

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**Niagara Mohawk Power Corporation**                    )  
**d/b/a National Grid**                                    )           **Docket No. ER08-552-000**

**MOTION TO INTERVENE AND COMMENTS OF THE  
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. §§ 385.212 and 385.213 (2007), the New York Independent System Operator, Inc. (“NYISO”) hereby moves to intervene in the above-captioned proceeding, and provides comments on the rate filing submitted by Niagara Mohawk Power Corporation d/b/a National Grid (“National Grid”). The NYISO does not object to the rate changes proposed by National Grid, but seeks to clarify certain aspects of the proposed rate methodology that rely on data from the NYISO.

**I. Communications**

All communications, correspondence, and documents related to this proceeding should be directed to the following persons:

Robert E. Fernandez, General Counsel and Secretary  
Mollie Lampi, Assistant General Counsel  
New York Independent System Operator, Inc.  
10 Krey Boulevard  
Rensselaer, NY 12144  
Tel: (518) 356-6000  
Fax: (518) 356-4702  
rfernandez@nyiso.com  
mlampi@nyiso.com

Ted J. Murphy  
Hunton & Williams LLP  
1900 K Street, NW, Suite 1200  
Washington, DC 20006-1109  
Tel: (202) 955-1500  
Fax: (202) 778-2201  
tmurphy@hunton.com

## **II. Motion to Intervene**

### **A. National Grid's Rate Proposal**

On February 11, 2008, National Grid submitted to FERC a rate filing pursuant to Section 205 of the Federal Power Act that seeks to change some of the data inputs in the formula used to calculate the Wholesale Transmission Service Charge (“Wholesale TSC”) for service over National Grid’s facilities. The Wholesale TSC applies to transmission service provided to most wholesale transmission customers in a Transmission Owner’s Transmission District, as well as wheels through and exports from such Transmission District. It is calculated -- pursuant to terms set forth in Attachment H of the NYISO Open Access Transmission Tariff (“OATT”) -- by adding the Transmission Owner’s monthly revenue requirement (“RR”), monthly scheduling, system control and dispatch costs (“CCC”), and several other inputs, and then dividing that sum by the Transmission Owner’s monthly wholesale load, otherwise referred to as the billing unit (“BU”).

Currently, the values for the RR, CCC, and BU inputs for National Grid’s Niagara Mohawk subsidiary are fixed, and are set forth in Table 1 of Attachment H. National Grid proposes to amend Attachment H to adopt RR, CCC, and BU values that will change periodically, and that are based on actual market data. Specifically, the RR value will be adjusted monthly to consist of the annualized sum of certain costs incurred by Niagara Mohawk.<sup>1</sup> The CCC value will be adjusted to reflect the annualized sum of the monthly scheduling, system control and dispatch costs invoiced to Niagara Mohawk by the NYISO.<sup>2</sup> The BU value will equal the annualized sum of Niagara Mohawk’s estimated “Corporate Load” -- defined as load in

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<sup>1</sup> See Niagara Mohawk Power Corporation, Amendments to the New York Independent System Operator, Inc. FERC Electric Tariff, Original Volume No. 1, Docket No. ER08-552-000, filed February 11, 2008 (“National Grid Filing”), at Attachment A, Original Sheet No. 413G.

<sup>2</sup> See National Grid Filing at Attachment A, Original Sheet No. 413O.

all Niagara Mohawk subzones, plus certain historically-based estimates, minus certain municipal loads.<sup>3</sup> The proposed tariff amendment states further that:

Once the NYISO load data is available for a month, that month's TSC calculation will be recalculated with BU defined as the annualized sum of the total load for NMPC and ESCO's plus loads for the Power for Jobs, Replacement, Expansion and Economic Development NYPA programs. The resulting true-up adjustment will be treated as a Billing Adjustment per J above.

National Grid asserts that the purpose of its rate filing is to ensure that the Wholesale TSC reflects, as closely as possible, the costs incurred by National Grid, rather than relying on the fixed amounts set forth in Attachment H of the NYISO OATT.

## **B. NYISO's Interest**

The NYISO is the independent body responsible for providing open-access transmission service, maintaining reliability, and administering competitive wholesale electricity, ancillary services and capacity markets in New York State. The Wholesale TSC is calculated by the Transmission Owner pursuant to the terms of the NYISO's OATT, and provided to the NYISO by each Transmission Owner by the 14<sup>th</sup> day of the month prior to the month in which it will be effective.<sup>4</sup> The NYISO then posts Wholesale TSCs on its website on the 15<sup>th</sup> day of the month -- two weeks in advance of the beginning of the month for which they will be effective. The NYISO also gathers and posts the load data that National Grid intends to use as its BU input to true up its Wholesale TSC calculation. The NYISO also gathers and posts subzone load data that National Grid intends to use to true up its BU input in the Wholesale TSC calculation.<sup>5</sup>

For these reasons, the NYISO has a strong interest in the outcome of this proceeding. Furthermore, because the proposed rate revisions will be reflected in the NYISO's OATT, and

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<sup>3</sup> *Id.*

<sup>4</sup> See NYISO OATT, New York Independent System Operator, Inc., FERC Electric Tariff, Original Volume No. 1, Attachment H. Section I.3, at First Revised Sheet No. 402.

<sup>5</sup> This is posted confidentially Transmission Owner by Transmission Owner.

because the rate calculations will be based on data that the NYISO compiles and maintains, the NYISO's interests cannot be adequately represented by any other party. It is therefore appropriate and in the public interest that the NYISO be permitted to intervene in this proceeding, and to participate with full rights as a party.

### III. Comments

#### A. **Billing adjustments calculated as a result of updated load data provided by the NYISO should apply to future service, and should not be used to revise Wholesale TSCs posted by the NYISO for past service**

The NYISO's key concern regarding National Grid's proposal involves the statement in the proposed tariff language that "[o]nce the NYISO load data is available for a month, that month's TSC calculation will be recalculated with BU defined as the annualized sum of the total load for NMPC and ESCO's plus loads for the Power for Jobs, Replacement, Expansion and Economic Development NYPA programs." In particular, the NYISO seeks to clarify the meaning of "recalculated" as used in that provision.

It appears that the recalculation contemplated by this provision is actually an adjustment applied to rates for prospective service only, and not a revision of rates charged for past service. Indeed, such an interpretation is consistent with Niagara Mohawk's characterization of the revision as a "billing adjustment" rather than as a billing revision. It is also consistent with the rule against retroactive ratemaking, which prohibits retroactive revisions to filed rates charged to customers.<sup>6</sup>

It is important to the NYISO that the recalculation performed as a result of updated load data posted by the NYISO apply only to prospective rates, and not past rates. The Wholesale

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<sup>6</sup> See *Consolidated Edison Company of New York, Inc. v. FERC*, 347 F.3d 964, 969 (D.C. Cir. 2003) ("The filed rate doctrine forbids a regulated entity to charge rates for its services other than those properly filed with the appropriate federal regulatory authority. The related rule against retroactive ratemaking prohibits the Commission from adjusting current rates to make up for a utility's over or under-collection in prior periods.").

TSCs that are used to invoice customers are provided by each Transmission Owner to the NYISO by the middle of the month prior to the month in which those rates will be effective. The NYISO then posts those Wholesale TSCs to its website, and the posted TSCs are the rates at which applicable customers take transmission service over the NYISO-controlled transmission system. By contrast, the final load data that Niagara Mohawk would use as its BU value is not posted until several months after the relevant transactions have occurred. Thus, any revised Wholesale TSCs based on that load data would not be calculated until several months after the initial Wholesale TSCs were posted, and until after the transactions using those initial Wholesale TSCs have occurred.

If the TSCs posted for a particular month were to be changed during a later month because of load data posted by the NYISO, the changed rate not only would be unfair to transmission customers -- who were expecting to pay based on the original posted numbers -- but also would impose a burden on the NYISO. The NYISO's software currently is configured to permit the posting of Wholesale TSCs as they are submitted by the individual Transmission Owners, but does not contain the functionality required to allow already-posted TSCs to be revised on a regular basis. Mandating that the NYISO revise already-posted TSCs to reflect updated data would require that the NYISO make software changes to accommodate these revisions. While these software revisions would not be overly burdensome, they will consume the time and attention of personnel who are involved on other projects.

At the same time, revising the applicable Wholesale TSCs would appear to have little benefit for either National Grid or its wholesale transmission customers. Indeed, the use of updated load data to revise a posted TSC is likely to make the rates paid by National Grid's customers only marginally more accurate.

For these reasons, the NYISO submits that the revision of posted Wholesale TSCs based on updated load data is not warranted. The Commission should clarify that the billing adjustments provided for under National Grid's proposed tariff amendments will apply only to prospective Wholesale TSCs, and that the updated load data provided by the NYISO will not be used to revise retroactively Wholesale TSCs that have been calculated and posted for past months.

**B. The Commission should clarify that the posted load data upon which National Grid will rely to issue billing adjustments will be load data posted by the NYISO pursuant to its applicable tariff requirements and manuals, as those may change from time-to-time**

It appears that National Grid intends to rely on the NYISO's existing practices for compiling and posting load data, as those may change from time-to-time, and does not intend that the NYISO adhere to a single method for gathering and posting load data. Indeed, National Grid makes only passing reference to the NYISO's data gathering and posting practices, and does not otherwise address how those practices should be undertaken.

Nonetheless, out of an abundance of caution, the NYISO asks the Commission to clarify that the proposed tariff revisions do not impact the manner in which the NYISO currently compiles and posts load data, and that National Grid will rely on NYISO load data compilation activities, as those may change from time-to-time. The NYISO relies on Transmission Owners to meter their facilities so that the NYISO can calculate and send to the Transmission Owners the hourly load information for compilation and posting on the NYISO website. The NYISO conducts these activities pursuant to Article 13 of the ISO Market Administration and Control Area Services Tariff and the Revenue Metering Requirements Manual. The NYISO should be permitted to continue these practices, or to change them as circumstances require, without constraint by National Grid's tariff filing.

#### **IV. Conclusion**

Wherefore, for the foregoing reasons, the NYISO respectfully requests that the Commission allow it to intervene in this proceeding with full rights as a party, and that the Commission clarify the National Grid tariff filing as requested herein.

Respectfully submitted,

*/s/ Ted J. Murphy*

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Ted J. Murphy  
Hunton & Williams LLP  
1900 K Street, NW  
Suite 1200  
Washington, D.C. 20006-1109  
Tel: (202) 955-1500  
Fax: (202) 778-2201  
Counsel for  
New York Independent System Operator, Inc.

March 17, 2008

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in these proceedings in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. §385.2010.

Dated at Washington, D.C., this 17<sup>th</sup> day of March, 2008.

*/s/ Ted J. Murphy*

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Ted J. Murphy  
Hunton & Williams LLP  
1900 K Street, N.W.  
Washington, D.C. 20006  
Tel: (202) 955-1500  
Fax: (202) 778-2201