UNITED STATES OF AMERICA116 FERC ¶61,039
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

New York Independent System Operator, Inc. Docket Nos . ER06-710-000 and 001

ORDER ACCEPTING CHANGES TO OPEN ACCESS TRANSMISSION TARIFF AND MARKET ADMINISTRATION AND CONTROL AREA SERVICES TARIFF

(Issued July 17, 2006)

1. On March 8, 2006, as supplemented on May 19, 2006, the New York Independent System Operator, Inc. (NYISO) proposed revisions to its Open Access Transmission Tariff (OATT) and Market Administration and Control Area Services Tariff (Services Tariff) (collectively, Tariffs) to make available three additional forms of credit support for customers participating in its Virtual Transactions market. In this order, we accept NYISO's proposed revisions effective May 8, 2006, as proposed.

NYISO's Filing

2. NYISO proposes to allow unsecured credit, affiliate guarantees, and surety bonds as acceptable forms of credit in addition to the three currently acceptable forms of credit; namely, (i) cash, (ii) an irrevocable letter of credit, and (iii) any net amount receivable NYISO owes to the Market Participant. NYISO states that the proposed revisions make available to the Virtual Transactions market the same forms of credit already available in NYISO's other markets; will result in a single, consistent set of permissible forms of credit that will apply to all NYISO-administered markets; and will allow Market Participants participating in the Virtual Transactions market increased flexibility in meeting their credit requirements. NYISO states that the proposed tariff revisions were approved at the January 25, 2006 Management Committee meeting, and that NYISO's Board of Directors approved the amendments on February 20, 2006.

Notice of Filing and Responsive Pleadings

3. Notice of the filing was published in the *Federal Register*, 71 Fed. Reg. 14,507 (2006), with interventions and protests due on or before March 29, 2006. The New York

Transmission Owners filed a timely motion to intervene. EPIC Merchant Energy LP (EPIC) filed a timely motion to intervene and limited protest.

4. EPIC asserts that, unless significant changes are made regarding how NYISO calculates the unsecured credit available to participants in the Virtual Transactions market, the proposed changes will have little effect. EPIC states that it does little good for NYISO to state that the credit requirements for Virtual Transactions will now include unsecured credit if, as presently occurs, NYISO's Tariffs make it substantially more difficult or even impossible for unrated participants such as EPIC to qualify for unsecured credit. EPIC explains that, while large companies that are rated by Standard and Poor's or Moody's need only have a rating of BBB- or higher to be deemed "Investment Grade Customers," and thereby qualify for unsecured credit, unrated companies such as EPIC must be rated as BBB to qualify. This is true, EPIC contends, even when such unrated companies have received an "Equivalency Rating" using Moody's KMV RiskCalc™ model, as provided for in the NYISO Tariffs.

5. EPIC also states that, even for participants deemed Investment Grade, the NYISO credit policies then allow the use of qualitative assessments, which are heavily weighted in favor of reducing credit eligibility to potentially reduce or eliminate any unsecured credit that would otherwise be available. EPIC explains that, even if the unrated company is able to satisfy the BBB or higher financial standard, the NYISO's qualitative factors can then be used to adjust the starting point for how much unsecured credit will actually be granted by up to 10 percent upward or up to 100 percent downward. EPIC contends that, because they are heavily weighted toward reducing eligibility, the primary purpose of these qualitative factors is to deny unsecured credit to companies NYISO has already found to be Investment Grade.

6. According to EPIC, since the cost of collateral is a key competitive concern, participants in the Virtual Transactions market such as EPIC and other unrated companies, which are mostly smaller or newer companies, are at a competitive disadvantage in relation to larger, rated companies trading in the NYISO markets. Thus, EPIC believes that, while the Commission should accept the proposed OATT and Services Tariff revisions, it should also direct NYISO to further change its Tariffs so that the unsecured credit standards treat both rated and unrated participants on a fair and equal basis.

7. An April 28, 2006 deficiency letter requested that NYISO provide additional information. On May 19, 2006, NYISO submitted its response.

8. At the outset, NYISO explains that the primary rationale underlying the proposed changes was to create a uniform credit policy across all NYISO-administered markets, making available to customers participating in the NYISO's Virtual Transactions market

the same forms of credit support already available to customers participating in the other NYISO-administered markets.

9. NYISO goes on to explain that there are three different ways a Market Participant can qualify as "Investment Grade." First, if the Market Participant has obtained a Senior Long-Term Unsecured Debt Rating of BBB- or higher on its public debt, the Market Participant will be deemed Investment Grade.[1] Second, if the Market Participant has obtained an Issuer Rating[2] of BBB or higher, the Market Participant will be deemed Investor Grade.

10. NYISO explains that an Issuer Rating, by virtue of looking more generally at a company's financial viability, was not considered as valuable a predictor of a company's ability to meet unsecured debt obligations as the Senior Long-Term Unsecured Debt rating and thus a higher BBB standard was required to qualify as Investment Grade. Finally, NYISO explains that, if the Market Participant does not have either a Senior Long-Term Unsecured Debt Rating or an Issuer Rating, the Market Participant may request that NYISO calculate an Equivalency Rating (using Moody's KMV RiskCalc™ software).[3] NYISO states that, if the Market Participant's Equivalency Rating is BBB or higher, the Market Participant will be deemed Investment Grade.

11. With respect to any possible discrimination between Market Participants, NYISO remarks that EPIC ignores the fact that rated Market Participants who have received an Issuer Rating are subjected to exactly the same standard as unrated Market Participants with an Equivalency Rating, *i.e.*, a BBB standard. Moreover, NYISO avers that the credit policy is, in fact, somewhat generous in applying the same BBB standard as a test

---

[1] NYISO explains that a Senior Long-Term Unsecured Debt Rating is considered by NYISO to be the best measure of whether a company will be able to honor an unsecured debt claim. According to NYISO, such rating is a more conservative rating than an Issuer Rating, discussed *infra* note 2, as it is harder to get a "good grade" on a Senior Long-Term Unsecured Debt Rating than on an Issuer Rating.

If a Market Participant has a Senior Long-Term Unsecured Debt rating, only that rating can be used for evaluation of unsecured credit, as that is what such rating addresses.

[2] According to NYISO, an Issuer Rating is a current opinion of overall financial capacity to pay financial obligations and is a more general and somewhat less conservative measure (as compared to a Senior Long-Term Unsecured Debt Rating, discussed *supra* note 1) of wherewithal to meet debt obligations.

[3] NYISO states that the process used to assign a RiskCalc-based Equivalency Rating is not as rigorous as the process a commercial rating agency uses to assign an Issuer Rating, although it produces a rating roughly equivalent to an Issuer Rating.

for Investment Grade both in the Equivalency Rating and in the Issuer Rating scenarios, because the considerations used to produce an Equivalency Rating are less rigorous than those used by the commercial rating agencies to assign an Issuer Rating.

12. With respect to the allegation that the qualitative factors are weighted toward reducing eligibility for unsecured debt and are used to deny unsecured credit, NYISO states that it has never downgraded a Market Participant's unsecured credit. Moreover, NYISO adds that if a reader was left the impression that it rarely, if ever, qualifies a market participant for unsecured credit based on an Equivalency Rating, in fact, as of its May 19, 2006 response, it has allocated unsecured credit to 83 percent of the Market Participants that have applied for it based on an Equivalency Rating.

Discussion

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

14. The Commission will accept NYISO's revisions to its OATT and Services Tariff to allow three additional forms of credit support for customers participating in NYISO's Virtual Transactions market. The Commission finds that the proposed revisions provide Virtual Transactions Market Participants with more ways of meeting NYISO's credit requirements, and thereby should provide for increased participation in the Virtual Transactions market. The proposed revisions also provide a uniform credit policy across all NYISO-administered markets, while continuing to ensure an appropriate balance between protecting the market from losses and eliminating undue barriers to entry.

15. Contrary to EPIC's assertions, NYISO has reasonably explained the bases for its credit requirements and its reasons for requiring a higher standard for Equivalency and Issuer Ratings (*i.e.*, BBB) than for Senior Long-Term Unsecured Debt Ratings (*i.e.*, BBB-). It is reasonable to require a higher rating for unsecured credit when the rating used is more general and less rigorous than one focused specifically on the ability to pay unsecured financial obligations. Because Issuer and Equivalency Ratings reflect a more general assessment of overall financial capacity, while the Senior Long-Term Unsecured Debt Rating is specifically focused on an ability to pay unsecured financial obligations, it is reasonable and not unduly discriminatory for NYISO to require a higher rating for the Issuer and Equivalency Ratings than for the Senior Long-Term Unsecured Debt Rating.

16. The Commission rejects EPIC's unsupported assertion that NYISO uses the qualitative factors to deny unsecured credit to investment grade companies. EPIC has not shown any instance in which NYISO has denied unsecured credit based on qualitative factors, and NYISO affirmatively states that it has never done so. However, even if an individual Market Participant were to be denied unsecured credit based on qualitative factors, EPIC has not shown how NYISO's instant proposal, which only increases the

options available to the Virtual Transactions Market Participants to meet NYISO's credit requirements, is unjust or unreasonable. Therefore, the Commission will accept NYISO's proposed revisions.

The Commission orders:

NYISO's proposed revisions to its OATT and Services Tariff are hereby accepted for filing, effective May 8, 2006, as requested, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.