

Discussion Regarding Possible Third-Party Dispute Resolution Mechanism to Address Unresolved Customer Settlement Challenges

Billing and Price Correction Task Force June 19, 2006 Meeting

Background

- The tariffs' general ADR provisions establish timeframes that are incompatible with the timeframes established for issuing Close-Out Settlements under the new rules for review, challenge, and correction of customer settlements ("Settlement Correction Rules").
- The NYISO has discussed with market participants that the new Settlement Correction Rules can be read to supersede the tariffs' general ADR provisions.
- In response, some market participants have expressed a desire for an expedited third-party mechanism for resolving disputes over Close-Out Settlements.
- The NYISO agreed to examine such a mechanism with a view toward development of a straw proposal for an expedited third-party dispute resolution process that would be compatible with the new Settlement Correction Rules.
- Having analyzed such a mechanism, the NYISO has identified certain issues and concerns that require market participants' input.

Goals

- Need to preserve timely process for issuance of Close-Out Settlements.
- Need to preserve the finality and certainty afforded by Close-Out Settlement under new Settlement Correction Rules.
- Need to provide market participants adequate process to pursue good faith settlement disputes.

Issues and Concerns

- When is third-party dispute resolution appropriate in the Close-Out Settlement process?
 - Third-party involvement would only be helpful after an issue has been pursued through the settlement correction and challenge process.
 - Once the NYISO makes a final substantive determination on a settlement challenge, third-party resolution could be sought.
- Issues should be limited to those raised in the settlement challenge.
- Binding arbitration would necessitate substantial procedural requirements that would be time-consuming, possibly affecting finalization of Close-Out Settlements.
- Non-binding mediation allows for more limited procedural requirements and a faster timeline, but the third party's involvement may have diminished benefits.
- Unresolved customer settlement disputes may have policy implications best handled by FERC, potentially diminishing the value of third-party involvement relative to adjudication by FERC.
- If third-party dispute resolution would not be helpful, the process could be waived.
- Abuse of any dispute resolution mechanism by one market participant could greatly affect issuance of Close-Out Settlements for all market participants.