

5.13 Installed Capacity Auctions

5.13.1 General Auction Requirements

The ISO will administer Installed Capacity auctions to accommodate LSEs' and Installed Capacity Suppliers' efforts to enter into Unforced Capacity Transactions and to give LSEs an opportunity to satisfy their Unforced Capacity requirements. The ISO shall conduct regular auctions, at the request of an LSE, at the times specified in this Section and the ISO Procedures.

Installed Capacity Suppliers, LSEs and Installed Capacity Marketers that are Customers under this Tariff will be allowed to participate in Installed Capacity auctions, provided that they satisfy the creditworthiness requirements set forth in ~~Section 11.0~~ Attachment K of the ISO OATT. Unforced Capacity purchased in Installed Capacity auctions may not be sold for the purposes of meeting Installed Capacity requirements imposed by operators of External Control Areas. Offers to sell and bids to purchase Unforced Capacity shall be made in \$/kW for the time period appropriate to the auction. The ISO shall impose no limits on Bids or offers in any auction, except to the extent required by any applicable market mitigation measures.

Installed Capacity Suppliers that wish to participate in an ISO-administered auction must submit completed certification forms to the ISO in accordance with the ISO procedures,

identified as such in the next monthly billing invoice. Close-Out Settlements shall not be subject to further challenge by Customers.

7.5 Customer Default

A. An event of default (“Default”) shall occur in the event a Customer (the “Defaulting Party”) shall:

- (i) ~~except as provided in Article 8, fail to provide adequate assurance of performance to the ISO within a period of five (5) business days of a demand for such assurance~~ comply with the ISO’s creditworthiness requirements and receive notice of such failure;
- (ii) make an assignment or any general arrangement for the benefit of creditors;
- (iii) ~~default in a payment obligation to the ISO which is not cured within two (2) business days after receipt of written notice of such default provided by the ISO~~ fail to timely make a payment due to the ISO, regardless of whether such payment is in dispute, and receive notice from the ISO of such failure;
- (iv) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a case, petition, proceeding, or cause of action under any bankruptcy or insolvency law or similar law for the protection of debtors or creditors, or have such a petition, case, proceeding or cause of action filed or commenced against it and such case, petition, proceeding or cause of action is not withdrawn or dismissed within thirty (30) days after

such filing or commencement;

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not dismissed, discharged, stayed or restrained, in each case within thirty (30) days thereafter;

- (xiii) cause or subject to any event with respect to which, under the applicable laws of any jurisdiction, said event has an analogous effect to any of the events specified in clauses (iv) to (xii) (inclusive);
- (xiv) take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or
- (xv) fail to perform any material covenant set forth in the Tariff or a Service Agreement (other than the events that are otherwise specifically covered in this Section as a separate Event of Default), and such failure is not excused by Force Majeure or cured within five (5) business days after written notice thereof to the Defaulting Party; ~~or a party fails to, or can no longer, demonstrate its creditworthiness after five (5) days notice of a demand to demonstrate.~~

B. A Customer shall have two (2) business days to cure a Default resulting from its failure to timely make a payment due to the ISO. A customer shall have three (3) business days to cure a Default resulting from its failure to comply with the ISO's creditworthiness requirements.

C. In the Upon an event of Default ~~by a Customer~~ and expiration of any cure period, the ISO shall have the right to suspend ~~performance of the Service Agreement with the Customer, and/or~~ terminate the Service Agreement; immediately upon notice to the Commission, ~~or both,~~ in addition to any and all other remedies available hereunder or

pursuant to law or in equity.

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ED. By entering into Transactions under this Tariff, the Customer agrees that its Service Agreement and Transactions under this Tariff shall constitute a “forward contract” within the meaning of the United States Bankruptcy Code.

DE. The ISO shall have the right to apply any amounts owed a Customer pursuant to this Tariff against any amounts owed to the ISO by a Customer.

7.6 Survival

This Article 7 will survive the termination of the ISO Services Tariff and any associated Service Agreement.

ARTICLE 8

ELIGIBILITY FOR ISO SERVICES

In order to participate in any ISO-administered market or to be a Primary Holder of a TCC, a Customer must satisfy the requirements of this Article and Attachment K, ~~purchase or supply Energy or Capacity or, to supply Ancillary Services, to Bid in a TCC Auction, or to be a Primary Holder of a TCC, Customers must satisfy the requirements of this Article.~~

8.1 Requirements Common to all Customers

A. Creditworthiness

All Customers and applicants seeking to become a Customer shall be subject to the creditworthiness requirements contained in Attachment K, ~~shall satisfy the following requirements prior to entering into a Transaction with the ISO. For the purpose of determining the ability of the Customer to meet its obligations related to services hereunder, the ISO shall require compliance with reasonable credit review procedures in accordance with standard commercial practices. In addition, the ISO may require the Customer to provide and maintain in effect during the term of the Service Agreement, an unconditional and irrevocable letter of credit as security to meet its responsibilities and obligations under the ISO Services Tariff, or an alternative form of security proposed by the Customer and acceptable to the ISO and consistent with commercial practices established by the Uniform Commercial Code that protects the ISO against the risk of non-payment.~~

~~Any service may be suspended or terminated by the ISO prior to, or any time after, the commencement of the service if the Customer fails to, or can no longer,~~

demonstrate its

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~~creditworthiness.~~

~~Each Customer shall be responsible for providing the information specified in this Section. Each Customer will be considered creditworthy if: (i) the Customer's long-term unsecured debt securities are, and remain, rated a minimum of BBB or Baa2 by Standard & Poor's or Moody's, respectively; (ii) the Customer either prepays for service or provides an irrevocable standby letter of credit issued by a domestic or Canadian bank with a minimum A (Standard & Poor's or Dominion), or A2 (Moody's) long-term unsecured debt rating, for an amount equal to the estimated sum of the charges pursuant to Article 7 for the three (3) individual months when such charges would be greatest over rolling twelve-month periods and, in addition, the amount required pursuant to Section 8.5, below; (iii) the Customer has, as determined by the ISO in its reasonable discretion, a qualified long-term payment history with the ISO or an individual Transmission Owner; or (iv) the Customer's parent company, in a form satisfactory to the ISO, guarantees the Customer's responsibility for all financial obligations associated with services and responsibilities hereunder and such parent company conforms to the minimum ratings specified above.~~

B. Completed Application and Minimum Technical Requirements

A Customer shall submit a Completed Application in accordance with Article 9 and shall receive ISO approval prior to obtaining any services under the ISO Services Tariff.

A Customer also shall demonstrate to the ISO's reasonable satisfaction that it is

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and a single Point of Withdrawal; or (b) making purchases from the ISO Administered Markets at a single bus of an amount greater than or equal to one (1) MW in each hour.

~~8.4 Additional Requirements Applicable to Virtual Transactions~~

~~Notwithstanding any other creditworthiness standards contained in the ISO Services Tariff, to be considered creditworthy for purposes of engaging in Virtual Transactions, Customers engaging in Virtual Transactions (“Virtual Transaction Customers”) shall be required to comply with the provisions of this Section 8.4.~~

~~8.4.1 Collateral Requirements~~

~~All Virtual Transaction Customers must provide collateral in the form of a cash deposit or irrevocable letter of credit (“ILOC”) in an amount determined according to this Section 8.4.1. The amount of collateral required to support Virtual Transactions is the product of the MWh that the Virtual Transaction Customer has applied to be authorized to bid per day and the amount of collateral required per MWh, as provided by this Section 8.4.1. The amount of collateral required per MWh is equal to seven times the highest differential between the Day Ahead and Real Time Energy market prices in the NYCA at the 97th percentile over the previous three months. The~~

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~~amount of collateral that a Virtual Transaction Customer is required to provide per MWh will be adjusted whenever there is an increase or decrease of ten percent (10%) or more since the amount was last determined.~~

~~8.4.2 Monitoring and Enforcement of Virtual Transaction Creditworthiness Requirements~~

~~The ISO will monitor the bids submitted by Virtual Transaction Customers. If the number of MWhs bid by a Virtual Transactions Customer in any given day exceeds the number of MWhs that the Virtual Transactions Customer is authorized to bid, all of the Virtual Transaction Customer's bids for that day will be rejected by the ISO.~~

~~If, at any time during the regular monthly billing cycle, the amount owed to the NYISO by a Virtual Transactions Customer as a result of Virtual Transactions reaches fifty percent (50%) of the collateral provided by the Virtual Transaction Customer to support its Virtual Transactions, the ISO will attempt to contact the Virtual Transactions Customer to request either payment or additional collateral in the amount then owned by the Virtual Transactions Customer as a result of Virtual Transactions. If the Virtual Transactions Customer fails to make payment or provide additional collateral as described above by 4:00 PM on the next business day, the ISO may immediately suspend the Virtual Transaction Customer's authorization to engage in Virtual Transactions until payment or additional collateral is provided as required by this Section.~~

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~~**8.5—Credit Requirements Applicable to TCCs**~~

~~Unless otherwise considered creditworthy pursuant to Section 8.1 of the ISO Services Tariff, Customers bidding to purchase TCCs and Primary Holders of TCCs must satisfy the creditworthiness requirements contained in this Section 8.5.~~

~~**8.5.1. Collateral Required to Bid on TCCs**~~

~~**A.—Positive Bids**~~

~~In order to be eligible to submit a Bid with a positive value to purchase a TCC in an Auction, a Customer must provide credit support prior to the commencement of the auction in an amount equal to the full amount of the Bid.~~

~~**B.—Negative Bids on TCCs**~~

~~Credit support is not required in order for a Customer to be eligible to submit a Bid with a negative value to purchase a TCC in an Auction.~~

~~**8.5.2. Collateral Required for Primary Holders of TCCs**~~

~~To be a Primary Holder of a TCC, a Customer must provide collateral in an amount equal to the greater of 8.5.2.A. or 8.5.2.B, below:~~

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~~A. The amount of the Primary Holder's total portfolio collateral requirement based on the clearing prices of each TCC in the portfolio as determined by the following formula:~~

$$\frac{\sum_{n \in N} \{IACn\}}$$

~~where: IAC = the initial amount of collateral required based on the Auction clearing price of TCC_n, which shall be 100% of the clearing price of a one month TCC with a positive market clearing price, 50% of the clearing price of a six month TCC with a positive market clearing price, 25% of the clearing price of a twelve month or longer TCC with a positive market clearing price, and 100% of the absolute value of the Auction clearing price of a TCC with a negative market clearing price~~

~~N = the set of unexpired TCCs held by the Primary Holder.~~

~~B. The projected amount of the Primary Holder's payment obligation to the NYISO, if any, considering the net mark to market value of all TCCs in the Primary Holder's portfolio as defined for these purposes according to the formula below:~~

$$\frac{\sum_{n \in N} \left\{ \frac{NAPn}{3} \times RMn \right\}}$$

~~where: NAP = the net amount of Congestion Rents (positive or negative) between the POI and POW composing each TCC_n during the previous three months~~

~~RM = the remaining number of months in the life of TCC_n; provided, however, in the case of Grandfathered TCCs, RM shall equal the original number of months in the life of the longest duration TCC sold in a NYISO-administered Auction then outstanding~~

~~N = the set of TCCs held by the Primary Holder.~~

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~~8.5.3. Monitoring of TCC Collateral Requirements~~

~~The NYISO shall review each Primary Holder's TCC portfolio at least once per month to determine whether an adjustment to the amount of collateral provided by the Primary Holder is required in accordance with the formulae above.~~

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Customer shall respond within 10 days to a request by the ISO to update the list of Affiliates and/or parent company. In addition, a Customer and an applicant seeking to become a Customer shall inform the ISO of any Affiliates that are currently taking service or applying to take service under the Tariffs. The ISO shall treat the information provided in the Application as Confidential Information except to the extent that disclosure of the information is required by the ISO Services Tariff, by regulatory or judicial order or for reliability purposes pursuant to Good Utility Practice. The ISO also shall treat the information in conformity with the standards of conduct contained in Part 37 of the Commission's Regulations and the Code of Conduct set forth in Attachment F to the ISO OATT.

9.3 Approval of Application and/or Notice of Deficient Application

The ISO will promptly review the Application and may request additional information to determine whether the applicant meets the ISO's minimum financial and technical requirements. The ISO will notify the applicant within thirty (30) days of receipt of a Completed Application. If the ISO rejects an Application, the ISO shall provide a written explanation within fourteen (14) days of the rejection. The ISO will attempt to remedy minor deficiencies in the Application through informal communications with the applicant. If such efforts are unsuccessful, the ISO shall return the Application.

9.4 Filing of Service Agreement

The ISO will file Service Agreements with the Commission in compliance with applicable Commission regulations and the ISO Services Tariff.

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