

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

<b>Cargill-Alliant, LLC</b>	)	
	)	
<b>v.</b>	)	<b>Docket No. EL02-116</b>
	)	
<b>New York Independent System Operator, Inc.</b>	)	

**ANSWER OF  
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.  
TO COMPLAINT OF CARGILL-ALLIANT, LLC**

The New York Independent System Operator, Inc. (“NYISO”), in accordance with Rules 206(f) and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”),<sup>1</sup> hereby answers the complaint (“Complaint”) filed in this docket by Cargill-Alliant, LLC (“Cargill”) on August 6, 2002.

In its Complaint, Cargill requests that the Commission order the NYISO to pay Cargill an interest rate on cash collateral provided to the NYISO that is substantially in excess of the interest actually earned on that collateral in the account in which it is held.<sup>2</sup> Cargill’s Complaint is based on a tortured reading of the NYISO’s tariff, and the remedy that Cargill seeks would impose an unfair financial cost on other participants in the NYISO-administered markets while granting Cargill an undeserved windfall. As discussed further below, the Complaint is without merit and should be dismissed.

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<sup>1</sup> 18 C.F.R. §§ 385.206(f) and 213 (2000).

<sup>2</sup> Complaint at 15.

## **I. Correspondence and Communications**

All correspondence and communications concerning the NYISO's answer ("Answer") should be sent to the following persons at the addresses shown:

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## **II. Facts**

Cargill is registered to engage in Virtual Transactions<sup>4</sup> in the NYISO-administered markets pursuant to the NYISO's Market Administration and Control Area Services Tariff ("Services Tariff"). Section 8.4.1 of the Services Tariff requires that all Virtual Transactions Customers provide collateral to support their Virtual Transactions and specifies that collateral may be in the form of an irrevocable letter of credit or a cash deposit. Cargill has chosen to provide a cash deposit.

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<sup>3</sup> The NYISO respectfully requests a waiver of the Commission's regulations (18 C.F.R. § 385.203) to allow the inclusion of more than two persons for service and communications.

The Services Tariff does not specify what, if any, interest is to be paid on cash collateral deposits, but the Financial Assurance Policy for NYISO Customers (“Financial Assurance Policy”) does.<sup>5</sup> It states that cash deposits used as collateral “will be held with an escrow agent selected by the NYISO and *interest earned* will be paid to the Customer.”<sup>6</sup> (Emphasis supplied.) Cargill acknowledges that, when it registered as a Virtual Transactions Customer, it was aware of the Financial Assurance Policy and understood that it would be subject to its terms.<sup>7</sup> Since receiving Cargill’s cash collateral deposit in October 2001, the NYISO has applied the interest accrued on Cargill’s deposit in accordance with the NYISO Financial Assurance Policy.<sup>8</sup>

### III. Argument

#### A. Cargill’s Complaint is based on an incorrect reading of the Services Tariff.

The Services Tariff does not require the NYISO to pay interest on cash collateral provided to the NYISO. Cargill correctly states that the Service Tariff provides that “[i]nterest on any *unpaid amount* whether owed to a Customer or to the ISO as trustee of the ISO Clearing

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<sup>4</sup> Capitalized terms not established herein are used as defined in Article 2 of the Services Tariff.

<sup>5</sup> A copy of the Financial Assurance Policy for NYISO Customers (“Financial Assurance Policy”) is provided as Attachment I. Cargill notes in its Complaint that the Financial Assurance Policy is not currently filed with the Commission. This document is publicly available on the NYISO’s website, however, as Addendum B of the Registration Packet for NYISO Customers and Guests, found at: <http://www.nyiso.com/services/registration.html>. The NYISO is currently working with its Market Participants to develop a comprehensive revision of its credit policies that the NYISO intends to file with the Commission upon completion.

<sup>6</sup> Financial Assurance Policy for NYISO Customers, Section 5.A. This provision is very similar to Section 4.C.2.a of the Credit Policy of the PJM Interconnection, L.L.C. (“PJM”), which provides that cash collateral deposits “will be held in a depository account by PJM and *interest earned* will accrue to the Participant.” (Emphasis added.) The PJM Credit Policy is found at: [http://www.pjm.com/applicationassistant/attachments/pjm\\_credit\\_policy.pdf](http://www.pjm.com/applicationassistant/attachments/pjm_credit_policy.pdf).

<sup>7</sup> Complaint at footnote 10.

<sup>8</sup> Complaint at 6.

(continued . . .)

Account (including amounts held in escrow) shall be calculated in accordance with the methodology specified for interest on refunds in the Commission’s regulations at 18 C.F.R. § 36.19a(a)(2)(iii).”<sup>9</sup> (Emphasis supplied.) This provision in the billing and settlement section depends on some amount being billed (or owing but not yet billed), and yet unpaid. Cargill incorrectly asserts, however, that this provision of the Services Tariff in addition requires the NYISO to pay Cargill the FERC Rate on cash collateral provided to the NYISO. The deposit upon which Cargill seeks to earn the FERC Rate is not an “unpaid amount,” but is rather cash collateral held in an account that earns an overnight bank deposit rate substantially lower than the FERC rate and made in lieu of a letter of credit to support Cargill’s Virtual Transactions in the NYISO-administered markets. Section 7.3 of the Services Tariff therefore does not apply.

Payment of the FERC Rate on amounts *owed* but not yet paid (including amounts held in escrow) is logical because it represents an estimation of the time value of money that is owed by or to the NYISO but which remains unpaid for some reason.<sup>10</sup> That scenario is clearly distinguishable, however, from the present case where Cargill has provided cash collateral to the NYISO to support its Virtual Transactions in the NYISO-administered markets.<sup>11</sup> In Cargill’s

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<sup>9</sup> Complaint at 4. For ease of reference, this Answer refers to the rate calculated in accordance with the Commission’s regulations at 18 C.F.R. § 36.19a(a)(2)(iii) as the “FERC Rate,” as it is commonly known.

<sup>10</sup> See Midwest Independent System Operator, Inc., 98 FERC ¶ 61,075, 61,214 (2002) (indicating that the FERC Rate is intended to approximate the time value of money).

<sup>11</sup> In its Complaint, Cargill asserts that the NYISO’s Financial Assurance Policy is inconsistent with the *pro forma* tariff. Complaint at 12. Section 7.3 of the Services Tariff is almost identical to Section 7.2 of the *pro forma* tariff, both of which apply to *unpaid amounts* and not to cash collateral deposits. The provision of the Financial Assurance Policy that specifies that the

(continued . . .)

case, it chose to deposit the cash collateral as an alternative to purchasing a letter of credit. Cargill's collateral is not an "unpaid balance" nor an "unpaid amount," as specified by Section 7.3, and the provisions of that section therefore do not apply to Cargill's cash deposit.

Section 7.3 is entitled "Interest on Unpaid Balances." Cargill emphasizes repeatedly in its Complaint that Section 7.3 applies to "amounts placed in escrow."<sup>12</sup> That is an incorrect reading of Section 7.3. Cargill's assertions ignore, however, the fact that the language that Cargill cites in Section 7.3 regarding escrow accounts plainly refers to interest on "unpaid amounts," not generally to any money placed into a cash collateral account with the NYISO.<sup>13</sup> The language of Section 7.3 of the Services Tariff does not require the NYISO to pay an interest rate on cash collateral deposits, which are routinely provided by NYISO Customers for long periods of time to support Customers' activities in the NYISO-administered markets, that is higher than the interest actually earned on those cash collateral deposits.

**B. The relief requested by Cargill would impose an unfair and illogical cost on other market participants while resulting in an undeserved windfall for Cargill.**

Cargill requests the Commission to order the NYISO to pay Cargill interest on its cash collateral deposit at the FERC Rate despite the fact that Cargill's cash collateral is held in an

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NYISO pays the interest earned on cash collateral deposits is therefore not incompatible with the *pro forma* tariff provision requiring the NYISO to pay the FERC Rate on unpaid amounts.

<sup>12</sup> See, e.g., Complaint at 8, 9, and 10.

<sup>13</sup> The Complaint itself demonstrates that Cargill misunderstands the provisions contained in Section 7.3 of the Services Tariff. Cargill misquotes Section 7.3, asserting that it applies "the FERC Rate to 'all amounts held in escrow' under the tariff." Complaint at 9. In fact, Section 7.3 states that the FERC Rate shall apply to "[i]nterest on any unpaid amount ... (including amounts placed in escrow)...."

account that earns a substantially lower, market-based overnight bank deposit rate.<sup>14</sup> During the period from January 2000 to present, the average overnight bank deposit rate earned on the account in which the NYISO deposits cash collateral has been approximately 3.62 percent while the average FERC Rate has been approximately 7.61 percent, approximately 2.1 times the rate actually earned. Thus, Cargill is asking the Commission to order the NYISO to pay *more than double* the amount actually earned on cash collateral deposits. During the period from January 2000 to present, the NYISO accrued approximately \$2.3 million in interest on cash collateral deposits from all Customers, but Cargill would have the NYISO pay approximately \$4.83 million in interest on those deposits. Because the NYISO is a not-for-profit entity, and its costs of administration are borne entirely by its market participants, the additional money could only come from the NYISO's other market participants.

The cost to Cargill of any difference between the bank rate of interest Cargill earns on its cash collateral deposit and the FERC Rate is best viewed as an alternative to the cost of Cargill's other option for securing its participation as a Virtual Transactions Customer: a letter of credit. In either case, Cargill's "cost" of collateral provided to participate in the NYISO-administered markets should be borne by Cargill, not by other market participants. If Cargill were to succeed in its argument, the NYISO would arguably be required to pay the FERC Rate on approximately \$95 million of cash collateral currently on deposit. Because the NYISO does not have any source of funds with which to pay the difference between the interest rate earned on those deposits and the FERC Rate, the NYISO would most likely be required to return all cash collateral deposits and demand letters of credit from each Customer previously supplying cash

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<sup>14</sup> Complaint at 15.

collateral pursuant to Section 8.1.A of the Services Tariff. This would make unavailable a convenient method of providing collateral that many Customers use today.

Cargill's proposed interest rate treatment would create an investment opportunity for those who register as Virtual Transactions Customers in the NYISO-administered markets whereby they could pay cash into accounts virtually guaranteed to earn the FERC Rate under the pretext of providing collateral to support Virtual Transactions. Even if those Customers never submit a Virtual Transaction, they would be guaranteed a return on their cash collateral deposits at the FERC Rate. While this scheme would provide a handsome profit to Cargill and other Virtual Transaction Customers for their collateral accounts, other market participants would be required to make up the difference between the rate of interest that the NYISO earns on those collateral deposits and the FERC Rate that Cargill seeks to be paid. This outcome is clearly illogical and unfair to other market participants in the NYISO-administered markets.

#### **IV. Compliance with Rule 213(c) of the Commission's Rules of Practice and Procedure**

##### **A. Disputed Factual and Material Allegations**

- The NYISO denies Cargill's allegation that the NYISO has paid an incorrect rate of interest on cash collateral Cargill provided to support its Virtual Transactions.
- The NYISO denies that Section 7.3 of the Services Tariff specifies the rate of interest that must be paid on Cargill's cash collateral deposit.
- The NYISO denies that Section 7.3 of the Services Tariff states that the NYISO must pay the FERC rate to "*all* amounts held in escrow" by the NYISO, as asserted and misquoted in Cargill's complaint.

- The NYISO denies that the Financial Assurance Policy fails to specify the method of determining the interest that the NYISO pays on cash collateral -- rather it specifies that the NYISO will pay what it actually earns on those funds.
- The NYISO denies that it has withheld any interest due to Cargill.
- The NYISO denies that its Financial Assurance Policy and its Financial Assurance Policy for Virtual Transactions are inconsistent with the FERC *pro forma* open access transmission tariff.

**B. Law Upon Which This Answer Relies**

- Midwest Independent System Operator, Inc. 98 FERC ¶ 61,075 (2002) (indicating that the FERC Rate is intended to approximate the time value of money).

**C. Defenses**

- The Cargill Complaint incorrectly asserts that Section 7.3 of the Services Tariff, which requires that the NYISO pay the FERC Rate on “unpaid amounts,” also requires the NYISO to pay the FERC rate on cash collateral deposits made in lieu of other acceptable forms of collateral.
- The NYISO’s Financial Assurance Policy specifies that the NYISO shall pay “interest earned” on collateral deposits.
- Paying Cargill the FERC Rate on cash collateral deposits would impose unjust costs on other market participants while providing Cargill with a windfall because Cargill would earn a rate of interest on its collateral deposits that would significantly exceed the interest actually earned on the cash collateral and the difference would be paid by other NYISO market participants.



**D. Attachments**

- I. Financial Assurance Policy for NYISO Customers

**IV. Conclusion**

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc., respectfully asks that the Commission deny Cargill the relief requested in its Complaint.

Respectfully submitted,

NEW YORK INDEPENDENT  
SYSTEM OPERATOR, INC.

By \_\_\_\_\_

Counsel

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Of Counsel

August 28, 2002

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing have been served upon each person on the official service list in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Washington, D.C. this 28<sup>th</sup> day of August, 2002.

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