

Agenda 6
4.01.05

The current draft amendment to the Services Tariff to deal with sales tax issues is designed to assure NYISO compliance with the Sales and Compensating Use Tax Law (the "Sales Tax Law") while minimizing the NYISO's burden and exposure. The draft reflects substantial input from the State Department of Taxation and Finance ("DTF") after lengthy discussions between NYISO counsel and tax policy managers and counsel for DTF.

Paragraph A requires every market participant (with exceptions stated below) to furnish to the NYISO a copy of a valid certificate of authority issued by DTF under the Sales Tax Law. This provision reflects DTF's interpretation of the Tax Law to require every seller of any goods or services that are taxable under the Sales Tax Law to register under that law, irrespective of whether the seller ever makes a taxable sale. The exceptions are for exempt organizations (typically 501(c)(3) organizations) and governmental entities (generally, the State and its agencies and subdivisions, the United States and its agencies and instrumentalities and the United Nations) that purchase but do not sell any services under the services tariff.

Paragraph B imposes certain additional documentary filing requirements on all market participants who purchase any services under the services tariff.

(1) A holder of a certificate of authority must file an exemption document, i.e., a resale certificate (which a holder of a certificate of authority that engages in purchases for resale may issue for itself), an exempt organization certificate, an exempt purchase certificate (e.g., for use in manufacturing) or a direct pay permit.

(2) An exempt organization that does not have a certificate of authority because it does not engage in any sales that would require registration must file a copy of a valid exemption organization certificate.

(3) A governmental entity or instrumentality exempted from filing a certificate of authority under paragraph A must file satisfactory evidence of being such an entity.

(4) An agent seeking to make a purchase on behalf of its principal must file satisfactory evidence of the agent's status as such and also the items that would be required of its principal were the principal acting directly.

Paragraph C deals with defaults. With respect to Customers, a default will arise where a Customer's certificate of authority or its reliance on its exemption document ceases to be valid. In such circumstance, the Customer will be required to notify the NYISO of that change of status promptly, to furnish to the

NYISO such other information as the NYISO may require to enable it to meet its obligations and, of course, to pay any State and local sales taxes imposed on its purchases. The Customer will have ten days from the disqualifying change of status to cure the default and to notify the NYISO thereof. Notwithstanding, the Customer will be allowed to continue to make purchases until 10 days after the NYISO receives notice (from anyone) of the disqualifying change of status; if the default is not cured (or the NYISO does not receive notice of a cure) within the 10 day grace period following notice to the NYISO, the Customer will then no longer be permitted to make purchases.

Until the NYISO receives notice of a disqualifying change of status, it is business as usual from the NYISO's perspective, that is, it may continue to rely on filed documents. Upon receipt of notice of a disqualifying change of status, the NYISO will have the obligation to report that change to DTF, together with name, address and TIN of the defaulting customer. The NYISO will also be required to maintain records of the type, quantity and point of delivery of any services purchased by the defaulting Customer during the 10 day grace period and to furnish such information to DTF. As the NYISO may not know the point of delivery (by which DTF contemplates the location of the last meter between the LDC and the Customer,) the DTF contemplates that the NYISO will obtain that information from the Customer. It is also likely that quantities will be estimates rather than precisely metered amounts. Up until the time the NYISO receives notice of a disqualifying change of status and through the 10 day grace period thereafter, the NYISO will not be expected to collect and report sales tax and will have no liability for it.

Paragraph D restates that a Customer that has defaulted and fails to cure the default within 10 days after the NYISO receives notice of the default shall no longer be eligible to make purchases under the NYISO services tariff. Paragraph D also contains a construction clause to make clear that the loss of eligibility to make purchases in the NYISO-administered markets does not affect the disqualified Customer right to engage in bilateral transactions outside the NYISO-administered markets.