docket and ETI's Petition clearly overlap and should be addressed together to avoid inconsistent outcomes and the duplication of effort.

## **III. IDENTITY AND INTERESTS OF PETITIONERS**

ETI represents a diverse group of energy market participants, all with substantial interests in wholesale electricity transactions in Commission-jurisdictional markets. ETI members provide important services to a wide variety of wholesale energy market participants. They act

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<sup>28</sup> *Connected Entities Order* at P 226 (declining to require regulated entities to report trader and other natural person information)

<sup>29</sup> *See, e.g., Cal. Public Utilities Comm'n v. Pacific Gas and Electric Co.*, 163 FERC ¶ 61,113, at P 23 (2018); *Cities of Anaheim v. Trans Bay Cable LLC*, 146 FERC ¶ 61,100, at P 19 (2014); *So. Cal. Edison Co.*, 129 FERC ¶ 61,304 at P 26 (2009); *ISO New England, Inc.*, 124 FERC ¶ 61,013, at P 36 (2008); *Missouri River Energy Servs.*, 124 FERC ¶ 61,309 at P 39 (2008); *Ameren Servs. Co.*, 121 FERC ¶ 61,205, at PP 22-23 (2007).

as intermediaries between producers and consumers of electric energy that have mismatched quantity, timing, and contract-type needs. In addition, they provide liquidity by engaging in energy-related commercial transactions with a variety of market entities including, but not limited to, generation owners, project developers, load-serving entities, and investors. ETI members advocate for markets that are open, transparent, competitive and fair – all necessary attributes for markets to ultimately benefit electricity consumers.

#### **IV. CONCLUSION**

ETI respectfully requests that the Commission require NYISO to amend its proposed tariff amendments in accordance with this Protest to correct the provisions that are vague, unduly burdensome, and potentially discriminatory or reject the proposed amendments for the same reasons. ETI also requests that the Commission consolidate this docket with Docket No. AD20-6.

Respectfully submitted,

/s/ Catherine Krupka  
Catherine M. Krupka  
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Washington, D.C. 20001-3980

Dated: December 17, 2019

*Attorneys for the Energy Trading Institute*

**NYISO MINIMUM PARTICIPATION CRITERIA  
OFFICER CERTIFICATION FORM**

**Customer Name:**

I, \_\_\_\_\_, a duly authorized officer of \_\_\_\_\_ ("Customer"), understanding that the NYISO is relying on this certification as evidence that Customer meets the minimum participation requirements set forth in Section 26.1 of Attachment K to the NYISO Market Administration and Control Area Services Tariff ("Attachment K"), hereby certify that I have full authority to bind Customer and further certify as follows:

1. Risk Management. Customer maintains current, written risk management policies and procedures that address those risks that could materially and adversely affect Customer's ability to pay its NYISO invoices when due, including, but not limited to, credit risks, liquidity risks, and market risks.
2. Training.
  - a. Each employee and agent with the right to Bid or schedule in the NYISO-administered markets on behalf of Customer has appropriate training and/or experience to transact on behalf of Customer in the NYISO-administered markets.
  - b. Each employee and agent with the right to Bid on Virtual Transactions or TCCs on behalf of Customer has successfully completed the designated NYISO-administered training course on Virtual Transactions and/or TCCs, as applicable.
3. Operational Capabilities. Customer has appropriate personnel resources and technical abilities to promptly and effectively respond to all communications and directions from the NYISO related to settlements, billing, credit requirements, and other financial matters.
4. Capitalization. Customer has demonstrated compliance with the NYISO's capitalization criteria as follows (check one):
  - a. By submitting a copy of Customer's, or its guarantor's, most recent audited annual financial statements that show at least:
 

\$10 million in assets                      OR                       \$1 million in tangible net worth

Customer acknowledges that pursuant to Section 26.1.1 of Attachment K that Customer is required to notify the NYISO promptly in the event Customer's financial position no longer satisfies these minimum capitalization criteria and to post the appropriate amount of additional security; **OR**

- b. By posting with the NYISO the amount of security indicated below, which security Customer acknowledges it may not use to support its NYISO credit requirements:
 

\$200,000; Customer is not authorized to participate in the TCC market      OR                       \$500,000; Customer is authorized to participate in the TCC market

Date: \_\_\_\_\_

\_\_\_\_\_ (Signature)

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Subscribed and sworn before me \_\_\_\_\_, a notary public of the State of \_\_\_\_\_, in and for the County of \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Notary Public Signature)

My commission expires: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

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## Credit Questionnaire Form

Applicant/Customer: *Enter name here*

Current Date: *Enter date here*

Origination / Incorporation Date: *Enter date here*

SIC / NAICS Code: *Enter code here*

Applicant/Customer Website: *Enter URL here*

Applicant/Customer Ultimate Parent Company (if any): *Enter name here*

All information provided herein shall be treated as Confidential Information pursuant to the NYISO's Market Administration and Control Area Services Tariff Section 6 and Open Access Transmission Tariff Section 12.4.

### Disclosures:

#### Litigation

- 1) List any pending civil or criminal litigation involving the Applicant/Customer, guarantor (if applicable), or Principals<sup>1</sup> of Applicant/Customer that could foreseeably have a material financial impact on Applicant/Customer.

*Use this space to provide a response to the question above*

- 2) List any theft or misappropriation of funds or fraud in the preceding seven years of which Applicant/Customer is aware (a) by any officer or director of the Applicant/Customer or guarantor (if applicable), (b) by any Principal of Applicant/Customer, or (c) if the theft, misappropriation, or fraud could foreseeably have a material financial impact on Applicant/Customer, by employees of Applicant/Customer.

*Use this space to provide a response to the question above*

#### Regulatory Investigations

- 3) Unless prohibited by law, list any ongoing investigation of which Applicant/Customer is aware by the Securities and Exchange Commission ("SEC"), Federal Energy Regulatory Commission ("FERC"), Commodity Futures Trading Commission ("CFTC"), any state or provincial entity responsible for regulating activity in energy markets, or any

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<sup>1</sup> "Principal" is defined as (i) the sole proprietor of a sole proprietorship; (ii) a general partner of a partnership; (iii) a president, chief executive officer, chief operating officer and/or chief financial officer (or equivalent position) of an organization; (iv) a manager, managing member or a member vested with the management authority for a limited liability company or limited liability partnership; (v) any person or entity that has the power to exercise a controlling influence over an organization's activities that are subject to regulation by the Federal Energy Regulatory Commission, the Securities and Exchange Commission, the Commodity Futures Trading Commission, any exchange monitored by the National Futures Association, or any state entity responsible for regulating activity in energy markets; or (vi) any person or entity that: (a) is the direct owner of 10% or more of any class of an organization's equity securities; or (b) has directly contributed 10% or more of an organization's capital.

other governing, regulatory, or standards body with respect to the Applicant/Customer, guarantor (if applicable), Principals, or traders of Applicant/Customer that could foreseeably have a material financial impact on Applicant/Customer. Applicant/Customer must take reasonable measures to obtain permission to disclose information related to a non-public investigation.

*Use this space to provide a response to the question above*

## **Regulatory Sanctions**

- 4) List any sanctions involving the Applicant/Customer, guarantor (if applicable), Principals, or traders of Applicant/Customer imposed by the SEC, FERC, CFTC, any state or provincial entity responsible for regulating activity in energy markets, or any other governing, regulatory, or standards body where such sanctions were either imposed in the past seven years or, if imposed prior to that, are still in effect that could foreseeably have a material financial impact on Applicant/Customer.

*Use this space to provide a response to the question above*

## **Bankruptcy**

- 5) List and summarize (including docket number, status, location, and trustee if applicable) any bankruptcy of Applicant/Customer, Affiliates, guarantor (if applicable), or Principals of Applicant/Customer in the preceding seven years.

*Use this space to provide a response to the question above*

## **Experience**

- 6) Provide a list of Principals below. Please discuss their experience with the Applicant/Customer and any previous experience related to participation in energy markets or trading exchanges.

*Use this space to provide a response to the question above*

- 7) List any other independent system operator or regional transmission market where Applicant/Customer currently operates, has previously operated, or has applied to join.

*Use this space to provide a response to the question above*

- 8) Has Applicant/Customer, guarantor (if applicable), or an entity that a Principal of Applicant/Customer was a Principal of ever had its participation in any independent system operator or regional transmission market suspended or terminated, or its registration application denied by an independent system operator or regional transmission market? If so, please explain.

*Use this space to provide a response to the question above*

## Access to Funding:

- 9) Are you relying on financing from financial institutions to fund operations in the NYISO's markets? Please detail entity name(s), type(s) of financing and credit limit(s) below.

*Use this space to provide a response to the question above*

- 10) Will Customer/Applicant be relying on a nonaffiliated third party (that is neither an Affiliate nor a Principal) to fund its operations? Please provide the entity's name(s), types of financing, and the relationship between the parties.

*Use this space to provide a response to the question above*

## Additional Information

- 11) As appropriate to assist the NYISO in its evaluation of Applicant/Customer's financial information, describe any transactions or corporate structure outside the ordinary course of business that have resulted in unique financial reporting requirements in Applicant/Customer's financial statements, e.g., intercompany transfers with an affiliate, discontinued operations, or extraordinary expenses. Applicant/Customer may reference its audited financial statements if appropriate.

*Use this space to provide a response to the question above*

- 12) Any other circumstance or factors that Applicant/Customer deems relevant to the NYISO's evaluation of the entity's creditworthiness that are not addressed above.

*Use this space to provide a response to the question above*

I certify that I am an officer of the Applicant/Customer listed above who is authorized to execute this form on Applicant/Customer's behalf, and that the information provided in this Credit Questionnaire Form is true and accurate.

Date: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_