

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New York State Electric and Gas Corporation) Docket Nos. EL09-26-000
) EL09-26-001

**MOTION FOR LEAVE TO INTERVENE OUT OF TIME OF
NYSEG SOLUTIONS, INC.**

Pursuant to Rules 212 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. §§ 385.212 and 385.214, and the “Notice Clarifying Prior Notice” issued October 21, 2009 in the above captioned proceeding, NYSEG Solutions, Inc. (“NSI”) respectfully moves for leave to intervene herein out of time. In support hereof, NSI states as follows:

1. NSI is a licensed retail supplier of electricity and natural gas services in New York State with its principal office located at 31 State Street, Suite 401, Binghamton, NY 13901 and is a Load Serving Entity (“LSE”) under the terms of the New York Independent System Operator (NYISO) tariff. The person to whom all notices and communications with respect to these proceedings should be sent is:

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**I. BACKGROUND: THE PENDING OFFER OF SETTLEMENT
AND THE RESERVED ISSUE**

2. On September 21, an offer of settlement (“Offer of Settlement”) was filed in the above-captioned proceedings that proposed a partial settlement of certain issues

relating to invoicing errors by the New York Independent System Operator (NYISO) between 1999 and 2008. The metering errors were discovered after the normal challenge and correction periods of the NYISO's tariffs had elapsed and affected certain market participants in the New York State Electric & Gas and Niagara Mohawk subzones, as described in the appendices to the Offer of Settlement.

3. The Offer of Settlement would resolve certain issues, including the extent of the errors and a proposed methodology for correcting the invoicing errors to be used if the Commission were to order the NYISO to do so (notwithstanding the fact that the normal challenge and correction periods under the applicable NYISO tariff had lapsed).

4. The parties were unable to reach agreement, however, as to whether as a matter of policy and/or law there should be a correction of the inaccurate invoices for past periods. The Offer of Settlement designates this as the "Reserved Issue" that is presented to the Commission for resolution. Joint Explanatory Statement, at 4.¹ The Offer of Settlement accordingly also reserved whether the NYISO should use the Stipulated Methodology to correct the NYISO invoices to market participants.

5. Appendices to the Offer of Settlement show the percentage share (in MWh) attributable to purchases by each of the affected load serving entities ("LSE's) during the relevant prior periods. *See, e.g.* Offer of Settlement, Appendix 5 (showing totals for all four meter error locations). As shown there, NSI is among the principally-affected LSEs.

¹ As stated there, the "Reserved Issue" is stated as:

whether, based on the agreed-upon facts in the Joint Stipulation and any other facts or considerations deemed relevant by the Commission, the Commission should direct the NYISO to correct the NYISO's invoices to market participants in certain NYSEG and National Grid subzones that were affected by the metering errors identified in the Joint Stipulation.. See also Settlement Agreement, at P 5.

6. The Settling Parties also agreed that a supplemental notice in this proceeding was warranted, that late interventions should be allowed for a period of 30 days after notice, and that all parties, including such late interveners, should be permitted to comment on the Settlement Agreement and file briefs on the Reserved Issue. Joint Explanatory Statement, at 5.

II. REQUEST FOR LEAVE TO INTERVENE OUT OF TIME

7. NSI respectfully moves for leave to intervene herein. As noted above, NSI is a Load Serving Entity (“LSE”) in New York State subject to the terms and conditions of the New York Independent System Operator (NYISO) tariff and is included in the appendices to the Settlement Offer as one of the LSEs that will be subject to invoicing if the Commission ultimately determines to order NYISO to do so. As a result, NSI has a substantial interest that will be directly affected by the outcome of proceedings in this docket and which cannot be adequately represented by any other party.

8. NSI respectfully submits that late intervention is warranted here. On October 21, 2009 the Commission issued a Notice Clarifying Prior Notice (“Clarifying Notice”) stating that any person wishing to become a party to the captioned proceeding may file a motion to intervene out of time within 30 days of that notice (which is to say by November 12, 2009). The Clarifying Notice was issued in response to a request by some of the parties to the Offer of Settlement that specifically asked the Commission to authorize such late interventions for a period of 30 days following Commission notice

and to allow such late intervening parties to file comments and briefs on the reserved issue.²

9. NSI is named in the appendices to the Offer of Settlement as one of the LSEs that may be financially responsible if the Commission orders NYISO to submit corrected invoices for periods outside the challenge and correction periods provided by the NYISO tariff. These LSEs were not identified prior to the settlement process and the Offer of Settlement expressly contemplates the opportunity for affected LSEs to intervene for the limited purpose of addressing the Reserved Issue. Moreover the instant motion is being filed within the 30 day period provided in the Commission's Clarifying Notice.

10. For the above reasons, NSI respectfully submits that good cause exists to allow its intervention herein. NSI accepts the factual record as it is to date and will limit its participation consistent with the Offer of Settlement and the Clarifying Notice.

² See Request For Clarification Of Niagara Mohawk D/B/A/ National Grid And The New York Independent System Operator, Inc. filed October 20, 2009 (available in e-Library at: <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=12178937>).

WHEREFORE, NYSEG Solutions, Inc. respectfully requests leave to intervene out of time in the above-captioned proceedings.

Respectfully submitted,

NYSEG SOLUTIONS, INC.

By: *PM Marston Esq.*
Philip M. Marston, Esq.
Its Attorney

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November 12, 2009

CERTIFICATE OF SERVICE

I hereby certify pursuant to Rule 2010 that I have this day caused a copy of the foregoing document to be served on each person designated on the official service list for the above-captioned proceedings as compiled by the Secretary.

Dated: November 12, 2009

PM Marston Esq.
Philip M. Marston, Esq.

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