

Agenda 6

DRAFT: 3.30.05 V3

8.4.1 Eligibility to Obtain Services Under This Tariff In Response To Sales Tax Issues

(A) In addition to any other requirement set forth in this Tariff or otherwise required by law, every Customer or other person selling or purchasing any service under this Tariff shall, before making any such sale or purchase, supply the NYISO with a copy of a valid certificate of authority issued by New York State Department of Taxation and Finance under Articles 28 and 29 of the New York State Tax Law; provided that a Customer described in paragraph (2) or (3) of subdivision (B) of this section who purchases but does not sell any services under this Tariff shall not be required to supply the ISO with such a certificate.

(B) In addition to any other requirements set forth in this Tariff or otherwise required by law, every Customer and every agent of a Customer seeking to purchase any services under this Tariff shall, before it makes any such purchase, supply the NYISO with

(1) if the Customer is registered or required to be registered with the New York State Department of Taxation and Finance a valid, properly completed New York State exemption document, such as a Resale Certificate, an exempt organization certificate, an exempt purchase certificate or a direct pay permit, issued in accordance with such New York State Tax Law; or

(2) if the Customer is not required to register, and is not registered, for sales and compensating use tax purposes under such Articles 28 and 29 of the New York State Tax Law, and is not a Customer described in paragraph three of this subdivision, a valid, properly completed exempt organization certificate issued in accordance with such New York State Tax Law; or

(3) if the Customer is an entity described in paragraph one, two or three of subdivision (a) of section 1116 of the New York State Tax Law, evidence satisfactory under such law that it is such an entity and it is not subject to New York State and local sales and compensating use taxes on its purchases of services under this Tariff; or

(4) if a person seeks to make a purchase under this Tariff as an agent of a Customer, such person shall supply the NYISO (a) the appropriate items described above that its principal would be required to supply the NYISO if it were making the purchase directly and (b) evidence satisfactory under the New York State Tax Law to establish such person's status as agent of such Customer for such purchase. Any such agent of a Customer shall also be registered with the New York State Department of Taxation and Finance under Articles 28 and 29 of the New York

State Tax Law and shall furnish the ISO with a copy of a valid certificate of authority issued by such department.

(C) (1) If a Customer's certificate of authority issued under Articles 28 and 29 of the New York State Tax Law is revoked, suspended, cancelled, surrendered or otherwise terminated or expires or, if a Customer's status as an exempt organization under such law is revoked, suspended, cancelled, surrendered or otherwise terminated or expires, or, if a Customer is no longer eligible to rely on the exemption document, exempt organization certificate or other satisfactory evidence it furnished to the ISO, such Customer shall immediately notify the ISO of such change in status and shall furnish to the ISO such other information as the ISO may require to enable it to comply with its obligations under this Tariff and law. If an agent's certificate of authority issued under Articles 28 and 29 of the New York State Tax Law is revoked, suspended, cancelled, surrendered or otherwise terminated or expires or, if an agent's relationship with a Customer is revoked, suspended, cancelled, surrendered or otherwise terminated or expires, such agent or former agent shall immediately notify the ISO of such change in status and shall furnish to the ISO such other information as the ISO may require to enable it to comply with its obligations under this Tariff and law. Regardless of whether the Customer or its agent so notifies the ISO of any such change in status of either the Customer or of the agent or former agent, the Customer shall, from the time of such change in status, be in Default under section xxx of this Tariff and shall be required to pay any State and local sales taxes imposed on its purchases. Such a Customer shall have ten days from such change in status to cure such

Default and notify the ISO that it has so cured such Default. Regardless of whether the ISO has notice of any such change in status from the affected Customer or from such Customer's agent or from a third party, such as the New York State Commissioner of Taxation and Finance, the Customer or its agent on the Customer's behalf shall continue to be allowed to purchase services under this Tariff for ten days from the time that the ISO has notice of such change in status. If, by the end of such ten days, the Customer does not cure the Default, and give notice to the ISO that such Default has been cured, such Customer and any agent of such Customer shall not be allowed to purchase any services under this Tariff.

(2) Immediately upon receiving from a Customer or its agent a notice described in paragraph one of this subdivision, or immediately upon learning that a Customer's or its agent's status has changed as described in such paragraph one, the ISO shall notify the New York State Commissioner of Tax and Finance of the name, address and federal identifying number of such Customer, and of any agent of such a Customer, and of such change of status; and the ISO shall keep records of the type, quantity, price and point of delivery of services any such Customer purchases, or is purchased on its behalf by any agent, after such change in status; and the ISO shall furnish such information to the Commissioner of Taxation and Finance in such form as the Commissioner requests.

(D) After the expiration of the ten day period described in subdivision (C) of this section, in addition to any and all other remedies available under this Tariff or pursuant to law or in equity, the ISO and its Customers shall not sell any services

under this Tariff to a Customer in Default, or to an agent of a Customer in Default, provided, however, that nothing in this subdivision or subdivision (C) shall preclude an ISO Customer from entering into a Bilateral Transaction with a Customer in Default, provided that such Customer making sales shall be registered with the New York State Department of Taxation and Finance under Articles 28 and 29 of the New York State Tax Law and shall collect from such purchaser State and local sales taxes due with respect to such transaction and shall pay any excise taxes due with respect to such transaction.