



Foreign Guaranty Discussion

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Background

- In April 2015 a Market Participant presented information to NYISO stakeholders requesting that the NYISO permit the use of foreign parent company guaranties as a form of unsecured credit.
- NYISO stakeholders encouraged the NYISO to assess the use of foreign parent guaranties in the NYISO markets.
- Funds for the research and analysis were approved for the 2016 budget.

Summary

- The NYISO researched and analyzed the use of foreign guaranties by other ISOs and RTOs as well as the enforceability of foreign guaranties.
- The following slides summarize the NYISO's findings.
- The NYISO requests that Market Participants consider this information and provide feedback to the NYISO Credit Manager about whether the NYISO should allow foreign guaranties and on what terms.

NYISO Guaranties

- A Market Participant that may not otherwise qualify for unsecured credit can provide a guaranty to the NYISO issued by an Investment Grade U.S. or Canadian Affiliate and obtain unsecured credit based on the creditworthiness of its affiliate.
- If the Market Participant defaults and its affiliate guarantor does not honor the guaranty, it could result in a bad debt loss, which would be socialized to all Market Participants.
- Accordingly, the risks and costs of affiliate guaranties are shared by all Market Participants.

Domestic versus Foreign Guaranties

- Allowing foreign affiliates to provide guaranties could increase the overall amount of unsecured credit extended to Market Participants.
- Foreign guaranties present enforceability challenges that do not exist with domestic guaranties.
- The cost of enforcing a foreign guaranty could be significantly more expensive than a domestic guaranty.

ISO/RTO Analysis

- The NYISO reviewed the tariffs of other ISOs and RTOs.
 - *ISO-NE does not accept domestic or foreign guaranties.*
 - *SPP does not accept foreign guaranties.*
 - *CAISO, MISO, PJM and ERCOT all accept foreign guaranties.*

Summary of ISO/RTO Foreign Guaranty Requirements

- Under each, the foreign guarantor is required to pay all expenses incurred by the ISO/RTO in reviewing and accepting a foreign guaranty beyond nominal in-house credit and legal review.
- The foreign guarantor, at its own cost, must provide the ISO/RTO with an independent legal opinion from an attorney licensed to practice law in the U.S. and/or the guarantor's domicile, confirming the enforceability of the guaranty and other requirements.

Summary of ISO/RTO Foreign Guaranty Requirements

- Must satisfy all conditions applied to domestic/Canadian guarantors.
- Country rating minimum of AA+.
- Must have parent guarantor rating.
- Must be in U.S. currency.

Summary of ISO/RTO Foreign Guaranty Requirements

- Must be in English.
- Maximum accepted amount of a foreign guaranty is \$25 million based on certain metrics.
- Disputes over guaranties are resolved through litigation.

Domestic Guaranty Enforceability

- NYISO can bring an action to enforce the guaranty in either New York or the state of domicile of the guarantor.
- Any judgment rendered on the guaranty is enforceable in any state where the guarantor has assets under the full faith and credit clause of the U.S. Constitution.
- Most states have also enacted laws that allow for expedited enforcement of judgments rendered in other states.

Foreign Guaranty

Enforceability of Judgment

- Enforceability of a judgment in the home country of a foreign guarantor would require the NYISO to bring a new action in that country, which could be costly and time consuming.
- Enforcement of a judgment in a foreign country often requires that the laws of the foreign country recognize the type of claim and the type of damages awarded.

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Enforceability of Arbitral Award

- International arbitration avoids most of the complications associated with attempting to domesticate a U.S. judgment to the foreign country.
- The NYISO could require arbitration to be held in New York.
- The U.S. is one of over 155 countries that is a signatory to the New York Convention.
- The New York Convention requires courts of the signatory countries to recognize and enforce arbitral awards made in other signatory countries, subject only to very limited grounds for objection.

Foreign Guaranty Costs of Litigation v. Arbitration

- Legal fees are typically the most significant component of litigation or arbitration costs.
- In arbitration, the NYISO would have to pay higher administrative fees up front to cover the cost of the tribunal and the fees of the arbitrators.
- Unlike litigation, there is no right to appeal an arbitral award.

Foreign Guaranty

NYISO Market Participant Costs

- Both a judgment on a foreign guaranty and arbitral award would require the NYISO to engage foreign counsel to enforce the award against the guarantor's assets.
- Insolvency laws of foreign countries differ from those of the U.S. and may limit the ability of the NYISO to recover against an insolvent foreign guarantor to a greater extent than limits arising under U.S. bankruptcy law.
- As is the case of a domestic guaranty, a bad debt loss on a foreign guaranty would be paid for by all Market Participants while the direct benefit of the guaranty extends to one Market Participant.
 - *However, the risks and costs of collecting on a foreign guaranty could be significantly greater.*

Next Steps

- Receive Market Participant feedback regarding acceptance of foreign guaranties.
- Send feedback to sprevratil@nyiso.com by June 8, 2016.
- Future CPWG.

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- *Maintaining and enhancing regional reliability*
- *Operating open, fair and competitive wholesale electricity markets*
- *Planning the power system for the future*
- *Providing factual information to policy makers, stakeholders and investors in the power system*

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