



successfully negotiated a settlement agreement, but have been unable to reach an agreement regarding whether the Commission should direct the NYISO to correct the invoices that were affected by the metering errors. The Settling Parties have agreed to present this issue as a “Reserved Issue” to the Commission for resolution. Additionally, the Settling Parties requested that the Commission, *inter alia*, (1) authorize late interventions for a period of 30 days from the date of the Notice; (2) extend the comment periods under Rule 602(f), 18 C.F.R. § 385.602(f), of the Commission’s Rules of Practice and Procedure to provide that initial and reply comments on the Settlement Agreement be due 30 and 40 days, respectively, from the date the Notice is issued; (3) allow any party to Docket No. EL09-26-000, including late intervenors, and Commission Trial Staff to comment on the Settlement Agreement and to submit briefs to the Commission addressing the Reserved Issue; and (4) adopt the proposed briefing schedule providing that initial briefs would be due 45 days from the date of the Notice and reply briefs would be due 15 days following the submission date for initial briefs.

NYPAA submitted a late motion to intervene which was granted by Chief Administrative Law Judge, Curtis L. Wagner, Jr. NYAPP is an unincorporated association of nine municipal electric utilities and four rural electric cooperative located throughout New York State, serving approximately 500 MW of load. The Members are community-owned municipal and cooperative utilities in New York State. NYAPP’s Members are “Load Serving Entities” (“LSEs”) as defined in the Commission’s Regulations, 18 C.F.R. § 41.2(b)(2), and in Section 217(a)(2) of the FPA.

NYAPP has Members located on the electric system of Niagara Mohawk, including the City of Sherrill and Oneida-Madison Electric Cooperative. Several

NYAPP's Members are located on the electric system of NYSEG, including the Delaware County Electric Cooperative, Oneida-Madison Electric Cooperative, Otsego Electric Cooperative and Steuben Rural Electric Cooperative.

## **II. INITIAL COMMENTS**

NYAPP appreciates the effort that participants have made to reach a settlement. Because certain NYAPP Members are located on the Niagara Mohawk and NYSEG systems, NYAPP is concerned that the Settlement Agreement and the Reserved Issue may have a material impact on NYAPP's Members that are full requirements customers of the Power Authority of the State of New York ("NYPA"). None of the NYAPP Members listed above are Members of NYMPA, which is a Settling Party. NYMPA's members are all partial requirements customers of NYPA.

NYSEG's Initial Comments in support of the Settlement Agreement, submitted on November 9, 2009, states that "NYSEG's position is that the initial notice in this proceeding provided any potentially affected entity with proper notice that their interests could be affected in the proceeding." NYSEG Initial Comments at 7. NYAPP does not agree. NYSEG's Complaint, and the Commission's Initial Notice, could reasonably lead one to conclude that this case was about allegations of metering errors on Niagara Mohawk's system that NYSEG being bill for too much energy. In any event, NYSEG agreed to the process in the Joint Motion which provided interested parties a second notice and the opportunity to file comments on the Settlement Agreement.

NYSEG admits that it is possible that an entity could be affected by the refund methodology in the Settlement Agreement. According to NYSEG:

[ T]he Stipulated Methodology provides that the NYISO use all tariff provisions to collect from Load Serving

Entities (“LSEs”) in National Grid’s subzones that were mistakenly undercharged for Unaccounted for Energy.

*Id.* As noted above, NYAPP’s members located on the National Grid are LSEs, which raises the concern that the settlement refund methodology might be used to collect amounts for Unaccounted for Energy from NYAPP members on the National Grid system, including the City of Sherrill and Oneida-Madison Electric Cooperative.

Indeed, Appendices 5 and 6 to the settlement appear to suggest that the Settling Parties believe Unaccounted for Energy was undercharged to “LSE Name” “NYPA-SHRLLE3\_NM\_MOHAWK.” YAPP believes this is an error and that no Unaccounted for Energy should be charged to the City of Sherrill and Oneida-Madison Electric Cooperative.

Therefore, to the extent the refund methodology in the Settlement Agreement would attempt to collect charges for Unaccounted for Energy from NYAPP Members located on the National Grid system, NYAPP partially contests the Settlement Agreement and Partial Offer of Settlement.

**WHEREFORE**, for the foregoing reasons, the New York Association of Public Power respectfully requests that the Commission:

1. Accept for filing NYAPP’s Initial Comments partially contesting the Settlement Agreement and Partial Offer of Settlement; and

2. Grant such other and further relief as the Commission deems just and reasonable.

Dated: November 12, 2009

Respectfully submitted,

/s/ **Thomas L. Rudebusch**

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**CERTIFICATE OF SERVICE**

I certify that I have this day served the forgoing document upon each person designated on the official service list compiled by the Secretary in this proceeding. Dated at Washington, D.C. this 12<sup>th</sup> day of November 2009.

/s/ **Thomas L. Rudebusch**

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