

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

July 12, 2006

In Reply Refer To:
New York Independent System
Operator, Inc.
Docket Nos. ER06-783-000 and
ER06-783-001

Ted J. Murphy, Esq.
Counsel for New York Independent System Operator, Inc.
Hunton & Williams LLP
1900 K. Street, N.W.
Washington, DC 20006

Dear Mr. Murphy:

1. On March 24, 2006, as amended on May 16, 2006, New York Independent System Operator, Inc. (NYISO) filed amendments to the Settlement Correction Provisions¹ under sections 7.2A of its Open Access Transmission Tariff (OATT)² and 7.4 of its Market Administration and Control Area Services Tariff (Services Tariff). The proposed amendments are conditionally accepted for filing to be effective May 24, 2006, as requested, subject to NYISO filing revised tariff sheets reflecting the treatment of the initiation of ADR proceedings regarding billing disputes, as discussed below, within 30 days of the date this order issues.

¹ In its transmittal letter, NYISO uses the term “Settlement Correction Provisions” to describe the provisions entitled “Billing Disputes” under sections 7.2A of its OATT and 7.4 of its Services Tariff.

² New York Independent System Operator, Inc. FERC Electric Tariff, Original Volume No. 1.

Background

NYISO's Current Settlement Correction Provisions

2. Under section 7.2A of its OATT and section 7.4 of its Services Tariff, NYISO has up to twenty-four months after it issues a billing invoice to a customer to review and correct settlement information for services furnished prior to October 1, 2002 and up to twelve months for services furnished beginning October 1, 2002. This initial correction period ends when NYISO issues a "Completed Settlement Component" for a portion or portions on an invoice, thereby beginning the customer challenge period for any items addressed in the Completed Settlement Component.

3. A customer has up to twelve months from the date on which the Completed Settlement Component is issued to challenge the accuracy of the Completed Settlement Component for services furnished prior to October 1, 2002, and up to four months for services furnished beginning October 1, 2002. The existing tariff provisions provide that NYISO shall evaluate all challenges within "a reasonable time" after the conclusion of the challenge period. Further, if NYISO makes corrections or adjustments to a challenged Completed Settlement Component it must provide the details to affected customers. Affected customers then have thirty days to review the corrections or adjustments and submit comments to NYISO. At the end of the thirty-day customer comment period NYISO is required to make any final corrections or adjustments and issue a "Close-out Settlement." Close-out Settlements are not subject to further challenge by customers.

Proposed Modifications

4. NYISO is proposing several tariff revisions which it indicates are being made to expedite the timing of and to improve and clarify the process of review, challenge and correction of settlement information. According to NYISO, these tariff revisions are the first of two planned sets of revisions to improve the settlement process. First, NYISO states that while it has been its practice to notify customers of corrections it makes to settlement errors during the initial review period after an invoice is issued, the proposed revisions to its tariffs will explicitly require NYISO to so notify affected customers.³ Second, NYISO indicates that although the concept of a "Completed Settlement Component" was adopted to enable it to release a selected portion or portions of a monthly invoice for customer review, in practice it has concluded its review and initiated the customer review period for each invoice in its entirety.⁴ NYISO's proposal eliminates the concept of "Completed Settlement Component" and instead treats each

³ NYISO Transmittal at 5.

⁴ *Id.*

monthly invoice as a whole for purposes of review, challenge, and correction of the settlement information, as NYISO maintains is its current practice.⁵ In addition, the proposed tariff revisions require a customer to clearly identify a settlement challenge as such, and to state and establish the basis for the challenge.⁶

5. NYISO's proposed tariff revisions also replace the "reasonable time" afforded for it to make corrections or adjustments after the conclusion of the customer challenge period, with "as soon as possible within two months" after the conclusion of the challenge period or up to six months if the NYISO provides notice to the customer of extraordinary circumstances requiring additional time.⁷

6. Further, the proposed revisions shorten the final customer review period from thirty days to twenty-five days and allow for an additional twenty-five day customer review period if errors in the implementation of a correction or an adjustment are identified during the first twenty-five day customer review period.⁸ Also, the proposed tariff revisions explicitly prohibit NYISO from making changes to an invoice after the issuance of a Close-Out Settlement for that month absent Commission or judicial intervention.⁹

7. Finally, the proposed tariff modifications temporarily exempt the allocation of certain congestion-related charges and credits among transmission owners, as defined in Attachment N of the OATT and Part V of Attachment B of the Services Tariff, from the Close-Out Settlement provisions. NYISO indicates that this exemption is necessary due to pending changes to the methodology used to allocate Transmission Congestion Contract congestion rent shortfalls and surpluses.¹⁰

8. On May 16, 2006, NYISO filed substitute sheets to reinsert section 7.5 into the Services Tariff. NYISO states that due to an administrative error it inadvertently deleted section 7.5 in its original filing. In addition, on May 19, 2006 NYISO filed a motion to permit its amended filing to become effective on May 24, 2006, the date it originally requested in its March 24, 2006 filing.

⁵ *Id.*

⁶ *Id.* at 6.

⁷ *Id.* at 7.

⁸ *Id.*

⁹ NYISO Transmittal at 7.

¹⁰ On March 17, 2006, in Docket No. ER06-769-000, NYISO made a tariff filing to revise Attachment N. The filing was accepted by unpublished letter order issued on April 14, 2006.

Notice and Pleadings

9. Notices of NYISO's filings were published in the *Federal Register*, 71 Fed. Reg. 18,311 (2006) and 71 Fed. Reg. 32,066 (2006), with interventions and protests due on or before April 14, 2006 and June 6, 2006 respectively. The New York Public Service Commission filed a notice of intervention and the New York Transmission Owners¹¹ filed a timely motion to intervene. On April 17, 2006, the National Energy Marketers Association (NEMA) filed a motion to intervene and protest out-of-time. On May 2, 2006, NYISO filed an answer to NEMA's protest. No protests were filed in response to the May 16, 2006 filing.

10. NEMA first complains that the proposed amendments do not expressly state whether or not they are prospective only or whether they may be applied retroactively to pre-existing customer challenges. According to NEMA, while NYISO proposes an effective date of May 24, 2006 for the proposed revisions, it does not explain how the changes will be applied to pre-existing customer challenges. NEMA requests that, to the extent the revised Settlement Correction Procedures are applied to customer challenges made prior to May 24, 2006, they be rejected.

11. Next NEMA argues that, although the revised tariff provisions recognize a stakeholder's right to seek redress from the Commission, the revised tariff provisions do not address a stakeholder's ability to seek redress through applicable alternative dispute resolution (ADR) procedures nor do they expressly contemplate the correction or modification of a Close-Out Settlement resulting from ADR. NEMA requests that the proposed tariff provisions be rejected or, alternatively, revised to include language that permits stakeholders to seek redress through ADR.

12. In response to NEMA's protest, NYISO argues that NEMA mischaracterizes the proposed revisions as a retroactive impairment of rights. Further, NYISO argues, while customer challenges and NYISO corrections pertain to prior settlement months by definition, the proposed provisions affect the administrative process for the review, challenge and correction of prior settlements, not the substantive determinations regarding those settlements.¹² Notwithstanding its assertion that application of the proposed provisions to prior settlement months will not retroactively impair any customer's rights, NYISO states that it has proposed to treat existing customer settlement

¹¹ The New York Transmission Owners are: Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., LIPA, New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

¹² NYISO Answer at 2.

challenges as complying with the proposed provisions and states that, to the extent that it requires any additional information from a customer under the revised provisions, it will provide the customer with a reasonable opportunity to provide that information.¹³

13. In its answer, NYISO states that its filing addresses NEMA's concerns regarding ADR procedures.

Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the notice of intervention and the timely unopposed motion to intervene serve to make the entities that filed them parties to this proceeding. Given its interest, the early stage of this proceeding, and the lack of undue prejudice or delay, we will grant NEMA's late-filed motion to intervene.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 385.213(a)(2) (2005), bars answers to protests unless allowed by the decisional authority. NYISO's answer provides information that has assisted us in our decisionmaking, and accordingly we will accept NYISO's answer.

B. Substantive Issues

16. We conditionally accept the proposed tariff revisions, as amended, effective May 24, 2006, subject to NYISO filing revised tariff sheets as discussed below.

17. We share NEMA's concern regarding retroactive application of the new procedures. NYISO states in its answer that the proposed revisions will not retroactively impair any customer's rights, and indicates that it will "treat existing customer settlement challenges as complying with [the proposed] provisions."¹⁴ Treating pre-existing challenges as complying with the revisions is not equivalent to allowing the settlement provisions that a customer relied upon when it initiated a challenge to govern the settlement correction process. Once a challenge has been initiated it would be inequitable to change the procedures that govern that challenge. We find that NYISO should not be allowed to retroactively change the process for customer challenges existing prior to the effective date of the proposed revisions, and that the revisions shall apply to customer challenges made on or after the May 24, 2006 effective date.

¹³ *Id.* at 3.

¹⁴ *Id.*

18. With regard to opportunities for ADR, in its filing, NYISO acknowledges the need to develop expedited ADR procedures that will be consistent with the revised timelines established under the proposed Settlement Correction Procedures. It also emphasizes that it is working on these procedures and that they will be part of the second phase of proposed revisions. In addition, NYISO states that it has indicated to customers that it would treat the initiation of an ADR proceeding regarding a billing dispute as an “extraordinary circumstance” triggering the longer six month timeframe for issuance of a Close-Out Settlement.¹⁵ We are satisfied that this will sufficiently guarantee that customers will also be able to seek redress through ADR in the interim. However, the tariffs should be revised to state that NYISO will treat the initiation of an ADR proceeding regarding a billing dispute as an extraordinary circumstance.

19. For the reasons stated above, we conditionally accept the proposed tariff revisions, as amended, effective May 24, 2006, subject to NYISO filing revised tariff sheets reflecting the treatment of the initiation of ADR proceedings regarding billing disputes, as an extraordinary circumstance, as discussed above, within 30 days of the date this order issues.

By direction of the Commission.

Magalie R. Salas,
Secretary.

¹⁵ NYISO Transmittal at 4-5.