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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 calculates customer settlements and administers a process for reviewing, correcting, and finalizing customer invoices. Because NYSEG requests that the Commission direct the NYISO to re-bill NYSEG and National Grid for certain charges that have already been finalized pursuant to the settlement provisions of 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.

Comments

The NYISO tariffs explicitly prohibit the NYISO from adjusting customer invoices that have been finalized pursuant to its tariffs absent an order from the Commission or a court of competent jurisdiction.⁴ NYSEG's petition requests that the Commission issue such an order directing the NYISO to "re-bill" NYSEG and National Grid to correct errors in finalized customer invoices for the service months of November 1999 through February 2008. The errors resulted from the submission to the NYISO of inaccurate tie-line metering data. Because re-

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 NYISO Market Administration and Control Area Services Tariff ("Services Tariff") § 7.4; NYISO Open Access Transmission Tariff ("OATT") § 7.2A.

issuing the bills for the one hundred affected service months would be exceedingly difficult, NYSEG specifically requests that the Commission order the NYISO to work with NYSEG and National Grid to estimate the amount that NYSEG asserts it is owed and to re-bill this resulting amount to NYSEG and National Grid.⁵

The NYISO respectfully requests that the Commission deny NYSEG's petition for the following reasons, as discussed in detail below:

(A) NYISO customers rely on the financial certainty afforded by finalized metering data. The NYISO tariffs establish specific time periods for reviewing and challenging metering data. Customers are obligated to thoroughly review their metering data during these time periods after which time such data is finalized. A Commission order requiring the NYISO to re-bill NYISO customers approximately \$21 million for certain charges that were previously finalized over a one hundred month period dating back nearly ten years to the NYISO's inception would upset the long-settled financial expectations of these NYISO customers and would be clearly inconsistent with the intent of the NYISO's settlement provisions to provide customers with financial certainty. The NYISO does not believe that such extraordinary action by the Commission is warranted under the circumstances described by NYSEG.

(B) In addition, the NYISO is concerned that Commission action could inadvertently harm the energy service companies ("ESCOs") in National Grid's service territory. These ESCOs were not involved in any way with the metering errors underlying NYSEG's petition; however, depending upon the disposition of NYSEG's petition, they might be required to bear unexpected costs related to invoices finalized years ago.

(C) As discussed below, the NYISO attempted unsuccessfully to facilitate a compromise among the parties. Inasmuch as NYSEG does not request that the NYISO re-issue

⁵ NYSEG Petition at p. 2 ("NYSEG is not requesting that the NYISO reissue bills for the relevant periods - NYSEG understands that it would be a challenge for the NYISO and would not be a practical resolution of these issues.").

bills for the affected service months in strict accordance with the NYISO's filed rate, the NYISO is not convinced that NYSEG and National Grid cannot resolve this matter between themselves without NYISO or Commission intervention.

(D) Finally, while this case is styled as a request for bill corrections, it really underscores a perennial problem in the NYISO's markets, namely: a lack of accurate metering. Putting aside the equities of whether or not to change ten-year-old bills, the more fundamental question is why New York's metering authorities have not brought their meters into compliance with industry standards. Failure to upgrade New York's meters will (i) perpetuate billing errors, (ii) impede finalizing settlements, and (iii) increase the risk of defaults and bad debt losses arising from bills that remain outstanding while corrections occur. In sum, the Commission has before it an opportunity to supply the proper economic incentives for New York metering authorities to rectify this issue.

A. The Commission Should Not Upset NYISO Customers' Settled Expectations Regarding Previously Finalized Invoices

Both NYSEG and National Grid failed to identify recurring metering errors in the tie-line metering data at issue within the time frames established in the NYISO tariffs for the review and challenge of such data. The Commission should not permit any party to revisit the invoices and upset the settled expectations of NYISO customers for service months dating as far back as 1999.

The NYISO's settlement provisions establish specific time periods for the NYISO and its customers to review, challenge, correct, and finalize settlement information.⁶ These provisions culminated from extensive discussions among the NYISO and its stakeholders that balanced customers' competing interests in attaining accurate settlements with their interests in obtaining the financial certainty of finalized invoices not subject to continuing revisions.⁷ Customers

⁶ See Services Tariff § 7.4; OATT § 7.2A.

⁷ See NYISO Management Committee, Motion Regarding Proposal to Shorten the NYISO Settlement Cycle, September 29, 2006, available at: http://www.nyiso.com/public/webdocs/committees/mc/meeting_materials/2006-

simply cannot make sound business decisions without the confidence that their financial obligations will not be revised years later. Settlement processes that promote finality and financial certainty are vitally important for the NYISO markets to function effectively.⁸

NYSEG's petition demonstrates the possibility that NYISO customers may discover settlement errors after bills have been finalized. Nevertheless, a majority of NYISO stakeholders viewed the possibility of uncorrected errors as an acceptable trade-off for the benefits of financial certainty. Because the NYISO cannot correct errors discovered after relevant deadlines, customers must commit resources to carefully and thoroughly evaluate their invoices to obtain the benefits of financial certainty.

The NYISO's settlement processes can only function effectively if customers carefully review their settlement information. All NYISO customers understand this responsibility to thoroughly review their settlement information and challenge any errors within tariff prescribed time periods. Indeed, the NYISO provides notices to customers within the settlement time periods reminding them of this responsibility and of upcoming deadlines.

In the case at hand, the parties were responsible for reviewing their tie-line metering data and challenging any errors within tariff prescribed time frames.⁹ Neither NYSEG nor National Grid timely identified inaccurate tie-line metering data for the one hundred affected service months. NYSEG asserts that it did not identify or challenge the inaccurate tie-line metering data

09-29/agenda_06_Motion_re_settlements_cycle_proposal.pdf (“Whereas, the NYISO and Market Participants seek to balance the benefits of financial certainty with adequate assurances regarding the accuracy of NYISO-issued customer invoices. . .”).

⁸ See 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 p. 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.”).

⁹ See Services Tariff 7.4.2.A(i); OATT 7.2A.2a(i). For the period at issue, NYSEG had the following periods of time to review its tie-line metering data: at least 12 months for those service months from start-up to September 2002, at least 4 months for those service months from October 2002 to December 2006, and fifty-five days from January 2007 to present.

because the errors were small and hard to detect.¹⁰ NYSEG argues that the errors were difficult to detect and thus extraordinary, not the “garden variety” errors for which the time frames in the NYISO’s settlement provisions were meant to apply.¹¹ The NYISO tariffs do not, however, distinguish between “garden variety” errors and other types of errors.¹² Rather, the NYISO tariffs clearly require customers to timely review all tie-line metering data and challenge any errors within specific time frames.¹³ The errors in question are the type of metering errors that the NYISO’s settlement review provisions were established to address.

In asserting that the Commission should grant the order it seeks, NYSEG relies on the Commission’s June 30, 2008, order requiring the NYISO to correct the finalized invoices affected by a metering error by National Grid.¹⁴ In that case, National Grid inadvertently submitted erroneous metering data at a late stage of the settlement process.¹⁵ The affected customers were not aware that their data had been changed late in the settlement process and did not identify the error until after their invoices were finalized.¹⁶ The Commission determined that those specific circumstances were extraordinary because the affected customers were not on notice regarding the late adjustment of their metering data and should not, therefore, be faulted for their untimely action in reviewing and identifying the error due to “the unusual nature and timing of the errors.”¹⁷

NYSEG states that extraordinary circumstances exist in this instance as well, which it identifies as “the ‘unusual nature’ of the errors themselves - both in magnitude and

¹⁰ See NYSEG Petition at pp. 6, 11-12.

¹¹ NYSEG Petition at p. 20 (“These are not the type of ‘garden variety’ minor billing errors for which the 55-day cut-off is intended to establish finality.”).

¹² See Services Tariff 7.4.2.A(i); OATT 7.2A.2a(i).

¹³ See *id.*

¹⁴ Niagara Mohawk Power Corporation, Order Granting Petition for Declaratory Order, Docket No. EL08-40-000 (June 30, 2008) (“National Grid Order”); NYSEG Petition at pp. 17 and 20.

¹⁵ National Grid Order at pp. 4-5.

¹⁶ National Grid Order at pp. 4-5.

¹⁷ National Grid Order at P 24.

elusiveness.”¹⁸ The NYSEG’s failure to identify a recurring metering error within the prescribed time frames does not necessarily create extraordinary circumstances warranting Commission action. Moreover, the magnitude of these errors is simply the result of NYSEG’s failure to identify a small metering error in its tie-line metering data over one hundred service months.

Unlike the National Grid case, where the Commission found that affected customers did not have a reasonable opportunity to review their metering data, NYSEG had the full length of time prescribed by the tariffs to review its tie-line metering data.

As NYSEG did not timely identify the metering errors and as the circumstances underlying the errors do not appear to be extraordinary, the Commission should not permit NYSEG to upset the settled expectations of NYISO customers for service months dating as far back as 1999.

B. Additional NYISO Customers May Be Harmed By Re-Billing NYSEG and National Grid

NYSEG’s petition implies that National Grid is the only counter-party that may be affected by a Commission order granting NYSEG’s request. In actuality, National Grid is not the only party serving load in the affected territory. National Grid uses its retail access tariffs to allocate unaccounted for energy costs among multiple parties serving load in the affected territory. The NYISO is concerned that depending on the specific disposition of NYSEG’s petition, certain ESCOs in National Grid’s territory may also be affected. These ESCOs were not responsible in any way for the metering error at issue, have received finalized invoices for all of the service months at issue, and have no reason to expect that invoices that were finalized in accordance with the NYISO tariffs as far back as 1999 may now be subject to adjustments.

The process for determining the proper allocation of their load and associated costs for a nearly ten-year period would require a significant commitment of NYISO resources, diverting it

¹⁸ NYSEG Petition at p. 20.

from other pressing tariff and regulatory commitments. Over the period at issue, certain ESCOs have ceased operating in National Grid's service territory and others have begun. Several ESCOs might, therefore, be apportioned costs that are not in any way attributable to them.

C. NYSEG and National Grid Can Resolve This Issue Without a Commission Order

The NYISO has attempted unsuccessfully to facilitate a compromise among the parties. Inasmuch as NYSEG does not request that the NYISO re-issue bills for the affected service months in strict accordance with the NYISO's filed rate, there is nothing to preclude NYSEG and National Grid from resolving this issue between themselves without outside intervention. As any action by the Commission could harm the settled expectations of other NYISO customers and undermine NYISO customers' incentive to address settlement issues within the time frames prescribed in the NYISO tariffs, the Commission should consider ordering that National Grid and NYSEG resolve this matter between themselves. The NYISO stands ready to continue to assist the parties reach an amicable resolution.

While NYSEG has requested that the Commission require the NYISO to supervise NYSEG and National Grid to establish the proper amounts due to NYSEG, it has not suggested a process by which the NYISO should supervise the parties and mediate disagreements that may arise.¹⁹ Without a clear process in place, it is probable that these issues will return to the Commission.

D. The Commission Should Examine the Current State of the Wholesale Metering Infrastructure in New York State

The erroneous charges at issue arose from inaccurate metering data and are symptomatic of an inadequate wholesale metering infrastructure in New York State. The NYISO and its customers depend on Transmission Owners, in their capacity as meter authorities, to provide the

¹⁹ NYSEG's assumptions about how its proposed process might work may turn out to be overly optimistic. *See* NYSEG Petition at p. 17 ("NYSEG and National Grid have engaged in an informal arbitration before the NYISO and have been unsuccessful in reaching final resolution of this matter. However, NYSEG anticipates that NYSEG, National Grid, and NYISO would be able to agree on the estimated amount of energy involved . . .").

timely and accurate metering data that enables the NYISO to administer its billing and settlement process. Further, the process requires that customers carefully review their settlement information within the time frames established in the NYISO tariffs.²⁰ As such, it is essential that the meters and related processes in New York State meet certain industry standards as detailed in the NYISO's Revenue Metering Requirements manual.²¹ A failure to meet these standards will (i) perpetuate metering errors, (ii) impede finalizing settlements, and (iii) increase the risk of defaults and bad debt losses arising from bills that remain outstanding while corrections occur. An order by the Commission requiring the NYISO to re-bill NYSEG and National Grid for erroneous billing charges that resulted from their own metering errors that persisted for years will only act as a disincentive to the NYISO's on-going efforts to promote necessary metering improvements by indicating to Transmission Owners that they will not suffer financial consequences for failing to properly maintain and support their metering infrastructure.²² Rather, the Commission should use this opportunity to reinforce appropriate economic incentives for New York metering authorities to bring their metering infrastructure into compliance with industry standards as described in detail in the NYISO's Revenue Metering Requirements Manual.

At start-up, the NYISO and Transmission Owners agreed that the metering infrastructure then in place would be acceptable for the initial operation of the NYISO markets.²³ Since then, in light of an aging and out-dated wholesale metering infrastructure in New York and the

²⁰ 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, unless other parties are authorized by the appropriate regulatory authority to provide metering data. Each Transmission Owner shall be responsible for collecting and making available to the ISO billing quality metering data and any other information for the Transmission District required by the ISO for billing purposes.”).

²¹ The NYISO's Revenue Metering Requirements manual restates the metering standards adopted by the New York State Public Service Commission.

²² Despite NYSEG's complaint that National Grid had “a systematic pattern of metering problems,” NYSEG's own metering error resulted in twice as much harm to itself (approximately \$13.5 million) as the metering errors associated with National Grid. *See* NYSEG Petition at pp. 10-11.

²³ Agreement Between New York Independent System Operator and Transmission Owners § 2.05 (“The Parties agree that the metering and data acquisition systems currently in place will be acceptable for initial ISO operation.”).

shortening settlement cycles established in the NYISO tariffs, the NYISO has taken what action it could to encourage Transmission Owners to upgrade and improve their metering infrastructure consistent with industry standards. In 2005, the NYISO, working with its stakeholders and Transmission Owners' technical experts, developed the Revenue Metering Requirements Manual, which contains a compilation of industry standards for wholesale metering infrastructure. The NYISO has since gone to significant lengths to encourage Transmission Owners to bring their metering infrastructure into compliance with the specifications of this manual.²⁴ However, as of the time of this filing, the NYISO has identified that the instrument transformers at 153 locations and the meters and communication infrastructure at 139 locations still do not meet the minimum standards established in the Revenue Metering Requirements Manual.

The problematic state of the wholesale metering infrastructure in New York at this time creates significant delays in the finalization of settlements for NYISO customers, which results in market inefficiencies and unnecessary increases in customer costs. A properly maintained metering infrastructure, on the other hand, would improve the timeliness and accuracy of customer settlements and provide the NYISO with additional opportunities to shorten its settlement process.²⁵ If, however, the New York metering infrastructure does not improve, errors such as the ones at issue in NYSEG's petition will continue to occur with all of their adverse affects on the NYISO markets and will likely lead to additional burdensome claims before the Commission for relief outside of the NYISO tariffs.

²⁴ See Transition Plan for Metering System Compliance with Revenue Metering Requirements Manual, NYISO Billing and Accounting Working Group, December 11, 2008, *available at*: http://www.nyiso.com/public/webdocs/committees/bic_bawg/meeting_materials/2007-12-11/BAWG_Transition_Plan_Metering_Sys_Compliance_121107.pdf.

²⁵ Such action would be consistent with the Commission's call for ISOs to shorten their settlement periods to lower collateral and lessen the risk and impacts of customer defaults. Policy Statement on Credit-Related Issues for Electric OATT Transmission Providers, Independent System Operators and Regional Transmission Organizations, 109 FERC ¶ 61, 186, in Docket No. PL05-3-000 at PP. 21-24 (November 19, 2004).

E. The Commission Should Not Require the NYISO to Re-Issue Invoices for the Affected Service Months

If, despite the NYISO's concerns, the Commission decides to grant NYSEG's request, the NYISO asks that the Commission only require it to re-bill NYSEG and National Grid in the manner described in NYSEG's petition.²⁶ That is, the parties will agree on estimates of appropriate energy values and load information and will rely on published NYISO prices to create an estimate of amounts owing or owed. The NYISO will then bill NYSEG and National Grid in one lump sum for the resulting amounts.

A requirement that the NYISO re-issue, rather than simply re-bill, customer invoices for the one hundred affected service months would require the NYISO to recalculate the invoices for all NYISO customers for all one hundred affected months using the NYISO's billing software and all of the actual billing determinant data. As the NYISO has replaced its settlement software and made additional changes to its settlement procedures in the nearly ten year period at issue, the NYISO would have to reconstitute its billing system as it existed throughout multiple time periods. Such a process could only be accomplished over a multi-year period and would require an unduly burdensome commitment of resources and personnel by the NYISO, would divert personnel from other pressing tariff and regulatory commitments, and could expose a greater number of NYISO participants to financial uncertainty.

²⁶ See NYSEG Petition at pp. 2, 17, and 18 ("NYSEG is requesting a rebilling to avoid the expense and massive dedication of resources that would be required to reissue all of the NYISO invoices since 1999.").

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 _____

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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 22nd day of January, 2009.

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