

June 16, 2004

The Honorable Magalie R. Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: New York Independent System Operator, Inc. Tariff Revisions to Add a Component for Wholesale Transmission Service Charges to the Operating Requirement under the Customer Creditworthiness Requirements and Clarify the Unsecured Credit Starting Point for Certain Affiliated Municipal Electric Systems; Docket No. ER04-____-000

Dear Ms. Salas,

Pursuant to Section 205 of the Federal Power Act,¹ the New York Independent System Operator, Inc. (“NYISO”),² hereby submits revisions to its Open Access Transmission Tariff (“OATT”) and Market Administration and Control Area Services Tariff (“Services Tariff”) to add a Component to the Operating Requirement such that certain transmission charges currently billed and collected by Transmission Owners will be addressed by the NYISO’s customer creditworthiness requirements. To the extent that a Market Participant’s Unsecured Credit is insufficient to satisfy its overall Operating Requirement, of which the certain transmission charges are proposed to be a part, the Market Participant will be required to post collateral with the NYISO. These revisions will provide necessary protection from default for the transmission charges due to the Transmission Owners and clarification of the NYISO’s authority to terminate customers who fail to pay certain transmission charges to Transmission Owners. The revisions also seek to clarify that, upon qualification, the Unsecured Credit starting point for certain affiliated municipal electric systems is the aggregate of the Unsecured Credit starting points of its individual members. This revision seeks to make explicit what the NYISO believes was implied in the existing tariffs.

I. Documents Submitted

1. This letter;
2. Clean revised sheets from the OATT incorporating new tariff provisions proposed by the NYISO (“Attachment I”);

¹ 16 U.S.C. § 824e (2002).

² Capitalized terms that are not otherwise defined herein shall have the meaning set forth in Article 1 of the OATT and Article 2 of the Services Tariff as applicable, including the definitions proposed to be added with this filing.

3. Redlined revised sheets from the OATT identifying the new tariff provisions proposed by the NYISO (“Attachment II”);
4. Clean revised sheets from the Services Tariff incorporating new tariff provisions proposed by the NYISO (“Attachment III”);
5. Redlined revised sheets from the Services Tariff identifying the new tariff provisions proposed by the NYISO (“Attachment IV”); and
6. A form of Federal Register Notice (“Attachment V”).

II. Copies of Correspondence

Communications regarding this proceeding should be addressed to:

Robert E. Fernandez, General Counsel and Secretary
Andrew S. Antinori, Senior Attorney
Belinda F. Thornton, Director of Regulatory Affairs
New York Independent System Operator, Inc.
290 Washington Ave. Ext.
Albany, NY 12203
Tel: (518) 356-7677
Fax: (518) 356-8825
rfernandez@nyiso.com
aantinori@nyiso.com
bthornton@nyiso.com

III. Background

Since the NYISO began administration of the New York electricity markets, the billing and collection of transmission charges for wheelthroughs, exports and internal wheels³ (“Wholesale Transmission Service Charges”) has remained with the appropriate Transmission

³ “Wheelthroughs” refer to scheduling of transmission service whereby a generation source is located outside the New York Control Area (“NYCA”), power flows through the NYCA and terminates at a point outside the NYCA. “Imports” refer to scheduling of transmission service whereby a generation source is located outside the NYCA and that power is consumed within the NYCA. “Internal wheels” refers to transmission service where the generation is within the NYCA and that power is transmitted through one or more transmission owners system before ultimately being consumed within the NYCA.

Owners. Because the Transmission Owners were, and continue to be, directly responsible for the billing and collection of Wholesale Transmission Service Charges, the NYISO's credit policy does not require collateral to protect against non-payment for Wholesale Transmission Service Charges to the Transmission Owners. Based upon over four years of operating experience under this situation, the NYISO has determined that a deficiency exists under the current structure.

When a Customer fails to pay a Transmission Owner for services rendered, the Transmission Owner lacks the authority to terminate service to the Customer because such termination authority rests exclusively with the NYISO. Moreover, even if the Transmission Owners had such termination authority, they do not have the ability to effect the termination because the NYISO has exclusive operational control of the bulk transmission system. Consequently, a defaulting transmission Customer can continue to accrue unpaid charges owing to the Transmission Owner and the Transmission Owner is limited to collection efforts for outstanding amounts, but lacks the authority or ability to terminate service to the customer. The proposed revisions will clarify the NYISO's authority to terminate such Customers who have defaulted in paying Transmission Owners for Wholesale Transmission Service Charges because such defaulting Customers will be in non-compliance with the creditworthiness provisions of the tariffs, thus explicitly triggering the NYISO's termination rights.

As discussed with stakeholders regarding this issue,⁴ the NYISO currently does not have the staff or resources to assume billing and collection for the Wholesale Transmission Service Charges at issue. Moreover, the Commission's commitment to eliminating rate pancaking charges will likely eliminate most of these charges in the near future, thus making any substantial investments required for the NYISO to take over the billing financially imprudent. Consequently, Market Participants have agreed upon a solution whereby the NYISO will potentially collect and hold collateral to secure the payment of Wholesale Transmission Service Charges while the Transmission Owners will continue their billing responsibilities for the same. Such solution will: (i) enable the NYISO to secure payments owed to the Transmission Owners for Wholesale Transmission Service Charges and (ii) clarify the NYISO's right to terminate service on account of a Customer's failure to make payments for Wholesale Transmission Service Charges to a Transmission Owner.

⁴ During stakeholder discussions, some Market Participants suggested that the NYISO should assume responsibility for the billing and collection of Wholesale Transmission Service Charges. The NYISO does not currently have the resources required to take over the billing and collection of Wholesale Transmission Service Charges. The proposed revisions represent a compromise whereby Transmission Owners will be afforded some protection from defaulting customers, while not imposing the entire burden of billing and collecting Wholesale Transmission Service Charges on the NYISO.

IV. Stakeholder Review and Approval

The Market Participants discussed the issues regarding the tariff revisions proposed in this filing at the December 3, 2003, Business Issues Committee (“BIC”) meeting, the January 9, 2004, Scheduling and Pricing Working Group (“S&PWG”), the January 21, 2004, BIC meeting and the February 10, 2004, S&PWG meeting. The tariff revisions proposed in this filing were approved based upon a detailed summary of the key terms at the February 18, 2004, BIC meeting and the March 2, 2004, Management Committee meeting. Pursuant to the Management Committee’s approval motion, the amendments were presented to the NYISO Board of Directors. On April 20, 2004, the NYISO Board of Directors approved the amendments to be filed with the Commission pursuant to Section 205 of the Federal Power Act.

V. Proposed Effective Date

The NYISO respectfully requests that this filing become effective on August 16, 2004, 61 days after the date of this filing.

VI. Description of Proposed Changes

1. WTSC Revisions

The losses that could result from non-payment by a NYISO Customer are determined by the nature and extent of the Customer’s activities in the NYISO-administered markets. The current NYISO creditworthiness provisions require that the NYISO calculate an Operating Requirement for each particular Customer to quantitatively determine the extent of this exposure. A Customer’s Operating Requirement is currently composed of four components: (i) the Energy and Ancillary Services Component; (ii) the UCAP Component; (iii) the TCC Component; and (iv) the Bid Component. A Customer must then satisfy the amount of the Operating Requirement with either Unsecured Credit or one of five forms of collateral. The Unsecured Credit and collateral posted then satisfy the Customer’s creditworthiness requirements. Any collateral posted secures the Customer’s obligations to the NYISO in the event of default.

To the extent that a Customer’s Operating Requirement (which as proposed now includes a component for Wholesale Transmission Service Charges) exceeds its Unsecured Credit, the NYISO will collect and hold additional collateral to serve as security against nonpayment to Transmission Owners for Wholesale Transmission Service Charges. Administratively, the NYISO would calculate the amount of this additional collateral by applying a fifth component to the Operating Requirement based upon a Customer’s prior purchases of Wholesale Transmission Services (“WTSC Component”). As discussed below, the NYISO would calculate the WTSC

Component similar to the manner in which the Energy and Ancillary Services Component of the Operating Requirement is calculated.

In the event of non-payment, the Transmission Owner would be required to comply with a series of collection efforts discussed below before requesting that the NYISO draw on the collateral to satisfy the non-payment. The Transmission Owner would not be entitled to use any other collateral held by the NYISO beyond the amount of collateral collected on account of the WTSC Component of the Operating Requirement unless the NYISO determined it had no existing or future liabilities for which the NYISO would require the collateral. Similarly, the NYISO would not be entitled to use the collateral posted as a result of the WTSC Component unless the NYISO determined that there were no existing or future liabilities for which the Transmission Owners would require the collateral.

Upon proper notice from the Transmission Owner that it has satisfied certain preconditions as discussed below, the NYISO shall send a final letter to the defaulting Customer demanding payment within two business days. If the Customer makes full payment, then no further action is necessary. If the Customer fails to make full payment, then the NYISO will initiate a draw on appropriate collateral for the affected Transmission Owner and may begin termination proceedings against the customer.

To the extent that the collateral collected pursuant to the WTSC Component were insufficient to satisfy the non-payment and additional collateral held by the NYISO was required to secure other liabilities, the balance of payment owed to the Transmission Owner would be collected through recovery as a bad debt loss via a Rate Schedule 1 charge. The Wholesale Transmission Service Charges to which these proposed revisions apply are limited to those charges: (i) calculated pursuant to Attachment H of the OATT and (ii) incurred or declared overdue by the Transmission Owner pursuant to Attachment W or K as applicable after the effective date of these revisions; provided, however, that these provisions will not apply to pre-petition bankruptcy debts for a company that is currently in bankruptcy.

2. Unsecured Credit Starting Point for Municipal Affiliations

As a starting point in the NYISO's Credit Assessment, the tariffs provide that the NYISO will consider a municipal electric system to have one million (\$1,000,000) dollars of Unsecured Credit. The proposed revisions clarify that a joint action agency or similar municipal affiliation may aggregate the one million (\$1,000,000) starting point for each member such that the aggregate becomes the Unsecured Credit starting point for that agency or affiliation subject to the NYISO's review of the particular affiliation agreement and the NYISO's review of documentation submitted by the agency to demonstrate that it was formed under the pertinent sections of the New York State Municipal Law.

VII. Description of Proposed Tariff Modifications

The Creditworthiness Requirements contained in Attachment K of the Services Tariff and Attachment W of the OATT are nearly identical with the exception that the Services Tariff refers to “Customers” while the OATT refers to “Transmission Customers.” With the exception of that minor difference, the proposed revisions for the Creditworthiness Requirements for the Services Tariff and OATT are identical. As such, the following description of revisions for the OATT will serve as explanation for the revisions to the Services Tariff as well.

1. Definition Section:

Sections 1.49(f) and 1.49(g) were added to define the terms “Wholesale Transmission Services Charges” and “WTSC Component” respectively. The “Wholesale Transmission Services Charge” definition limits those charges as: (i) calculated pursuant to Attachment H of the OATT and (ii) incurred or declared overdue by the Transmission Owner pursuant to Attachment W or K as applicable after the effective date of these revisions; provided, however, that these provisions will not apply to pre-petition bankruptcy debts for a company that is currently in bankruptcy. The “WTSC Component” specifies a fifth component that will be included in the Operating Requirement based upon a Customer’s historical Wholesale Transmission Service Charges.

2. Section III.B(v): WTSC Formulae:

This section was added to specify the formulae by which the WTSC Component will be calculated. Using similar methodology already used to calculate the Energy and Ancillary Services Component of the Operating Requirement, the WTSC Component equals the greater of: (i) the quantity of highest amount owed for WTSC during any single month in a prior Equivalent Capability Period divided by the number of days in the Basis Month, multiplied by 50; or (ii) the quantity of the total WTSC incurred for the previous thirty days divided by 30, multiplied by 50. The Commission has already approved using fifty days worth of collateral in calculating other components of the Operating Requirement.

3. Section IV.C(ii): Unsecured Credit Starting Point for Municipal Electric Systems

This proposed tariff modification serves to make explicit what was implied by the previous language. The prior language stated that, “The starting point for the ISO’s Credit Assessment of a municipal electric system shall be one million (\$1,000,000) dollars without regard for its tangible net worth.” The proposed language makes explicit that when a group of Municipal Electric Systems join together to act through a joint action agency or other type of affiliation, such agency or affiliation may aggregate the one million (\$1,000,000) starting point for each member such that the aggregate becomes the Unsecured Credit starting point for agency or affiliation subject to the NYISO’s review of the particular affiliation agreement and the NYISO’s review of documentation submitted by the agency to demonstrate that it was formed under the pertinent sections of the New York State Municipal Law.

4. Section VII. Financial Assurances for WTSC

- A. Application of Security: This section specifies that the collateral collected pursuant to the WTSC Component shall be primarily used to satisfy non-payments to Transmission Owners, however, if once the Transmission Owners are fully satisfied, and the NYISO determines that no future liabilities to the Transmission Owners exist, the NYISO may use any remaining collateral collected pursuant to the WTSC Component to satisfy obligations to the NYISO. Similarly, the other collateral held by the NYISO (that was collected pursuant to the other components of the Operating Requirement) shall not be available to satisfy delinquent WTSC unless the NYISO determines that it is not necessary to secure other liabilities (current or future true ups and / or anticipated billing adjustments) which would require the NYISO to use such collateral. In situations where adequate collateral does not exist to satisfy the delinquent WTSC obligations, such delinquent amount shall be allocated to bad debt and collected through a Rate Schedule 1 charge as discussed below.
- B. Prerequisites to NYISO Action: This section lists the specific conditions that must be satisfied before the NYISO will take action to address a WTSC non-payment. Those conditions are as follows:
- (i) The WTSC payment must be at least ten (10) days overdue, as measured from the due date on the invoice sent to the Customer by the Transmission Owner;
 - (ii) The Transmission Owner must have issued a late notice and demand letter to the Customer specifying both the amount and period by which the WTSC payment is overdue;
 - (iii) The Transmission Owner must have made an additional, informal attempt to collect the overdue WTSC payment from the Customer which may be, without limitation, a telephone call or meeting with appropriate personnel; and
 - (iv) The Transmission Owner must provide to the General Counsel of the ISO, by certified mail or other verifiable delivery method, a copy of the initial invoice sent to the Customer, a copy of the late notice and demand letter with proof of receipt by the Customer, an indemnification of the ISO regarding the liabilities discussed in Section VII.D below, a request that the NYISO draw upon available collateral to satisfy the default, and a sworn statement by an officer of the Transmission Owner stating that: (a) the WTSC

payment is due and owing, (b) the period by which the WTSC payment is overdue, (c) a recitation of the Transmission Owner's collection efforts (including the additional, informal attempt with the Customer to collect the debt).

- C. NYISO Action: This section specifies the actions the NYISO will and may take once all of the above prerequisites are satisfied. On the first business day after the prerequisites are satisfied by the Transmission Owner, the NYISO shall issue a final demand for payment of the WTSC to the defaulting party within two business days. Further, assuming the NYISO had collected collateral based upon the WTSC Component, the NYISO shall draw upon available collateral for the benefit of the affected Transmission Owner if the WTSC due is not paid within two business days of the letter. Finally, the NYISO may begin termination proceedings in accordance with the NYISO tariffs.
- D. Transmission Owner Indemnification to the NYISO: This section specifies the scope of the indemnification required by the Transmission Owner for the benefit of the NYISO. The indemnification includes the Transmission Owners indemnifying and holding the NYISO harmless against any liability arising out of the use of security to satisfy the WTSC non-payment, any proceeding to terminate service, or termination of service to a customer, except to the extent the dispute arises out of the NYISO's reporting to the Transmission Owner of whether the underlying scheduled transaction occurred and the details of the transaction.

5. Attachment U of the OATT: Declaration and Recovery of Bad Debt Losses

The changes to this section specify that unpaid WTSC charges that still exist after any available collateral has been exhausted to satisfy the unpaid WTSC will be recovered through the dollar value formula specified in Section 3.0 that is currently used to allocate bad debt losses. The standard treatment for bad debt losses is modified for WTSC in that the Working Capital Fund will not be used to satisfy unpaid WTSC charges and no obligation of the NYISO exists to attempt recovery from insurance coverage because the NYISO's insurance coverage does not apply to amounts owed to Transmission Owners. Additionally, the Transmission Owner is still required to pursue reasonable debt collection efforts despite any recovery of unpaid WTSC through Rate Schedule 1. Any revenue collected from such recovery efforts would be refunded through Rate Schedule 1.

VIII. No Costs Relating to Discriminatory Employment Practices

The NYISO has no expenses or costs that have been alleged or judges to be illegal, duplicate, or unnecessary costs that are demonstrably the product of discriminatory employment practices.

IX. Service List

Copies of this filing are being served on all signatories of the OATT and Services Tariff.

X. Federal Register Notice

A form of Federal Register Notice is provided as Attachment V hereto.

XI. Conclusion

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, respectfully requests that the Commission accept the proposed tariff changes identified in this filing.

Respectfully submitted,

NEW YORK INDEPENDENT
SYSTEM OPERATOR, INC.

By _____
Andrew S. Antinori

cc: Daniel L. Larcamp, Director Office of Markets, Tariffs and Rates, Room 8A-01,
Tel. (202) 502-6700
Alice M. Fernandez, Director Office of Markets, Tariffs and Rates -- East
Division, Room 71-31, Tel. (202) 502-8284
Robert E. Pease, Deputy Director of Division of Investigations and Enforcement, Office
of Market Oversight and Enforcement, Room 5A-03, Tel. (202) 502-8131
Michael A. Bardee, Lead Counsel for Markets, Tariffs and Rates, Room 101-09,
Tel. (202) 502-8068
Stanley P. Wolf, Office of the General Counsel, Room 101-03,
Tel. (202) 502-8891

ATTACHMENT I

ATTACHMENT II

ATTACHMENT III

ATTACHMENT IV

ATTACHMENT V

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

New York Independent System Operator, Inc.

Docket No. _____

NOTICE OF FILING

Take notice that on June 16, 2004, the New York Independent System Operator, Inc. (“NYISO”), filed proposed revisions to the NYISO’s Open Access Transmission Tariff (“OATT”) and Market Administration and Control Area Services Tariff (“Services Tariff”). The proposed filing would amend the NYISO’s creditworthiness requirements to add a component for Wholesale Transmission Service Charges to the Operating Requirement and clarify the Unsecured Credit starting point for certain affiliated municipal electric systems. The NYISO has requested that the Commission make the filing effective on August 16, 2004, 61 days after the above filing date.

The NYISO has served a copy of this filing to all parties that have executed Service Agreements under the NYISO’s OATT or Services Tariff.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 224 of the Commission’s Rules of Practice and Procedure (18 CFR §§ 385.211 and 385.214). Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission’s website at www.ferc.gov, using the FERRIS link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502-8222 or TTY, (202) 208-1659. Protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(I)(iii) and the instructions on the Commission’s website under the “e-filing” link. The Commission strongly encourages electronic filings.

Comment Date:

Magalie R. Salas

Secretary

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Market Administration and Control Area Services Tariff in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure 18 C.F.R. § 2010 (2003).

Dated at New York, N.Y. this 16th day of June 2004.

Andrew S. Antinori
NYISO – Senior Attorney
290 Washington Ave. Ext.
Albany, NY 12203