

I. COMMUNICATIONS

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II. REQUEST FOR LEAVE TO ANSWER

The Commission normally allows answers to “comments” but discourages answers to “protests.”² Because National Grid’s pleading is styled as “comments,” the NYISO believes that it is permitted to answer it as a matter of right.³ With respect to the NYTOs’ protest, the NYISO respectfully asks that the Commission exercise its discretion and grant it leave to answer. The Commission has allowed answers to protests when they help to clarify complex issues, provide additional information that will assist the Commission, or are otherwise helpful in the development of the record in a proceeding.⁴ In this case, the NYISO’s answer should be accepted because it will clarify important

² 18 C.F.R. § 385.213 (2005).

³ If the Commission decides to treat the NYTOs’ pleading as tantamount to a protest the NYISO requests leave to answer it on the same basis that it is requesting leave to answer National Grid.

⁴ *See, e.g., New York Independent System Operator, Inc.*, 108 FERC ¶ 61,188 at P 7 (2004) (accepting NYISO answer to protests because it provided information that aided the Commission in better understanding the matters at issue in the proceeding); *Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.*, 93 FERC ¶ 61,017 at 61,036 (2000) (accepting an answer that was “helpful in the development of the record”)

factual points that the NYTOs (and National Grid) have ignored. Allowing this answer will therefore help the Commission make a well-reasoned decision.

III. ANSWER

There are a number of factual errors, misstatements, and inconsistencies with past positions in the NYTO Commenters' pleadings. First, it is wrong for the them to claim that the NYISO's existing billing system "could be readily adapted to encompass reliability organization costs."⁵ While other ISOs/RTOs might be in a position to quickly expand the scope of their invoicing and collection systems, the NYISO is not. Modifying the NYISO software to track and recover ERO costs would require a great deal of coding and testing. These changes would be required because the methodology approved by the Commission for allocating ERO-related costs to Load Serving Entities on a "Net Energy for Load" basis, is significantly different from the allocation methodology specified under the NYISO's tariff. Making the NYISO responsible for invoicing LSEs would also immerse it in tracking, allocating, and billing costs associated with purely retail market related activities that are outside the scope of the NYISO's Commission-jurisdictional mission. Finally, assuming these new responsibilities would expose the NYISO to collection risks and to added financing costs due to the fact that the ERO anticipates billing in advance and on a quarterly basis.

Second, even the NYTO Commenters acknowledge⁶ that tariff changes will be needed to change the cost allocation methodology currently in the NYISO tariffs. Under the NYISO's "shared governance system," tariff revisions, cannot be made without first working through an extensive stakeholder process. An approved filing must, of course,

⁵ NYTOs at 6.

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then be accepted by the Commission. These procedural steps only increase the scope of the commitment that the NYTO Commenters seek to impose on the NYISO.

Third, as the Commission is aware, the NYISO already has a number of major projects underway as part of its comprehensive Settlement System Replacement initiative. Most are intended to address existing issues, or to provide enhanced capabilities to address concerns raised by stakeholders. It would not be practicable or cost effective for the NYISO to suspend these projects or to try to change their objectives in midstream. Moreover, the NYTO Commenters have frequently criticized the NYISO for not completing these projects faster.⁷ It is unreasonable for them to now seek to divert the NYISO into introducing a complex manual adjustment or a re-design of its billing system that is due for replacement in order to support an unnecessary new functionality.

Fourth, earlier today the NYISO Management Committee voted to shorten the NYISO's settlements cycle to ensure that accurate final bills are issued more quickly. To secure this stakeholder support, the NYISO promised that it would minimize invoice-level manual adjustments going forward and try, to the extent practicable, to eliminate existing manual adjustments over time. If the NYISO were required to adopt new billing systems, and a new billing methodology, for ERO charges, it would be much harder to fulfill this commitment.

Fifth and finally, the NYTO Commenters' proposal would impose a costly burden on the NYISO that is unnecessary given NERC's willingness to assume the invoicing

⁷ See, e.g., *Motion to Intervene and Comments of the New York Transmission Owners*, Docket No. EL05-137-000, *et al.* (August 11, 2005).

function⁸ and the absence of any reason to think that direct invoicing, in and of itself,⁹ will lead to the problems that the NYTO Commenters imagine. They offer nothing but unsubstantiated speculation that direct invoicing “may” create administrative burdens, be incompatible with retail access, or increase costs.¹⁰ These hypothetical concerns do not justify the imposition of a major new commitment on the NYISO.

In short, the NYTO Commenters’ request contradicts arguments they have made in the past and ignores the reality that that it would be difficult, time-consuming, and costly for the NYISO to modify its software so that it could allocate and bill ERO costs to LSEs. It would also extend the NYISO beyond wholesale markets as specified in its tariffs. Given that NERC is willing to implement a direct invoicing system for the NPCC that would not materially harm the NYTO Commenters, the Commission should not grant the relief that the NYTO Commenters request.

⁸ At footnote 34 of its August 23rd budget filing, NERC indicated that it was willing to directly invoice LSEs in New York. In its September 26th answer in this proceeding NERC suggested that it might be more efficient, from its perspective, for ISOs/RTOs to handle invoicing. Nevertheless, it did not say that it would be unwilling to perform this function itself. NERC noted that it expected to receive LSE billing information from the regional councils by September 30. Subject to resolving a confidentiality concern, the NYISO will submit the required information to the NPCC so that NERC will be able to implement direct invoicing in a timely manner. The Commission should therefore not issue a ruling that would prevent NERC from directly invoicing LSEs in regions, such as New York, where circumstances make it appropriate.

⁹ The NYTOs have raised a number of concerns about the data NERC proposes to use but those issues are separate from the question of whether it is reasonable for NERC to directly invoice LSEs. These concerns should be addressed directly by NERC.

¹⁰ See, e.g., National Grid at 7, NY TOs at 7.

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc. respectfully requests that the Commission accept its answer and reject the New York Transmission Owners' and National Grid USA's objections to the direct invoicing by NERC of ERO costs to LSEs.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have on this day served the foregoing document on the official service list compiled by the Secretary in these proceedings.

Dated at Washington, DC this 2nd day of October, 2006.

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