

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

**Niagara Mohawk Power Corporation
d/b/a National Grid**

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Docket No. EL08-40-000

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

Pursuant to Rules 212 and 214 of the Commission’s Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. (“NYISO”) hereby moves to intervene and comment in the above-captioned proceeding concerning Niagara Mohawk Power Corporation d/b/a National Grid’s (“National Grid’s”) petition to the Commission for a declaratory order directing the NYISO to adjust certain customer invoices that were previously finalized pursuant to the NYISO tariffs in order to correct an error in metering data supplied by National Grid.²

I. Copies of Correspondence

Copies of correspondence concerning this filing should be served on:

Robert E. Fernandez, General Counsel
Elaine D. Robinson, Director of Regulatory Affairs
*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
erobinson@nyiso.com
mlampi@nyiso.com

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

¹ 18 C.F.R. §§ 385.212 and 385.214.

² Capitalized terms that are not otherwise defined herein shall have the meaning specified in Article 2 of the NYISO Market Administration and Control Area Services Tariff (“Services Tariff”) and Article 1.0 of the NYISO Open Access Transmission Tariff (“OATT”).

*Kevin W. Jones³
Hunton & Williams LLP
951 East Byrd Street
Richmond, VA 23219
Tel: (804) 788-8200
Fax: (804) 344-7999
kjones@hunton.com

* -- Persons designated for service.

II. Motion to Intervene

The NYISO is a Not-For-Profit Corporation responsible for providing open-access transmission service, maintaining reliability, and administering competitive wholesale electricity, ancillary services, and capacity markets in New York State. Pursuant to its Commission-approved tariffs, the NYISO is responsible for calculating customer settlements and for administering a process for the review, correction, and finalization of customer invoices. Because National Grid requests that the Commission direct the NYISO to adjust certain customer invoices that have already been finalized pursuant to the NYISO tariffs, the NYISO has a direct and substantial interest in this proceeding. This interest cannot be adequately represented by any other party. The NYISO, therefore, should be permitted to intervene in this docket.

III. Comments

The NYISO tariffs explicitly prohibit it from adjusting customer invoices that have been finalized pursuant to the tariffs absent an order from the Commission or a court of competent jurisdiction.⁴ Through its petition, National Grid requests that the Commission issue such an order directing the NYISO to adjust finalized customer invoices for the service months of March 2005 through August 2005 to correct for errors in the metering data supplied by National Grid for those months.

³ The NYISO respectfully requests waiver of 18 C.F.R. § 385.203(b)(3) (2006) to permit service on counsel for the NYISO in both Washington, D.C. and Richmond, Virginia.

⁴ Services Tariff § 7.4; OATT § 7.2A.

The NYISO does not take a position as to the merits of National Grid's petition. However, the NYISO urges that, in considering National Grid's request - or any similar request - to reopen finalized customer invoices, the Commission carefully consider the importance to NYISO customers of both accuracy and financial certainty. As described in the NYISO's filing to establish the current restriction on changes to finalized invoices, a process that promotes the finality of prior settlements is vitally important to the effective functioning of the NYISO markets.⁵ In addition, the NYISO strongly disagrees with National Grid's assertion that the NYISO has the discretion to modify finalized customer invoices and seeks this opportunity to clarify this point.⁶ Finally, while not taking a position as to the merits of National Grid's petition, the NYISO notes that National Grid could address this matter directly with the affected parties in a manner that would not require the NYISO to reopen six months of finalized customer invoices dating back to early 2005.

The NYISO's settlement procedures establish explicit time periods for the NYISO and its customers to review, challenge, and correct customer invoices.⁷ The NYISO relies on Transmission Owners such as National Grid, acting in their capacity as meter authorities, to provide the NYISO with accurate and timely metering data that is essential to this process.⁸ The NYISO also relies on each customer to carefully review its settlement data during the appropriate period to confirm the accuracy of that data. At the conclusion of the settlement review process,

⁵ *New York Independent System Operator, Inc., New York Independent System Operator, Inc.'s Proposed Tariff Revisions Regarding the Review, Challenge, and Correction of Customer Settlement Information*, Docket No. ER06-783-000 at 7 (March 27, 2006) ("Section 7.4.C of the Services Tariff has also been revised to more clearly establish the finality of a Close-Out Settlement by explicitly prohibiting the NYISO from making changes to an invoice after the issuance of a Close-Out Settlement for that month absent Commission or judicial intervention. This clarification will provide certainty regarding the finality of prior settlements that is vitally important to the effective functioning of the NYISO markets.").

⁶ *Niagara Mohawk Power Corporation d/b/a National Grid, Petition for Declaratory Order*, Docket No. EL08-40-000 at 11-13 (February 13, 2008) ("National Grid Petition").

⁷ National Grid provides an accurate description of the explicit time periods for the NYISO and its customers to review, challenge, and correction of customer invoices. See *National Grid Petition* at 4-7. As such, the NYISO has not repeated it here.

⁸ See *Agreement Between New York Independent System Operator and Transmission Owners* § 2.05 ("Each Transmission Owner shall have the responsibility for providing metering data in its Transmission District to the ISO...").

after making any necessary corrections that have been identified, the NYISO issues a finalized invoice that cannot be adjusted by any party, including the NYISO, absent an order from the Commission or a court of competent jurisdiction.⁹

In the case at hand, National Grid provided erroneous metering data to the NYISO affecting the service months of March through August 2005. This data was provided to the NYISO near the end of the customer settlement review and correction process, but within the window for Transmission Owners to update such data and within the time period during which customers are responsible for reviewing and verifying settlement information.¹⁰ To support this review and verification, National Grid and the other affected customers had access to the NYISO's Web-Based Reconciliation application, which indicated the meter data that had been submitted to the NYISO by National Grid, and to the NYISO's Decision Support System application, which indicated the resulting customer settlements that are the subject of National Grid's petition. Despite having access to the relevant meter and settlements data as described above, neither National Grid nor the other affected customers identified errors within the applicable period of review.

By the time that the error was identified and called to the attention of the NYISO, the NYISO had already issued finalized invoices for those months and was prevented from making any further adjustments.¹¹ National Grid, however, asserts that the NYISO incorrectly applied the time limits for corrections established in its tariffs when it determined that it did not have authority to make further adjustments to the finalized invoices affected by National Grid's metering error.¹² Without providing any support for its claim, National Grid argues that simply

⁹ Services Tariff § 7.4; OATT § 7.2A.

¹⁰ *National Grid Petition* at 7-10. The tariffs now include revised procedures applicable to customer invoices issued on or after January 1, 2007, under which metering data must be provided to the NYISO and finalized earlier in the customer settlement review and correction process. *See* Services Tariff § 7.4.2.A and OATT § 7.2A.2a.

¹¹ *National Grid Petition* at 11.

¹² *Id.* at 11-13.

because its metering calculation error occurred late in the settlement review process the NYISO's position is somehow "not compelled by the language of its tariff."¹³

National Grid's assertion is not supported by the NYISO tariffs nor the materials that it submits along with its petition. As stated in National Grid's petition, the metering error in question was introduced in the process of correcting another identified error.¹⁴ This is a scenario contemplated by the relevant provisions of the NYISO tariffs. In fact, it is to address just this scenario that, following the period for NYISO corrections, a final review period of twenty-five (25) days is provided to allow customers to review the implementation of those corrections and provide comments to the NYISO.¹⁵

Customers' responsibilities during the final twenty-five (25) day period for review of revised customer settlement information are clear and well understood. In fact, they are explicitly described in the materials submitted by National Grid.¹⁶ Furthermore, the NYISO provides email notices to all customers prior to each twenty-five (25) day period reminding them of this responsibility. Nevertheless, neither National Grid nor the other affected customers identified the metering errors in question during the final twenty-five (25) day review period. As a result, the NYISO moved to finalize the customer settlements for the relevant periods as prescribed by its tariffs.

National Grid's position that the NYISO could have made further adjustments to finalized invoices would require the NYISO to exercise discretion simply not afforded to it under its tariffs. As noted above, the NYISO is expressly prohibited from making further adjustments to finalized invoices absent an order from the Commission or a court of competent jurisdiction.

¹³ *Id.* at 12.

¹⁴ *Id.* at 7-9.

¹⁵ Services Tariff § 7.4.1.C provides that, following the period for NYISO corrections to customer settlements, "the ISO shall provide all Customers with the details of the corrections or adjustments ... and shall then provide a period of twenty-five (25) days for customers to review the corrected settlement information and provide comments to the ISO regarding the implementation of those corrections or adjustments."

¹⁶ *National Grid Petition*, Attachment 4, "Shortened Settlement Cycle Straw Proposal: Billing and Price Correction Task Force Meeting, dated July 28, 2006" at 11.

The NYISO's determination to act in compliance with its tariffs was not, as National Grid asserts, unjust and unreasonable. The NYISO had no authority to do otherwise.

The NYISO's process for review, challenge, correction, and finalization of customer settlements was the product of extensive discussions among the NYISO and its stakeholders. The resulting procedures strike a balance between customers' interest in attaining accurate settlements on the one hand and the financial certainty afforded by finalized invoices that are not subject to continuing revisions on the other. Inherent in this balancing of interests is the possibility that a settlement error may be discovered after the timeframe provided for the NYISO to make corrections to customer settlements for a given service month. This was viewed by the NYISO and a majority of its stakeholders as a reasonable tradeoff to promote both accuracy and financial certainty in the administration of customer settlements. Furthermore, as recognized in the NYISO tariffs, the Commission may order such remedy as it determines to be appropriate should a serious error in customer settlements be discovered following the period provided for the NYISO to apply corrections.¹⁷ The NYISO would seek such action by the Commission only in extraordinary cases where a failure to do so would result in a significant injustice.¹⁸ The NYISO takes no position as to whether the facts underlying National Grid's petition rise to this level and defers to the Commission as to the appropriate outcome in this instance.

¹⁷ See Services Tariff § 7.4; OATT § 7.2A.

¹⁸ Contrary to the statements by Pro-Energy Development, LLC, ("Pro-Energy") and Fluent Energy Corporation ("Fluent") the NYISO has never requested that the Commission extend the settlement deadlines established in its tariffs and has never asked the Commission to reopen a finalized customer invoice. *Motion to Intervene and Comments of Pro-Energy Development, LLC in Support of Petition for Declaratory Order*, Docket No. EL08-40-000 at 4 (March 13, 2008); *Motion to Intervene and Comments of Fluent Energy Corp. in Support of Petition for Declaratory Order*, Docket No. EL08-40-000 at 5 (March 13, 2008). Pro-Energy and Fluent may be referring to the NYISO's invocation of a provision of its tariffs that allows it to take up to a total of six months to evaluate a customer settlement challenge rather than the two months ordinarily provided where, due to extraordinary circumstances, the NYISO requires additional time to evaluate the challenge or implement a correction. Services Tariff § 7.4; OATT § 7.2A. This stage of the process comes prior to the issuance of a finalized customer settlement invoice, and the procedure referenced does not require any action by the Commission. (While the Commission has not expressly invited reply comments in this proceeding, the NYISO requests leave, to the extent the Commission determines it necessary, to submit the preceding response to Pro-Energy and Fluent. The NYISO's response is intended to assist the Commission by clarifying the record on key points and correcting factual inaccuracies.)

If the Commission grants National Grid's petition, the NYISO requests that the Commission provide the NYISO with adequate time to adjust the affected invoices. The NYISO does not possess the capability to limit the scope of any such adjustment to only those parties or those markets that were specifically affected by National Grid's metering calculation error. For this reason, if the Commission grants National Grid's petition, the NYISO will have to re-settle all customer invoices issued by the NYISO for the March 2005 through August 2005 service months. The NYISO estimates that such a process would take at least six months to complete and would require the dedicated attention of several NYISO employees to implement.

IV. Conclusion

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc., respectfully asks that the Commission (i) allow the NYISO to intervene in this proceeding; and (ii) accept the NYISO's comments.

Respectfully submitted,

/s/ Ted J. Murphy
Ted J. Murphy
Counsel for
New York Independent System Operator, Inc.

Ted J. Murphy
Hunton & Williams LLP
1900 K Street, N.W.
Suite 1200
Washington, D.C. 20006

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 this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2008).

Dated at Washington, DC this 14th day of March, 2008.

By: /s/ Ted J. Murphy
Ted J. Murphy
Hunton & Williams LLP
1900 K Street, NW
Washington, DC 20006-1109
(202) 955-1500