133 FERC ¶ 61,028
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

New York Independent System Operator, Inc. Docket No. ER09-1204-001

ORDER DENYING REHEARING

(Issued October 12, 2010)

1. This order addresses a request for rehearing filed by the New York State Electric & Gas Corporation (NYSEG) and Rochester Gas and Electric Corporation (RGE) of the Commission's order issued in the above matter.[1] The July 24 Order dealt with a request by the New York Independent System Operator, Inc. (NYISO) for a waiver, to the extent necessary, of section 3.1 of Attachment K of the Open Access Transmission Tariff's (OATT or tariff) or such other action to permit NYISO not to correct invoices pertaining to 37 affected service months for which NYISO had issued finalized invoices. The July 24 Order found, among other things, that there was no need for a waiver of Attachment K of the OATT to permit NYISO not to correct invoices for the past periods at issue and it declined NYSEG's request to order NYISO to correct the errors and issue refunds for the affected service months. As discussed below, the Commission denies NYSEG and RGE's request for rehearing.

I. Background

2. At NYISO's start-up, transmission customers with existing Transmission Wheeling Agreements (TWA) were given the choice to either retain their existing TWAs (grandfathered rights) or convert those rights to Transmission Congestion Contracts (grandfathered TCC). Under the provisions of Attachment K of NYISO's OATT, a transmission customer that retained its Grandfathered Rights could inject and withdraw power at the Point of Injection and Point of Withdrawal identified in the underlying TWA and Attachment L, Table 1 of NYISO's OATT, without having to pay (or be paid, if congestion was negative) the Congestion Component of the Transmission Usage Charge (TUC), provided that the transaction was scheduled in the Day-Ahead Market.

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[1] *New York Independent System Operator, Inc.*, 128 FERC ¶ 61,086 (2009) (July 24 Order).

3. NYISO stated that, in June 2005, an undetected software error occurred while NYISO was modifying the manner by which energy prices were stored for external proxy buses. As a result of this error, NYISO asserted that its settlement code failed to provide the appropriate relief for the Congestion Component of the TUC to one transmission customer (NYSEG) when it scheduled NYSEG's seven (7) MW grandfathered rights in accordance with section 3.1 of Attachment K of the OATT. Specifically, NYISO stated that the TUC for NYSEG's transactions should not have contained a congestion charge.

4. NYISO asserted that its staff discovered the error in April 2009 and corrected the settlement code during the same month. NYISO stated that it informed the affected parties and adjusted the invoices for July 2008 through March 2009, which were still open for review, challenge, and correction pursuant to NYISO's OATT. However, NYISO stated that invoices for the 37 service months of June 2005 through June 2008 had been finalized, and therefore, according to section 7.2A of its OATT, could not be corrected absent an order from the Commission or a court of competent jurisdiction.[2] NYISO claimed that the TUC assessed on transactions involving this seven (7) MW grandfathered right that included the Congestion Component, have been visible to NYSEG for the entire period of this settlement error. NYISO requested waiver, to the extent necessary, of Attachment K of the OATT to avoid correcting the invoices of all affected customers as a result of NYISO's improper calculation of congestion charges for the 37-month period. In the alternative, NYISO proposed that the Commission order it to provide the congestion relief to NYSEG in the form of a lump-sum recalculation of the invoices of NYSEG and the transmission owners that mistakenly received congestion payments from NYSEG.

5. Several parties intervened arguing that the Commission should not order NYISO to reopen "finalized" invoices because market participants rely on the financial certainty of closed settlements in accordance with the procedures set forth in NYISO's OATT. For example, Niagara Mohawk d/b/a National Grid (Niagara Mohawk) complained that had it no ability to revise charges to past customers, and therefore, refunds would result in the "corrected" amounts being invoiced to current customers rather than the customers who actually benefitted as a result of the error and who should rightfully be assessed these

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[2] *See* NYISO OATT section 7.2A. Section 7.2A establishes the process and timeframe for review, challenge, and correction of Transmission Customer invoices. For purposes of this Section 7.2A, "finalized" data and invoices shall not be subject to further correction, including by the ISO, except as ordered by the Commission or a court of competent jurisdiction: *provided, however,* that nothing herein shall be construed to restrict any stakeholder's right to seek redress from the Commission in accordance with the Federal Power Act. (emphasis provided)

charges.[3] NYSEG, however, argued that the Commission should not grant NYISO's requested waiver because it would leave NYSEG without a remedy by not allowing it to request that the Commission direct NYISO to correct the erroneous invoices. NYSEG did not refute NYISO's allegation that the congested charges assessed against it were visible during the entire settlement period.

6. In the July 24 Order, the Commission ruled that it would not order NYISO to reopen its invoices in order to refund erroneously billed congestion charges to NYSEG. The Commission also determined that approval of a waiver of Attachment K of NYISO's OATT was not necessary for NYISO to honor section 7.2A related to the finality of "settled" invoices. The Commission stated that there is no dispute that the errors were visible on NYSEG's invoices, and that NYSEG's failure to carefully review its invoices was a primary reason that the errors were not discovered earlier. Further, the Commission found that the only entity other than NYISO who could have discovered the error was NYSEG.

7. On August 21, 2009, NYSEG and RGE filed a request for rehearing of the July 24 Order. On September 10, 2009, NYISO filed an answer to NYSEG and RGE's rehearing request.

II. <u>Request for Rehearing</u>

8. NYSEG and RGE argue that the Commission's July 24 Order is arbitrary and capricious because it does not satisfy the Commission's obligation to articulate a "rational connection between the facts found and the choices made."[4] NYSEG and RGE essentially raise the same arguments on rehearing that were raised in their protest of NYISO's initial filing. NYSEG and RGE identify the following issues on rehearing stating that the Commission erred because it did not adequately: 1) explain what standard it applied when interpreting the provisions of NYISO's OATT; 2) justify giving greater weight to one tariff provision over another; or 3) explain how giving NYISO's invoicing provisions more weight than the tariff's rate provisions satisfies its core obligation under the Federal Power Act (FPA) to ensure just and reasonable rates for electric transmission service. Finally, NYSEG and RGE contend that the Commission also failed to explain how its tariff interpretation is consistent with its precedent regarding refunds relating to tariff violations.

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[3] Niagara Mohawk, Motion to Intervene and Comments at p 2, ER09-1204-000 (June 17, 2009).

[4] *Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 43 (1983) (internal quotation marks omitted); *Keyspan-Ravenswood, LLC v. FERC*, 474 F.3d 804, 809 (D.C. Cir. 2007).

9. In its answer, NYISO states that the Commission's decision in the July 24 Order was reasonable. NYISO argues the Commission considered NYSEG and RGE's arguments in light of the relevant NYISO tariff provisions and case law and then determined that refunds were not appropriate. NYISO contends the Commission has previously determined that finalized NYISO invoices should only be re-opened in "extraordinary circumstances."[5]

A. NYISO's OATT and the Filed Rate Doctrine

10. NYSEG and RGE argue that the July 24 Order's rationale for denying refunds is perfunctory because the order states that NYSEG should have noticed the overcharges although NYISO itself failed to notice them. NYSEG and RGE state that the July 24 Order erroneously concludes that NYSEG's failure to identify the NYISO overcharges was a "primary reason that the error was not discovered earlier."[6] NYSEG and RGE aver that this statement is not supported by the record and improperly shifts the burden to the customer to ensure that the charges under the OATT comply with the filed rate. Rather than starting with its general policy of providing refunds for overcharges, NYSEG and RGE claim the Commission seems to be putting responsibility for ensuring that the NYISO charges just and reasonable rates on the customer rather than the jurisdictional entity in contravention of the FPA. NYSEG and RGE also argue that the July 24 Order does not give adequate weight to NYSEG's concerns and thus fails to balance the equities in this situation, resulting in an abuse of discretion.

11. NYSEG and RGE allege that the Commission's decision not to order refunds disregards the fact that NYSEG has been overcharged in violation of specific tariff provisions. NYSEG and RGE argue that these congestion charges were in clear violation of the provisions in Attachment K of NYISO's tariff. NYSEG and RGE contend that under the FPA, the Commission's central obligations are to ensure that rates are just and reasonable and consistent with filed tariffs, and to protect consumers.[7] NYSEG and RGE contend the equitable reasons for ordering refunds are strong because the rates charged were excessive under the tariff and NYISO could easily refund the money directly to NYSEG.

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[5] *Niagara Mohawk Power Corp*., 123 FERC ¶ 61,314, at P 24-25 (2008) (*Niagara Mohawk*)

[6] July 24 Order, 128 FERC ¶ 61,086 at P 20.

[7] *Atlantic Refining Co. v. Public Service Commission of New York*, 360 U.S. 378, 388 (1959) ("[Commission regulation] was so framed as to afford consumers a complete, permanent and effective bond of protection from excessive rates and charges.").

12. Next, NYSEG and RGE aver that the public policy objectives underlying the filed rate doctrine are relevant here because FERC's central mission is not to provide certainty for completed transactions but to ensure that the filed rate will always be charged, even where settled expectations are upset as a result.[8] NYSEG and RGE state the July 24 Order seems to elevate the invoicing provisions over the actual rate provisions in accordance with the filed rate doctrine. NYSEG and RGE claim the July 24 Order indicates that the Commission will disregard the billing cut-off provision in the tariff only in "extraordinary circumstances." However, NYSEG and RGE maintain that the correct interpretation of the tariff is to ensure that the rate provisions are respected and only under "extraordinary circumstances" would a refund that is easy to implement not be granted. NYSEG and RGE state the Commission should not interpret a tariff in a way that prevents it from enforcing the filed rate doctrine when its interpretation would lead to unjust and unreasonable rates being preserved.[9]

13. Finally, NYSEG and RGE argue the July 24 Order erred in deciding that NYISO did not need a waiver of Attachment K of the OATT. NYSEG and RGE aver that by its own admission, NYISO violated its tariff when it failed to provide congestion relief to NYSEG under Attachment K of the OATT which resulting in overcharging NYSEG by $1.25 million. NYSEG and RGE state that while section 7.2A of the OATT may prevent NYISO from correcting certain finalized invoices without a Commission order, the provision cannot be interpreted to relieve NYISO of its obligations under Attachment K. Yet, NYSEG and RGE claim that the July 24 Order incorrectly implies that tariff obligations vanish once the claims limitation applies.

B. <u>Commission Precedent</u>

14. NYSEG and RGE state that the Commission's refusal to direct NYISO to refund overcharges represented an unexplained departure from Commission precedent regarding the appropriateness of refunds in the case of tariff violations. NYSEG and RGE argue that when considering a recent waiver request related to a NYISO error, the Commission properly asked the NYISO to "discuss with its market participants whether any course of

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[8] *Cities of Anaheim, et. al. v. California Independent System Operator Corp.*, 95 FERC ¶ 61,197 (2001) (the filed rate is to be construed strictly).

[9] *Long Island Power Authority v. New York Independent System Operator, Inc.*, 118 FERC ¶ 61,109 (2007) (rejecting tariff interpretation that could lead to an unjust and unreasonable result); *see also Texas Eastern Transmission Corp.*, 49 FERC ¶ 61,395 (1989) (rejecting tariff interpretation that would produce an unjust and unreasonable result).

restitution is feasible"[10] when an order would have the undesirable consequences of denying an injured party a remedy. NYSEG and RGE allege that a course of restitution is feasible and NYISO has stated that this situation could be resolved completely and accurately using NYISO's manual adjustment mechanism. NYSEG and RGE argue that the proposed method of recovery would not unduly burden NYISO or the other market participants because the amounts due have been calculated previously by NYISO.

15. In addition, NYSEG and RGE assert that the Commission has previously ordered and approved settlement due to errors in the NYISO markets,[11] generally declining to do so when the error was very small,[12] the remedy extremely complex,[13] or where no party protested a tariff waiver or requested refunds.[14] NYSEG and RGE also contend that the Commission has also ordered refunds by other Independent System Operators (ISO) when an error by the ISO has caused market participants to be billed incorrectly.[15] NYSEG and RGE aver that the Commission did not distinguish its actions from any of its precedent and instead, errs when it distinguishes its decision in *Niagara Mohawk* where refunds were awarded.

16. Moreover, NYSEG and RGE argue that the circumstances in the instant proceeding compare favorably with *Niagara Mohawk*. NYSEG and RGE claim that,

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[10] *New York Independent System Operator, Inc*., 126 FERC ¶ 61,100, at P 17 (2009) (February 9 Order).

[11] *KeySpan-Ravenswood, LLC v. New York Independent System Operator, Inc*., 127 FERC ¶ 61,086 (2009) (*KeySpan*); *New York Independent System Operator, Inc*., 117 FERC ¶ 61,305 (2006); *H.Q. Energy Services, Inc. v. New York Independent System Operator, Inc*., 115 FERC ¶ 63,068 (2006); *New York Independent System Operator, Inc.*, 115 FERC ¶ 61,026 (2006); *New York Independent System Operator, Inc.*, 114 FERC ¶ 61,267 (2006); *New York Independent System Operator, Inc*., 112 FERC ¶ 61,347 (2005).

[12] *New York Independent System Operator, Inc*., 125 FERC ¶ 61,005 (2008).

[13] *New York Independent System Operator, Inc*., 122 FERC ¶ 61,211, at P 147 (2008); s*ee also New York Independent System Operator, Inc*., 92 FERC ¶ 61,073, at 61,037 (2000).

[14] *New York Independent System Operator, Inc*., 125 FERC ¶ 61,005.

[15] *DTE Energy Trading, Inc. v. Midwest Independent System Operator, Inc.*, 119 FERC ¶ 61,109 (2007) (*DTE Energy*); *see also Exelon Corp. v. PPL Electric Utilities Corp*., 117 FERC ¶ 61,176 (2006) (*Exelon*).

although there was more opportunity for NYSEG to spot the errors than there was for the parties in *Niagara Mohawk*, the process required to correct the error is simpler and there are fewer entities involved. NYSEG and RGE aver that in *Niagara Mohawk*, no single entity suffered harm as great as the $1.25 million at stake here. Finally, NYSEG and RGE assert that in *Niagara Mohawk*, it was the entity requesting the correction that made the error and not NYISO as in this case.

17. NYSEG and RGE state that in *NRG Power*, NYISO took actions to correct the prices charged.[16] In *NRG Power*, NYSEG and RGE contend NRG complained that the corrections took place after the period for correction had passed and claimed the actions were inconsistent with the filed rate. NYSEG and RGE assert that the Commission rejected that argument and stated that "[t]o comply with the provisions of the tariff, the formula rate must be applied as intended using the correct inputs. Any other result is not an approved rate."[17] NYSEG and RGE further claim that in *NRG Power*, the Commission stated that the time limit for ISO computational corrections did not prevent the NYISO from correcting the incorrect clearing prices.[18]

18. Finally, NYSEG and RGE allege that the Commission's order deviates from the above cases without explanation. Therefore, NYSEG and RGE aver that the decision is in error and should be reversed.

III. Discussion

A. Procedural Matters

19. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 713(d)(1) (2010), prohibits an answer to a request for rehearing. Therefore, we reject NYISO's answer to NYSEG and RGE's rehearing request.

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[16] *NRG Power Marketing, Inc. v. New York Independent System Operator, Inc.*, 91 FERC ¶ 61,346 (2000) (*NRG Power*). In addition to *NRG Power*, NYSEG and RGE cite several other cases in the footnote to support their arguments that the Commission has either ordered rebilling or refunds in previous NYISO and other ISO/RTO proceedings. Specifically, NYSEG and RGE cite: *Black Oak Energy, LLC. v. New York Independent System Operator, Inc.*, 122 FERC ¶ 61,261 (2008) (*Black Oak*); *Quest Energy, L.L.C. v. The Detroit Edison Corp*., 106 FERC ¶ 61,227 (2004) (*Quest*); *ISO New England*, 90 FERC ¶ 61,141, at 61,245 (2000) (*ISO New England*). NYSEG and RGE, August 21, 2009, Petition for Rehearing at P 10, n. 37.

[17] *NRG Power*, 91 FERC at 62,165.

[18] *Id*. at 62,166.

B. Substantive Matters

20. For the reasons stated below, the Commission denies NYSEG and RGE's request for rehearing of the July 24 Order.

21. With regard to the July 24 Order's determination that the filed rate doctrine was not violated by our decision not to order refunds, NYSEG and RGE state that the Commission's order improperly shifts the burden to the customer to ensure that charges under the OATT comply with the filed rate. NYSEG and RGE further allege the July 24 Order seems to elevate the invoicing provisions over the actual rate provisions in violation of the filed rate doctrine. This analysis of the July 24 Order is erroneous. In the July 24 Order, the Commission considered the relevant facts surrounding NYISO's reported violation of section 3.1 of Attachment K to its OATT regarding congestion charges, along with the relevant finality provisions of settled bills in section 7.2A, and determined that both provisions make up the filed rate.[19] The Commission considered the extent to which the affected party, in this case NYSEG, was able to ascertain the errors in question and the effect of any decision to order refunds on other parties. We also sought to strike a balance between the finality provisions of section 7.2A of NYISO's OATT and the congestion relief provisions of section 3.1 of Attachment K of NYISO's OATT.

22. Based on our analysis of the language in NYISO's OATT, the Commission ruled that both section 7.2A and section 3.1 of Attachment K made up the filed rate. The Commission determined that, in order to give proper effect to the meaning of NYISO's OATT, both provisions of the tariff must be read together. This analysis led us to conclude that the proper reading of the OATT was to allow the settled invoices to remain closed. As stated in the July 24 Order, one purpose of the filed rate doctrine is rate predictability for customers.[20]

23. Another factor which led to our decision not to order refunds was the extent to which a refund would be detrimental to NYISO's markets and its members who had no notice of the errors, but would be negatively impacted by the ordering of refunds for the affected 37 months. NYSEG did not allege that it could not have detected the errors through careful examination of its bills from NYISO. The other parties, however, had no ability to discover these charges and no ability to revise charges to past customers, which would lead to customers that did not benefit from the incorrect bills becoming responsible for these charges. Therefore, in addition to giving proper effect to all

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[19] July 24 Order, 128 FERC ¶ 61,086 at P 22.

[20] *Id.* P 22 (citing *Towns of Concord, Norwood, and Wellesley, Massachusetts v. FERC*, 955 F.2d 67, 75 (D.C. Cir. 1992) (*Towns of Concord*)).

relevant tariff provisions, we determined that, in this case, where the charges were visible to NYSEG and where NYSEG failed to challenge its bills from NYISO during the settlement period, it would not be just and reasonable to reopen finalized invoices.

24. The Commission noted in the July 24 Order that the finality provisions in NYISO's OATT were negotiated by its stakeholders and reflect their decision on the appropriate balance between the need for invoice accuracy and financial certainty.[21] One of the benefits that goes along with rate certainty and the finality of invoices issued to NYISO's market participants is the tradeoff that, at some point, incorrect bills would become final under section 7.2A of the OATT and not subject to further correction by NYISO. The finality of invoices pursuant to section 7.2A is not predicated on compliance with other tariff provisions. NYISO is prohibited from changing or even correcting settled invoices under the OATT after a date certain, regardless of whether its invoices are later found to be erroneous. While section 7.2A of the OATT states the Commission or a court may order that finalized invoices be reopened, we have exercised our right to do so since the adoption of this provision of the tariff under extraordinary circumstances where significant injustice would result in the absence of Commission action.[22] It does not appear that this provision is meant to usurp the normal timeline for NYISO and its participants to review and finalize invoices by operating as some sort of routinely-invoked "safety net." Moreover, the Commission has long recognized the important role that billing finality and the resulting financial certainty play in the effective functioning of RTO markets.[23]

25. NYSEG and RGE argue that the Commission failed to follow its own precedent of granting refunds for tariff violations by citing previous NYISO cases where the Commission ordered reinvoicing or refunds when NYISO violated its tariff. We note that the Commission has considerable discretion when determining whether to order refunds.[24] The Commission has exercised its discretion not to order refunds after a

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[21] July 24 Order, 128 FERC ¶ 61,086 at P 19.

[22] *Niagara Mohawk*, 123 FERC ¶ 61,314 at P 25.

[23] *Southwest Power Pool, Inc*., 114 FERC ¶ 61,289, at P 124 (2006) ("Since RTO billings disputed successfully by one participant, generally must be paid by others, there would be too much uncertainty on billing and settlement issues if a party was allowed to dispute an invoice for months or years after the transmission provider had been paid and it had in turn paid the market participants.").

[24] *Towns of Concord*, 955 F.2d at 76 ("As to the necessity of refunds to deter violations of the statute, the [Federal Power] Act leaves this determination to the Commission's expert judgment.").

reasoned evaluation of the relevant facts in a particular proceeding,[25] and this case likewise warrants us doing so.

26. The July 24 Order contained a discussion of the similarities of this case with *Niagara Mohawk* but determined that *Niagara Mohawk* was distinguishable.[26] As stated in the July 24 Order, the *Niagara Mohawk* errors arose uncharacteristically at the end of the market settlement process, when incorrect data was introduced into allegedly "corrected" bills. In the instant case, the incorrect information was listed on the actual invoices themselves. In *Niagara Mohawk*, the utility had only a 25-day review period to detect the errors submitted by NYISO; in this case, NYSEG had at least seven months to protest the errors of some of the invoices and up to a year to protest others. We also stated that the Commission, in the event of extraordinary circumstances, has reopened finalized invoices when it has determined that significant injustice would result in the absence of Commission action.[27] However, we determined that the facts of this case did not present such circumstances. We see no reason to change that decision because NYSEG and RGE have not put forth any persuasive reason to cause us to reevaluate our decision in the July 24 Order.

27. With regard to the other NYISO cases cited by NYSEG and RGE in support of their allegation that the Commission routinely order refunds in cases where NYISO has violated its tariff, we, likewise, do not find this argument persuasive as these cases are distinguishable from the case at bar. Three of the NYISO cases cited by NYSEG and RGE include orders with refunds as part of a settlement agreement between the parties to resolve cases pending before the Commission.[28] Of the other NYISO cases cited by NYSEG and RGE: 1) one involved a complaint over the parties' interpretation of certain provisions in NYISO's tariff in which the Commission denied the complaint, and thus did not to order refunds and agreed with NYISO regarding the disputed provisions;[29] 2) three involved cases where the settlement periods in question were still "open" and not

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[25] *E.g.*, *Mirant Americas Energy Marketing, L.P.*, 112 FERC ¶ 61,056, at P 24 (2005) (explaining that equities of the case did not warrant refunds).

[26] July 24 Order, 128 FERC ¶ 61,086 at P 21.

[27] *Id.* P 20.

[28] *KeySpan*, 127 FERC ¶ 61,086; *H.Q. Energy Services, Inc. v. New York Independent System Operator, Inc.*, 115 FERC ¶ 63,068; *New York Independent System Operator, Inc.*, 114 FERC ¶ 61,267.

[29] *See Black Oak*, 122 FERC ¶ 61,261.

finalized as is the 37-month period at issue here;[30] 3) one involved a case where the Commission ultimately decided not to order refunds (although it told the parties to investigate whether refunds where appropriate);[31] and 4) one involved a complaint regarding NYISO's corrections to market prices in the spot energy market, filed by the complainant within a few days of the computer error that sent incorrect market price signals to NYISO's markets (not billing corrections for a single customer, as is the case here).[32]

28. Finally, NYSEG and RGE also cite other cases (i.e. *DTE Energy*,[33] *Exelon*,[34] *Quest*,[35] *ISO New England*,[36] and *Wisconsin Electric*[37]) to show that the Commission has granted refunds in previous RTO/ISO cases, but they are distinguishable because, at the time, the RTOs/ISOs in question did not have specific tariff provisions governing the time limit for invoice corrections similar to section 7.2 of NYISO's OATT. Therefore, these cases do not support a different outcome from the one we reach here.

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[30] *See New York Independent System Operator, Inc.*, 112 FERC ¶ 61,347; *New York Independent System Operator, Inc.*, 115 FERC ¶ 61,026; *accord New York Independent System Operator, Inc.*, 117 FERC ¶ 61,305 (NYISO's petition for limited temporary tariff waiver stated that the close out settlements were at or near their close out periods, and, absent a Commission order granting a waiver, NYISO would have to reissue the invoices and not close out its settlements in a timely manner.)

[31] *See* February 9 Order, 126 FERC ¶ 61,100 at P 17; *see also New York Independent System Operator, Inc*., 129 FERC ¶ 61,217 at P 48 (2009).

[32] *See NRG Power*, 91 FERC at 62,165-66.

[33] *DTE Energy*, 119 FERC ¶ 61,109.

[34] *Exelon*, 117 FERC ¶ 61,176.

[35] *Quest*, 106 FERC ¶ 61,227.

[36] *ISO New England*, 90 FERC ¶ 61,141.

[37] *Wisconsin Electric Power Co. v. Midwest Transmission System Operator, Inc.*, 114 FERC ¶ 61,005 (2006).

The Commission orders:

NYSEG and RGE's request for rehearing is hereby denied for the reasons stated herein.

By the Commission. Commissioner LaFleur is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.