

Tax Issues for Direct Customers

Presentation to BIC

Agenda 7

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Tax Issues for Direct Customers

- As discussed at the 8/16 BIC, some consultants are encouraging large retail customers to become Direct Customers of the NYISO as a way to apparently avoid taxes on the commodity charges
 - Allows the customer to procure their electricity (energy, capacity and ancillary services) directly from the NYISO
- The NYISO does not differentiate between Market Participants that purchase electricity for their own use from those that purchase for resale to other customers
 - Treats all transactions as wholesale sales and does not collect Gross Receipts or Sales Tax.

Adverse Impact on Markets

- Any tax avoidance is harmful to Retail Markets as it would give Direct Customers an artificial advantage over traditional LSEs that are collecting and remitting taxes on the retail sale of electricity.
- The Sales/Use tax is applicable to the buyer so Direct Customers ultimately retain the liability for remitting applicable sales/use tax.
- The GRT is a tax on the seller so any tax avoidance by Direct Customers creates a liability for the NYISO or for the sellers into the NYISO markets.
 - If the NYISO is not the “seller”, the GRT liability falls on the wholesale sellers into the ISO markets.

Requested Action

- Have the NYISO work with Market Participants to identify options to ensure Direct Customers of the ISO are not able to avoid applicable gross receipts and sales taxes and to report its recommendations at the next BIC meeting.
- The solution must address ***BOTH the GRT and Sales taxes!***
 - A partial solution addressing only the sales tax leaves ESCOs at a competitive disadvantage and imposes tax liabilities on sellers into the NYISO markets.

Possible Resolutions

- Require Direct Customers to attest that they are buying at wholesale and reselling to their retail affiliates
 - May require establishing a wholesale affiliate but creates a taxable transaction downstream from the ISO.
- Have the NYISO or wholesale sellers into the NYISO charge Direct Customers for applicable GRT
 - But tax rates vary by municipality and/or locality.
 - NYISO would have to disaggregate the Direct Customer's charges by individual end-use facility in order to identify the applicable taxes.
 - May not be practical without changes to Billing and Accounting software and structural changes to how TOs report M-Load to NYISO.
- Change the tax law to allow for direct pay of GRT taxes by Direct Customers.
 - Would allow comparable treatment of Sales and GRT.