

New York State Sales Tax Issues

January 5, 2005
Management Committee



Introduction

NYISO faces two basic issues:

- **Today's motion addresses only the NYISO's legal obligation as a NYS sales tax collection agent.**
- **However, the NYISO also recognizes Market Participant concerns about the possible imposition of Gross Receipts Taxes ("GRTs") and is committed to facilitating discussion among MPs to address those concerns.**

Background

Sales Tax Issue:

- **The NYISO tariff permits sales directly to end-use customers (so-called “Direct Customers”).**
- **There are “Direct Customers” today that have sales tax liability for purchases from the NYISO Administered Markets.**
- **NYS Department of Taxation and Finance notified NYISO in Fall 2003 that the NYISO is required to register as a collection agent for sales tax on electricity sold in the spot market and consumed by “Direct Customers”.**

NYISO's Response

Sales Tax Issue:

- **Sought to convince NYS Tax Department to reconsider and reverse its determination that the NYISO should register as collection agent, but was unsuccessful.**
- **NYISO has a legal obligation that must be satisfied, i.e., registration as sales tax collection agent**
- **NYS Department of Taxation and Finance expects compliance by early 1st quarter 2005**

Proposed Solution

Sales Tax Issue:

- **Modify the tariff to require Customers to (i) supply a Reseller's Certificate or (ii) supply an exemption certificate or direct pay certificate or be a governmental entity or instrumentality not subject to the sales tax.**
- **This approach will:**
 - ✓ *Allow the NYISO to fulfill its legal obligation to register as collection agent.*
 - ✓ *Avoid costly expenditure of MP funds and limited NYISO resources to administer a new sales tax function.*

MC Motion

- **The Management Committee ("MC") approves the NYISO proposal, as presented and discussed today, January 5, 2005, to address the NYISO's legal obligations under the New York State sales tax laws and requests that the Board authorize a filing to the FERC pursuant to Section 205 of the Federal Power Act in substantially the form attached. The MC also requests that the NYISO continue to facilitate discussions among Market Participants to address concerns about the possible imposition of Gross Receipts Taxes ("GRTs") arising from sales to "Direct Customers."**