

170 FERC ¶ 61,054
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

New York Independent System Operator, Inc.

Docket No. ER20-483-000

ORDER ACCEPTING CREDITWORTHINESS REQUIREMENTS

(Issued January 24, 2020)

1. On November 26, 2019, New York Independent System Operator, Inc. (NYISO) filed, pursuant to section 205 of the Federal Power Act (FPA),¹ proposed amendments to its Market Administration and Control Area Services Tariff (Services Tariff) and its Open Access Transmission Tariff (OATT) to enhance its ability to prevent or mitigate the risk of credit defaults in the NYISO-administered markets. As discussed below, we accept NYISO's proposed amendments, effective January 27, 2020, as requested.

I. NYISO's Filing

2. In the NYISO markets, NYISO explains, credit is collectively extended by all market participants to each individual market participant so that if one market participant defaults on its obligations to NYISO, the remaining participants must make up the shortfall.² NYISO states that, in 2018, certain market participants, some of which filed for bankruptcy under Chapter 11 of the United States Bankruptcy Code,³ defaulted on their payment and credit obligations to the NYISO market.⁴ NYISO states that it terminated those market participants from ongoing participation in the NYISO markets. Subsequently, on January 29, 2019, Light Power & Gas of NY LLC (LPGNY) filed a complaint with the Commission against NYISO alleging that NYISO violated its tariff by declining to approve LPGNY's pending customer registration application until unpaid

¹ 16 U.S.C. § 824d (2018).

² NYISO Transmittal at 2 (citing *Policy Statement on Credit-Related Issues for Electric OATT Transmission Providers, Independent System Operators and Regional Transmission Organizations*, 109 FERC ¶ 61,186, at P 5 (2004) (*Policy Statement on Electric Creditworthiness*)).

³ 11 U.S.C. §§ 1101-1146 (2018).

⁴ NYISO Transmittal at 2.

obligations of North Energy Power LLC (North Energy) were satisfied.⁵ The complaint was in response to NYISO's decision to treat LPGNY as the same entity as North Energy. On June 20, 2019, the Commission denied LPGNY's complaint, finding that it was reasonable for NYISO to treat LPGNY and North Energy as the same transmission customer.⁶ In doing so, the Commission encouraged NYISO to augment its tariff to include the factors that NYISO will consider to determine whether to treat two entities as the same for the purposes of administering its tariff.⁷

3. NYISO proposes five tariff revisions here to augment its ability to protect market participants from defaults. First, NYISO proposes to include an additional minimum participation criterion. According to NYISO, Section 26.1.1 of the Services Tariff currently requires market participants to satisfy, and remain in compliance with four minimum participation requirements: (1) maintain risk management policies and procedures; (2) ensure employees are properly trained or experienced; (3) have appropriate personnel, resources, and technical abilities to respond to NYISO's communications related to settlements, billing, credit requirements, and other financial matters; and (4) meet minimum capitalization criteria.⁸ NYISO proposes to include an additional criterion requiring market participants to certify that they have the "appropriate experience and resources to satisfy [their] obligations to NYISO as they become due."⁹ NYISO argues that this criterion will ensure that market participants retain the necessary capability to timely satisfy all payment obligations to NYISO.¹⁰

4. Second, NYISO proposes to modify Section 9.3 of the Services Tariff to give NYISO express authority to "reject an application if the NYISO determines that the applicant's participation in the ISO Administered Markets presents an unreasonable credit risk."¹¹ NYISO proposes revisions to Section 26.1.4 of the Services Tariff to

⁵ *Id.* (citing *Light Power & Gas of NY LLC v. N. Y. Indep. Sys. Operator, Inc.*, Docket No. EL19-39-000 (filed Jan. 28, 2019)).

⁶ *Id.* at 3 (citing *Light Power & Gas of NY LLC v. N.Y. Indep. Sys. Operator, Inc.*, 167 FERC ¶ 61,232, *reh'g denied*, 169 FERC ¶ 61,216 (2019) (Order Denying Complaint)).

⁷ Order Denying Complaint, 167 FERC ¶ 61,232 at P 46.

⁸ NYISO Transmittal at 3.

⁹ *Id.* at 3-4; *see also*, NYISO, proposed Services Tariff, § 26.1.1.

¹⁰ NYISO Transmittal at 4.

¹¹ *Id.* (quoting NYISO, proposed Services Tariff, § 9.3).

require a customer or applicant to “submit to the ISO any information or documentation reasonably required for the ISO to evaluate its experience and resources.”¹² NYISO states that, if it rejects an applicant based on this information, it will provide written explanation of the reasons why NYISO rejected the application. NYISO argues that these requirements will allow NYISO to take appropriate, proactive measures to help protect its markets from the risk of credit defaults.¹³

5. Third, NYISO proposes to amend Section 26.14 of the Services Tariff to include an event or circumstance indicating that the customer may present an unreasonable credit risk as a specific example of “material adverse change” in financial condition.¹⁴ NYISO’s current tariff allows NYISO to change the amount of unsecured credit granted to a market participant in the event there is a material adverse change affecting the risk of nonpayment by the market participant.¹⁵ The tariff contains several illustrative examples of events that constitute a material adverse change. NYISO proposes to add to the list “an event or circumstance indicating that the Customer may present an unreasonable credit risk to the [NYISO-administered markets].”¹⁶ NYISO argues that, while the tariff already provides NYISO the authority to declare a material adverse change under such circumstances, the additional example will help provide greater transparency to market participants.¹⁷

6. Fourth, NYISO proposes to clarify, in Section 26.2.1.3 of the Services Tariff, the requirements for market participants to report on certain investigations. Specifically, NYISO proposes to clarify the existing obligation of a market participant to report the existence of an investigation by adding “unless prohibited by law” to that obligation in Section 26.2.1.3 of its Services Tariff and further adding an obligation that a market participant must take reasonable measures to obtain permission to disclose information related to non-public investigations to NYISO.¹⁸

¹² *Id.* (quoting NYISO, proposed Services Tariff, § 26.1.4).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* (quoting NYISO, proposed Services Tariff, § 26.1.4).

¹⁷ *Id.* at 5.

¹⁸ *Id.* (citing NYISO, proposed Services Tariff, § 26.2.1.3).

7. Finally, NYISO proposes to clarify the evaluation of entities for purposes of reentry to the NYISO markets after a bad debt loss. Specifically, NYISO proposes to add language to Section 27.4 of its OATT to explain that it will evaluate relevant factors to determine if an applicant should be treated as the same entity that had caused a previous default, in order to prevent the purpose of the provision from being circumvented by the use of separate entities.¹⁹ NYISO states that such relevant factors “may include, but are not limited to, the interconnectedness of the business relationships, overlap in relevant personnel, similarity of business activities, overlap of customer base, if any, and the business engaged in prior to the attempted re-entry.”²⁰

II. Notice of Filings and Responsive Pleadings

8. Notice of NYISO’s filing was published in the *Federal Register*, 84 Fed. Reg. 66,397 (2019), with interventions and protests due on or before December 17, 2019.

9. The New York Public Service Commission filed a notice of intervention. Timely motions to intervene were filed by Boston Energy Trading and Marketing LLC, DC Energy, LLC, Exelon Corporation, the Financial Marketers Coalition,²¹ Vitol Inc, Energy Trading Institute (ETI),²² and NRG Power Marketing. On December 18, 2019, New York Transmission Owners, filed a late motion to intervene. On December 17, 2019, ETI filed a protest. On January 2, 2020, NYISO filed an answer to ETI’s protest.

10. ETI argues that NYISO’s proposed amendments are vague, unduly burdensome, and potentially discriminatory. ETI also asserts that NYISO’s proposal is inconsistent with the Commission’s precedent because Order No. 741 directed Regional Transmission Operators (RTOs)/Independent System Operators (ISOs) to include language specifying minimum participation criteria in their tariffs, such as requirements related to adequate capitalization and risk management controls.²³ ETI also states that NYISO’s Officer

¹⁹ *Id.*

²⁰ *Id.* (quoting NYISO, proposed OATT, § 27.4).

²¹ Financial Marketers Coalition is an ad hoc group of financial market participants who trade electricity in the organized wholesale markets, including NYISO.

²² ETI characterizes itself as a diverse group of energy market participants, all with substantial interests in wholesale electricity transactions in Commission-jurisdictional markets.

²³ ETI Protest at 9 (citing *Credit Reforms in Organized Wholesale Electric Markets*, Order No. 741, 133 FERC ¶ 61,060, at PP 131-33 (2010), *order on reh’g*, Order No. 741-A, 134 FERC ¶ 61,126 (2011), *reh’g denied*, Order No. 741-B, 135 FERC

Certification Form and Credit Questionnaire Form are unlawful because they request information that the Commission declined to require from regulated entities in Order No. 860.²⁴ Regarding NYISO's proposed addition to the minimum participation criteria to require market participants to certify that they have the "appropriate experience and resources to satisfy [their] obligations to NYISO as they become due,"²⁵ ETI argues that NYISO has not clearly defined what constitutes "appropriate experience and resources."²⁶ In addition, ETI contends that NYISO has not explained how it will ensure that NYISO will apply this provision in a non-discriminatory manner, which conflicts with the Commission's assertion that "clear and consistent credit policies are an important element in ensuring rates that are just, reasonable, and not unduly discriminatory or preferential."²⁷

11. Regarding NYISO's proposal to reject applicants that pose unreasonable credit risks, ETI argues that NYISO's proposal does not give market participants adequate protection from arbitrary or discriminatory decision-making by NYISO.²⁸ Moreover, according to ETI, market participants will have no recourse if NYISO rejects the application for creditworthiness reasons. ETI argues that NYISO's proposal should be modified to include an applicant's right to challenge the basis for the rejection to a NYISO committee of industry representatives with expertise on credit risk, and an express ability to appeal to the Commission.²⁹

12. Regarding NYISO's proposed clause on material adverse changes, ETI argues that this amendment is unjust and unreasonable because NYISO does not define what constitutes an unreasonable, as opposed to reasonable, credit risk.³⁰ According to ETI, market participants would have no way of knowing what NYISO may believe makes

¶ 61,242 (2011)).

²⁴ *Id.* at 1 (citing *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes*, Order No. 860, 168 FERC ¶ 61,039 (2019)).

²⁵ NYISO Transmittal at 3-4; *see also* NYISO, proposed Services Tariff, § 26.1.1.

²⁶ ETI Protest at 4.

²⁷ *Id.* (quoting Order No. 741-A, 134 FERC ¶ 61,126 at P 2).

²⁸ *Id.* at 5-6.

²⁹ *Id.* at 6.

³⁰ *Id.*

them a credit risk. ETI argues that NYISO should be required to define these concepts and explain how they intend to apply this requirement on a non-discriminatory basis.³¹

13. Regarding NYISO's proposal to require market participants to inform NYISO of investigations unless prohibited by law, ETI argues that NYISO does not define what constitutes "material impact," as noted in the tariff. ETI asserts that NYISO should provide "quantifiable standards for measuring materiality."³² ETI further argues that this reporting requirement should apply only to investigations of the customer, and not when a customer is not the subject of the investigation but is aware of an investigation of another customer and provides such information through an interview, third-party subpoena, or in grand jury testimony.³³

14. Regarding NYISO's proposal to prevent market re-entry after a bad debt loss, ETI argues that the proposal would circumvent well-established principles of corporate and insolvency law.³⁴ ETI argues that NYISO's proposal gives NYISO authority to pierce the corporate veil between entities based on factors that ETI argues are vague.³⁵ ETI also argues that NYSIO has not made clear whether it will respect insolvency laws when assessing how to address prior uncured defaults.³⁶

15. ETI also argues that NYISO's Officer Certification Form and Credit Questionnaire Form are not included in the tariff despite the fact that they impose obligations on market participants.³⁷ ETI alleges that these forms make unlawful requests, such as collecting information on passive investors, that in Order No. 860 the Commission decided against having RTOs and ISOs collect.³⁸

16. Lastly, ETI requests that the Commission consolidate the instant docket with its recent request for a technical conference and petition for rulemaking in

³¹ *Id.* at 6-7.

³² *Id.* at 7.

³³ *Id.*

³⁴ *Id.* at 8.

³⁵ *Id.*

³⁶ *Id.* at 9.

³⁷ *Id.* at 10.

³⁸ *Id.* (citing Order No. 860, 168 FERC ¶ 61,039 at P 226).

Docket No. AD20-6 (ETI's Petition). ETI argues that the credit enhancement policies that are the subject of NYISO's filing in this docket and ETI's Petition overlap and should be addressed together for administrative efficiency and to avoid inconsistent outcomes and the duplication of effort.³⁹

17. In NYISO's answer to ETI's protest, NYISO argues that the FPA requires that NYISO demonstrate that its proposed tariff revisions are just and reasonable, and does not require that NYISO propose what ETI considers to be the most just and reasonable.⁴⁰ Further, NYISO argues that ETI urges the Commission to reject not just NYISO's proposed tariff language but also previously accepted NYISO tariff provisions, which is counter to Commission precedent.⁴¹ NYISO also notes that the Commission cannot rewrite NYISO's proposed tariff revisions and is constrained to accepting or rejecting NYISO's proposal as submitted.⁴² NYISO reaffirms that its proposed tariff language strikes the appropriate balance between the flexibility needed to fulfill NYISO's administrative responsibilities with the transparency and clarity entitled to market participants.⁴³

18. NYISO asserts that its proposed changes to the minimum participation criteria are expressed in a level of detail similar to existing requirements in NYISO's tariff.⁴⁴ NYISO maintains that the proposed language allows market participants to certify their compliance while providing NYISO the discretion to consider the facts and circumstances of individual cases as necessary.⁴⁵

19. NYISO argues that it is impractical and undesirable to establish an exhaustive list of all information reasonably required for it to evaluate a market participant's experience and resources when determining whether to reject applicants that pose an unreasonable

³⁹ *Id.*

⁴⁰ NYISO Answer at 3.

⁴¹ *Id.*

⁴² *Id.* at 4.

⁴³ *Id.* at 5. NYISO notes that the proposed tariff amendments were passed unanimously, with no abstentions, and no member of ETI voted against the proposed amendments. *Id.* at 1.

⁴⁴ *Id.* at 6.

⁴⁵ *Id.* at 7.

credit risk.⁴⁶ Rather, NYISO asserts that the proposal permits NYISO the appropriate flexibility to collect information needed to effectively evaluate the individual circumstances of a new customer application and prevent entry to the NYISO-administered markets when appropriate.⁴⁷ Further, NYISO states that its commitment to provide a written explanation of the reasons for rejecting a customer application provides an important safeguard for market participants against arbitrary and discriminatory decision-making by NYISO.⁴⁸ NYISO also notes that any applicant that feels that NYISO has engaged in unduly discriminatory conduct may seek redress at the Commission.⁴⁹

20. In addition, NYISO notes that the Commission specifically allowed that the list of material adverse changes need not be exhaustive.⁵⁰ Further, NYISO asserts that the requirement that NYISO provide a written explanation for any invocation of the material adverse change clause provides an important safeguard against arbitrary and discriminatory decision-making by NYISO. NYISO also argues that ETI taking issue with NYISO's proposal to require market participants to inform NYISO of investigations unless prohibited by law is contrary to existing NYISO tariff language and that the instant proceeding is not an appropriate forum for ETI's objection.⁵¹

21. Regarding NYISO's proposal to prevent market re-entry after a bad debt loss, NYISO notes that, in the Order Denying Complaint, the Commission encouraged NYISO to add tariff language establishing the factors it will use to determine whether to treat two entities as the same entity.⁵² Further, NYISO argues that ETI raises unsupported claims about scenarios that do not pertain to the provisions proposed by NYISO.⁵³

22. In response to ETI's claim that the requirements of NYISO's Officer Certification Form and Credit Questionnaire Form should be included in NYISO's tariff, NYISO

⁴⁶ *Id.* at 8.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at 8-9.

⁵⁰ *Id.* at 9 (citing Order No. 741, 133 FERC ¶ 61,060 at P 147).

⁵¹ *Id.* at 10-11.

⁵² *Id.* at 11-12.

⁵³ *Id.* at 11.

asserts that only provisions that significantly affect the rates, terms, and conditions of service must be on file with the Commission.⁵⁴ NYISO also states that the requirements of the forms cited by ETI are technical implementation details and non-material requirements, which the Commission allows to be set forth in manuals and procedures. Further, NYISO argues that Order No. 860 established reporting requirements for a specific purpose and, contrary to ETI's claim, has no bearing on what information an ISO/RTO may reasonably collect for purposes of administering its credit policy.⁵⁵

23. NYISO also opposes ETI's request to consolidate the instant proceeding with ETI's Petition. NYISO states that consolidation would unnecessarily delay the instant filing, ignore Commission precedent, and waste administrative time and resources.⁵⁶

III. Discussion

A. Procedural Matters

24. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

25. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2019), we grant New York Transmission Owners' late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

26. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept NYISO's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

27. We find that NYISO's proposed amendments are just and reasonable and not unduly discriminatory or preferential, and therefore we accept them for filing. NYISO proposes five enhancements to its current creditworthiness requirements. These enhancements include, for example, new minimum participation criterion and mechanisms for NYISO to act when a customer, or potential customer, presents an

⁵⁴ *Id.* at 13.

⁵⁵ *Id.*

⁵⁶ *Id.* at 15.

unreasonable credit risk. These enhancements are just and reasonable because they allow NYISO to protect its customers from financial losses that result from unreasonable credit risks and defaults. As the Commission has previously stated, NYISO acts as a gatekeeper for the integrity of the markets it administers.⁵⁷ We agree with NYISO that its proposal will enhance its ability to perform this role, which will help ensure that rates are just and reasonable.

28. ETI takes issue with several aspects of NYISO's filing. As discussed in more detail below, we reject the arguments ETI raises in its protest. Under FPA section 205, the Commission determines the justness and reasonableness of the proposal before it and is not obligated to consider whether the proposal is more or less reasonable than other alternatives.⁵⁸

29. We disagree with ETI's argument that the proposed revisions are inconsistent with Order No. 741. In Order No. 741, the Commission explained that sound credit practices were, and continue to be, necessary to prevent a disruption in the system.⁵⁹ Here, NYISO is proposing rules to address its ability to prevent or mitigate the risk of credit defaults. We find that these proposed rules are consistent with the objectives of Order No. 741, which serve to establish credit practices that provide stability to the market and its participants.

30. In its protest, ETI argues that NYISO's proposal creates the potential for discrimination and arbitrary decision-making by NYISO. We find that NYISO's proposal provides NYISO with necessary, reasonable discretion to implement its credit requirements while sufficiently addressing any potential for undue discrimination or arbitrary discrimination. We agree with NYISO that the proposed tariff language will allow NYISO the reasonable discretion to evaluate individual facts and circumstances, as

⁵⁷ *Policy Statement on Electric Creditworthiness*, 109 FERC ¶ 61,186 at P 18.

⁵⁸ *Accord PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,038, at P 12 (2019); *see Cities of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984) (when determining whether a rate was just and reasonable, the Commission properly did not consider "whether a proposed rate schedule is more or less reasonable than alternative rate designs"); *see also, e.g., Cal. Indep. Sys. Operator Corp.*, 128 FERC ¶ 61,265, at P 21 (2009) ("[T]he issue before the Commission is whether the CAISO's proposal is just and reasonable and not whether the proposal is more or less reasonable than other alternatives."); *OXY USA, Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995) (finding that under the FPA, as long as the Commission finds a methodology to be just and reasonable, that methodology "need not be the only reasonable methodology, or even the most accurate").

⁵⁹ Order No. 741, 133 FERC ¶ 61,060 at P 13.

necessary, to protect the NYISO-administered markets without limiting NYISO to act only in specific scenarios of increased credit risk enumerated in the tariff. This discretion is present with respect to the material adverse change clause found in Section 26.14 of the Services Tariff. There, NYISO has a reasonable amount of discretion because it is neither practical nor productive for NYISO to define every single circumstance that could result in a material adverse change. In addition, we find that NYISO has added transparency and clarity to the tariff that did not previously exist. For example, NYISO's proposed minimum participation criterion outlines what market participants must do to remain in compliance. Taken altogether, NYISO's proposed revisions better outline the ways in which NYISO will monitor a market participant's creditworthiness. This will provide market participants more transparency and certainty as to how NYISO will determine a market participant's creditworthiness. With the additional transparency and clarity, entities can address any potential for undue discrimination or arbitrary decision-making if future events demonstrate a flaw in NYISO's instant proposal that is not yet apparent on this record.

31. NYISO proposes to add to the list of examples of a material adverse change in Section 26.14 of the Services Tariff the example of "an event or circumstance indicating that the Customer may present an unreasonable credit risk."⁶⁰ ETI alleges that "unreasonable" in this addition is not adequately defined. Section 26.14 of the Services Tariff⁶¹ only permits NYISO to make a change to a market participant's operating requirement if there is a material adverse change to its credit risk, which includes, but is not limited to, the examples provided. In Order No. 741, the Commission required that RTO/ISOs specify examples of a material adverse change in their tariff, but noted that "this list [of examples] should be illustrative, rather than exhaustive" and that "the tariff provisions should allow the ISOs and RTOs to use their discretion to request additional collateral in unusual or unforeseen circumstances."⁶² We find that NYISO's proposed tariff language complies with Order No. 741's requirement that RTO/ISOs provide examples of conditions that may trigger use of their material adverse change

⁶⁰ See NYISO Transmittal at 4-5; NYISO, proposed Services Tariff, §§ 26.2.1.4, 26.14. NYISO revised its Services Tariff § 26.14 to include the following clarification: "(i) an event or circumstance indicating that the Customer may present an unreasonable credit risk to the ISO Administered Markets, which may be identified based on the material Customer provides to the ISO pursuant to Section 26.1.4 of Attachment K of the ISO Services Tariff."

⁶¹ *Id.* § 26.14.

⁶² Order No. 741, 133 FERC ¶ 61,060 at P 147.

clause, but that such examples merely be illustrative and allow the RTO/ISO to use its discretion to determine, for example, what is “unreasonable.”

32. ETI further argues that NYISO’s proposal to reject a new applicant that NYISO determines presents an unreasonable credit risk to NYISO-administered markets could lead to discriminatory decision making by NYISO, arguing, in part, that the NYISO has failed to provide ample information concerning what will constitute “unreasonable credit risk”.⁶³ We decline to require NYISO to be more specific at this time. We note that other terms in NYISO’s credit policy, such as material adverse change, are not narrowly and precisely defined and that striking a balance between providing sufficient flexibility to an RTO/ISO to protect the wholesale markets and providing certainty to market participants is an inherently difficult aspect of sound credit policy. Akin to the Commission’s finding in Order No. 741 that RTO/ISOs must be provided reasonable discretion to define a material adverse change,⁶⁴ we find that it is impractical and undesirable to list all examples that constitute an unreasonable credit risk and limit NYISO to act to protect the wholesale markets only in specific instances enumerated in the tariff. We find that the proposed tariff language provides NYISO with the needed flexibility to protect the integrity of the NYISO-administered markets. However, we recognize ETI’s concern regarding the need for a record of the market administrator’s actions when exercising this discretion to protect the interests of market participants. NYISO’s proposed tariff language committing to provide a written explanation to any applicant rejected for creditworthiness reasons constitutes such a record and will provide transparency for market participants, which can address any potential for undue discrimination in implementation. Further, we note that, if a market participant believes that NYISO has acted in an unduly discriminatory or arbitrary manner in administering its tariff, it may seek relief by filing an FPA section 206 complaint at the Commission.

33. ETI objects to language in Section 26.2.1.3 of NYISO’s Services Tariff regarding reporting requirements for investigations. We find this objection to be outside the scope of NYISO’s proposal. NYISO’s proposal in the instant proceeding merely seeks to clarify the existing obligation of a market participant to report the existence of an investigation by adding “unless prohibited by law” to that obligation as well as adding that a “[c]ustomer must take reasonable measures to obtain permission to disclose information related to a non-public investigation,” in Section 26.2.1.3 of its Services Tariff. ETI objects to existing language that is already part of NYISO’s currently-effective tariff, which references a material impact, and not to language that NYISO proposes to add or revise. Similarly, we find ETI’s other concern of whether the obligation pertains only to investigations of the customer, or if it also pertains to

⁶³ ETI Protest at 5-6.

⁶⁴ Order No. 741, 133 FERC ¶ 61,060 at PP 147-151.

situations when a customer is not the subject of the investigation but is aware of an investigation of another customer, to be outside of the scope of this proceeding.

34. ETI also protests the proposed revisions in Section 27.4 of NYISO's OATT that would allow NYISO to evaluate whether an entity should be treated as the same market participant that caused a prior default. In making its argument, ETI asserts that NYISO's proposal to prevent market reentry after a bad debt loss circumvents well-established principles of corporate and insolvency law. We disagree. ETI does not identify what corporate or insolvency laws it has in mind and does not specify how the proposed tariff would lead to circumvention of such corporate and insolvency laws. Thus, we find ETI's arguments to be unsupported and speculative. Here, in response to the Commission's determination in the Order Denying Complaint, NYISO seeks to add criteria by which NYISO will evaluate whether an entity is seeking to circumvent the purpose of OATT Section 27.4 and should be considered the same Transmission Customer for the purpose of the tariff.⁶⁵ In that order, the Commission found that corporations may be regarded as one entity for the purposes with which the agency is immediately concerned even though they are legitimately distinct for other purposes.⁶⁶ The criteria NYISO seeks to add to its tariff largely reflect the same criteria the Commission applied in the Order Denying Complaint and relevant precedent.⁶⁷ We do not find such criteria to be vague, as ETI asserts.⁶⁸ As NYISO explains in its answer, the purpose of these proposed revisions is to ensure that a market participant must cure a previous default before re-entering, including re-entering as only a nominally different entity, the NYISO-administered market.⁶⁹

35. We also decline to require NYISO to include its Officer Certification Form and Credit Questionnaire Form in the tariff. Decisions as to whether an item should be included in a tariff or in a business practice manual are guided by the Commission's rule of reason policy, under which provisions that "significantly affect rates, terms, and conditions" of service, are readily susceptible of specification, and are not generally understood in a contractual agreement must be included in a tariff.⁷⁰ These forms are an

⁶⁵ Order Denying Complaint, 167 FERC ¶ 61,232 at P 46 ("[W]e encourage NYISO to add language to its OATT to address comparable situations, by setting forth the factors it will consider to determine whether to treat two separate entities as the same entity for purposes of Section 27.4.").

⁶⁶ *Id.* P 40.

⁶⁷ *Id.* P 41.

⁶⁸ *See supra* P 14.

⁶⁹ NYISO Answer at 11.

⁷⁰ *See Energy Storage Assoc. v. PJM Interconnection, L.L.C.*, 162 FERC ¶ 61,296,

administrative mechanism through which NYISO will collect information from market participants that NYISO can use to assess whether the participant meets the requirements of the tariff. While related to the proposed requirements, these forms do not in themselves constitute a practice that significantly affect rates, terms, or conditions of service under NYISO's tariff—they are merely a means of gathering information. Further, we find that the information requested in NYISO's Officer Certification Form and Credit Questionnaire Form does not conflict with the requirements of Order No. 860, as ETI claims. Order No. 860 imposes specific information reporting requirements on public utilities but does not prohibit NYISO from collecting from market participants further information not required by Order No. 860.⁷¹

36. Finally, we deny ETI's request to consolidate this proceeding with ETI's Petition in Docket No. AD20-6. We find that the merits of NYISO's proposed tariff changes can be adequately assessed based on the information in the record in this proceeding. Therefore, we find no need to consolidate this proceeding with ETI's Petition, which seeks a technical conference or rulemaking to consider more general credit and risk management matters.

at P 103 (2018); *see also City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985) (finding that utilities must file “only those practices that affect rates and service significantly, that are reasonably susceptible of specification, and that are not so generally understood in any contractual arrangement as to render recitation superfluous”); *Pub. Serv. Comm'n of N.Y. v. FERC*, 813 F.2d 448, 454 (D.C. Cir. 1987) (holding that the Commission properly excused utilities from filing policies or practices that dealt with only matters of “practical insignificance” to serving customers).

⁷¹ Order No. 860, 168 FERC ¶ 61,039 at PP 160-61, 171-81.

The Commission orders:

NYISO's filing is hereby accepted, effective January 27, 2020, as requested, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.