

NYISO Board of Directors Decision

On

**Transmission Owners' Appeal of the Management Committee Vote
On Final Bill Challenge Procedures**

Introduction

Consolidated Edison Company of New York, Inc. ("ConEd"), the Long Island Power Authority, Niagara Mohawk Power Corporation, New York State Electric and Gas Corporation, Rochester Gas and Electric Corporation, and the City of New York ("TOs") appeal from a Management Committee ("MC") decision that directed the NYISO staff to develop tariff amendments consistent with the NYISO's proposed "Final Settlement Challenges Policy and Procedure." Multiple Intervenors, an unincorporated association of large commercial and industrial electricity consumers in New York, filed a Motion in Support of the TOs' appeal. Both ConEd and Multiple Intervenors presented oral arguments in support of their challenge to the MC action.

The TOs' appeal raises two issues. First, the TOs argue that the final bill challenge policy unfairly allocates the amounts awarded as a result of successful bill challenges to loads, rather than adjusting the bills between the parties to the underlying transactions. Second, the TOs argue that the billing process should be shortened so final bills can be issued sooner. In their request for relief, the TOs ask the Board to (1) direct the NYISO staff to change the allocation method described in the policy, and (2) return this matter to the NYISO committee process for development of an allocation method that would adjust bills between the specific parties responsible for the transaction in question.

Relevant Tariff Provisions

Our evaluation of this appeal requires us first to examine the final bill challenge policy in the context of the existing tariffs.

Article 7 of the NYISO Services Tariff and the Open Access Transmission Tariff ("OATT") set out billing and settlement procedures. These include monthly invoices, which may be based on estimates. Estimated invoices are subject to true-up and reissuance. Services Tariff section 7.2(A); OATT section 7.1. Customers must pay their invoices within a specified time frame. Services Tariff at 2(B); OATT at 7.1 (ii).

The provisions that are directly relevant to this appeal are in section 7.4 of the Services Tariff and OATT section 7.2, which authorize the NYISO to correct certain billing errors and specify the time in which a Customer can challenge a bill. The Services Tariff provision states "Settlement information shall be subject to correction or adjustment for errors by the ISO in arithmetic, computation or estimation twenty-four (24) months from the month in which service is rendered." It further provides that Customers may challenge the accuracy of "a final billing invoice" any time within twelve months of its issuance but

does not specify when an invoice is "final." The same paragraph requires the NYISO to "correct or adjust" Settlement information if the challenge is successful. Services Tariff section 7.4.¹

The NYISO interprets these provisions as establishing a twenty-four month "adjustment period" followed by a twelve month "challenge period." Under this interpretation, an invoice does not become "final" and ripe for the challenge procedure until the expiration of the adjustment period. Because the tariffs do not provide an alternative funding mechanism, the NYISO includes the payments resulting from any successful final bill challenges in Rate Schedule 1 charges as part of the costs of dispute resolution.² The TOs assert that this allocation is unfair and unreasonable.

Discussion

We find that the allocation to loads of payments resulting from bill challenges that arise after the expiration of the adjustment period is consistent with the NYISO's tariffs.³ The OATT and the Services Tariff authorize the NYISO to correct arithmetic, computational, and estimation errors up to twenty-four months after a transaction. The NYISO has reasonably inferred from this provision that an invoice is only final for purposes of the challenge procedure at the end of that period. The NYISO also reasonably concludes that it has no authority to continue to make inter-party adjustments after twenty-four months. Thus, when a party challenges a final invoice, the only source of payment if the challenge is successful is Rate Schedule 1.

Because we find that the tariffs support the NYISO's approach to final bill challenges, we decline to grant the TOs' request for a directive that the staff immediately implement an alternative methodology. However, we agree with the TOs that there are defects in the present tariff structure. As the TOs correctly point out, the tariffs require them to fund their own refunds, which means ratepayers may in essence pay twice for some services. The tariffs also may allow some parties who were overpaid to retain the overpayments.

We believe the NYISO's bill challenge process should result in the correction of the bills of both sides to a challenged transaction, not a pass-through of these amounts to ratepayers. We also see no reason to allocate funds differently if an error is uncovered as a result of a final bill challenge rather than during the initial adjustment period. If a party has been overpaid, it should return the excess to the party who was overcharged, regardless of when in the billing and bill challenge period the error is found.

¹ The same language appears in the OATT, with the addition of the word "within." Thus, the parallel OATT section reads "Settlement information shall be subject to correction or adjustment for errors by the ISO in arithmetic, computation or estimation, within twenty-four (24) months from the month in which service is rendered." OATT section 7.2A.

² OATT Rate Schedule 1 allows the NYISO to include the costs of "dispute resolution." Such dispute resolution costs include awards made to resolve billing disputes.

³ We note that the TOs bringing this appeal are the principal authors of the provisions they now challenge.

A better rule would make the adjustment period co-extensive with the bill challenge period, so the NYISO would have the ability to correct computational errors discovered through final bill challenges without relying on Rate Schedule 1 as a source of funds. We realize that this approach would effectively require issuing a corrective bill after the “final” bills have been distributed, but fairness and the need for accuracy dictate this result. At the same time, we recognize that the principle of finality requires a definite end to the adjustment process. Thus, corrected bills issued after a successful bill challenge should generally be non-appealable within the NYISO framework.

The TOs' appeal leads us to conclude that the tariffs do not represent the best balance of the competing needs for accuracy, fairness, and finality in the billing process. The MC decision would perpetuate the inequity the TOs have identified in the existing structure. Therefore, we grant the appeal and direct the MC to develop proposed tariff amendments that would provide for inter-party correction of invoices, eliminate the need for reliance on Rate Schedule 1, and achieve finality as early as practicable.

We note that the Committee recently passed, and the Board approved, tariff amendments that would reduce the billing and bill challenge cycle to twelve and four month periods respectively. We believe that this is a positive first step toward addressing the TOs' assertion, with which we agree, that the billing process is excessively long. The MC should consider the effect of these changes when it re-examines the bill challenge procedures in accordance with this decision. We ask the staff to present a proposal that has been vetted by the MC to the Board at its November meeting, for filing with FERC.

The appeal is granted.