

~~SPWG REVISIONS TO PROPOSAL ON GRT ISSUES~~

8.4.2 Eligibility to Obtain Services Under This Tariff In Response To Gross Receipts Tax Issues

In addition to any other requirements set forth in this Tariff, any Customer, other than a Supplier or Transmission Owner, seeking to purchase any services under this Tariff shall satisfy the requirements of this Section 8.4.2 with respect to any applicable New York state and local “gross receipts” taxes irrespective of whether such tax is a tax upon the Customer or upon a third party.

- A. With respect to each jurisdiction in which a Customer, other than a Supplier or Transmission Owner, owns or operates a facility for which it engages in purchases from the NYISO-administered markets for its own use, such Customer shall:
1. provide to the NYISO ~~a copy of~~ a current Reseller’s Certificate of the kind and in the form prescribed in N.Y. Tax Law § 1132(c)(1)(form ST-120); or
 2. provide to the NYISO a copy of a current exemption certificate from each applicable taxing authority that exempts the Customer and its transactions from any state or local gross receipts tax (“GRT”) that exists in the subject jurisdiction, or the substantial equivalent thereto; or
 3. provide to the NYISO a current written agreement or comparable document with or from each applicable taxing authority pursuant to which the Customer accounts for and pays directly to the taxing authority GRTs arising from its purchases, which agreement must provide that the taxing authority: (a) waives any and all claims for GRT liability against sellers into the NYISO-administered markets with respect to the Customer’s purchases under the NYISO Tariffs; and (b) acknowledges that all sellers into the NYISO markets may enforce the aforementioned waiver of GRT liability.
- B. As an alternative to the procedure set forth in Section A, a Customer that engages in ~~direct~~ purchases from the NYISO for its own use may demonstrate to the satisfaction of the NYISO that:
1. each jurisdiction in which the Customer will engage in ~~direct~~ such purchases under the NYISO Tariffs does not impose a GRT; or
 2. the receipts from the purchase by or sale to the Customer of such goods or services are not subject to the GRT imposed by such jurisdiction.
- C. The showing required under Section B(1) above may be satisfied by presenting to the NYISO current tariff leaves for each utility in whose service territory the Customer engages in ~~direct~~ purchases for its own use under the NYISO Tariff (e.g., Niagara Mohawk – PSC 207 – Statement 35) showing that each such jurisdiction does not

impose a GRT-(i.e., that the jurisdiction is not listed on the Statement). It also may be satisfied by other, comparable documentary evidence that there is no GRT in a particular jurisdiction.

D. The showing required under Section B-(2) above may be satisfied by presenting to the NYISO a certificate or other satisfactory written evidence from each applicable taxing authority.

F. Upon approval of the requirements set forth herein by FERC, the NYISO shall:

_____ 1. inform ~~all each~~ Customers known or believed to be engaging in ~~direct~~ _____ purchases from the NYISO for ~~their~~ its own use of the approved _____ requirements but the failure by the NYISO to inform any Customer engaging in such purchases of such approved requirements or of such Customer to receive such information shall not excuse such Customer from complying with the requirements of this Section 8.4.2; _____ and

_____ 2. assign and make known to market participants one or more NYISO _____ representatives responsible for responding to inquiries from such Customers, taxing _____ authorities and others regarding the requirements.

G. Within six months after FERC's acceptance or approval of this Section 8.4.2 -? ~~[NYISO Legal to Designate Section Number]~~ of this ~~e~~ NYISO ~~TT~~ tariff, each ~~customer~~ Customer subject to the requirements ~~herein, above~~ hereof shall provide the NYISO with the documentation required herein. Thereafter, Customers subject to the se requirements shall satisfy them on an annual basis by January 15th of each calendar year; provided, however, that if the next January 15th is within six months of the date a Customer satisfied the requirements for the first time, then such Customer shall not be required to satisfy them again until January 15th of the following year (i.e., under no circumstances would a Customer be required to satisfy the requirements twice during a six-month period).

H. In the event a Customer fails to provide the required documentation, the NYISO shall terminate service to such Customer in accordance with the provisions of Article 7.5 -? ~~[NYISO Legal to Fill in Section of Tariff Setting Forth Termination of Service Provisions]~~ of this Tariff.

J. The requirements imposed by this ~~proposal~~ Section 8.4.2 +--- shall be null and void if and when any of the following conditions occur: ~~eliminated as soon as practicable~~ _____ if and when:

1. the authority of municipalities in New York State to impose a GRT relating to electricity is rescinded or otherwise eliminated; or
2. ~~a legally binding determination that the sellers into the NYISO administered markets are not liable for sales tax and GRT imposed by reason of their sales into the NYISO administered markets.~~ the New York State Department of Taxation and Finance issues an advisory opinion or comparable written document indicating that sellers into the NYISO markets are not liable for GRT related to a Customer's purchases from the NYISO for the Customer's own use; or
3. a New York court interpreting New York law issues a binding decision that sellers into the NYISO markets are not liable for GRT related to a Customer's purchases from the NYISO for the Customer's own use. a final and binding, non-appealable legal decision is issued by an administrative agency or court of competent jurisdiction providing that sellers - into the NYISO-administered markets are not liable for sales tax and GRT imposed by reason of their sales into the NYISO-administered markets notwithstanding the existence of Customers who make purchases from the NYISO-administered markets for their own use.