

Con Edison's comments on proposed GRT tariff language REVISIONS TO
PROPOSAL ON GRT ISSUES

~~A.~~ A. With respect to each jurisdiction in which a Customer owns or operates a facility ~~that for which it~~ engages in direct purchases from the NYISO for its own use, ~~at the request of the NYISO~~ such ~~customer~~ Customer shall, ~~by January 15 of each year:~~

1. ~~Provide~~ 1. provide to the NYISO a copy of a current reseller's certificate; or

2. ~~Provide~~ 2. provide to the NYISO a copy of a current exemption certificate from each applicable taxing authority that exempts the Customer or the transaction from any state or local gross receipts tax ("GRT") that exists in the subject jurisdiction, or the substantial equivalent thereto; or

3. ~~Be~~ 3. affirm to the NYISO that it is a governmental entity ~~that is not subject to the GRT and whose transactions are not subject to a tax imposed upon a third party;~~ or

4. ~~Provide~~ 4. provide to the NYISO a ~~copy of a~~ current written agreement or comparable document with ~~the~~ 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: (ia) waives any and all claims for GRT liability against ~~all~~ all sellers into the NYISO markets ~~in~~ with respect ~~of~~ to the Customer's purchases under the NYISO Tariff; and (iii) acknowledges that all sellers into the NYISO markets ~~are third party beneficiaries of the formal written agreement with standing to may enforce its terms and conditions~~ 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 ~~annually~~ demonstrate to the satisfaction of the NYISO that:

1. ~~Each~~ 1. each jurisdiction in which the Customer will engage in direct purchases under the NYISO Tariff does not impose a GRT; or

2. ~~The~~ 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.4, (1) above, ~~can~~ may be satisfied by presenting to the NYISO current tariff leaves for each utility in whose service territory the Customer engages in direct purchases under the NYISO Tariff (~~see, e.g., Statement 35 of PSC 207 (Niagara Mohawk) – PSC 207 – Statement 35~~) showing that each such jurisdiction does not ~~have in effect~~ 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 Showings~~showing required ~~pursuant to~~under Section B. ~~2,(2)~~ above, ~~shall require the Customer~~ may be satisfied by presenting to~~provide~~ the NYISO a certificate or other satisfactory written evidence from each applicable taxing authority.
- E. As an alternative to the procedures set forth in Sections A through D, a Customer which engages in direct purchases from the NYISO for its own use may elect to indemnify the NYISO and sellers into the NYISO markets with respect to any GRT liability related to the Customer's purchases under the NYISO Tariff. Customers electing this option will be required to: (a) execute an indemnification agreement with the NYISO which also names sellers into the NYISO markets as third party beneficiaries; and (b) satisfy credit requirements established by the NYISO.
- F. Upon approval of the requirements set forth herein by FERC, the NYISO shall:
1. inform all Customers known or believed to be engaging in direct purchases from the NYISO for their own use of the approved requirements; and
 2. assign and make known to market participants one or more NYISO representatives responsible for responding to inquiries from Customers, taxing authorities and others regarding the requirements.
- G. The NYISO shall commence enforcement of the requirements set forth herein no earlier than four months and no later than six months from the date the requirements are approved by FERC. Thereafter, Customers subject to the 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).
- ~~E.—H.~~ In the event ~~such~~a Customer fails to provide ~~such~~the requested required documentation, the NYISO shall ~~(a) terminate service to such entity~~Customer until the ~~appropriate~~required documentation is provided; ~~and (b) provide the appropriate taxing authority with the name, contact information, and billing information of the non-compliant customer.~~
- I. Notwithstanding anything to the contrary set forth above, Suppliers shall not be subject to the requirements of this proposal with respect to their purchases in the balancing, energy, ancillary services or ICAP markets administered by the NYISO.
- J. The requirements imposed by this proposal shall be eliminated as soon as practicable if and when:

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1. the authority of municipalities in New York State to impose a GRT relating to electricity is rescinded or otherwise eliminated; or
2. 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.

~~Note: The language in (E) should also be added to the sales tax language that was approved at the last MC meeting.~~

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Document comparison done by DeltaView on Wednesday, January 19, 2005 09:28:41

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