

Brief the Commission on a Single Reserved Issue (“Settling Parties’ Motion”). The Settling Parties’ Motion, relates to NYSEG’s request that NYISO correct its invoices to the market participants in NYSEG and National Grid subzones that were affected by certain metering errors from 1999 to 2008. The Settling Parties report that they have 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.

NYAPP submitted a late motion to intervene which was granted by the 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. § 42.1(b)(2), and in Section 217(a)(2) of the FPA, since they are each a “distribution utility or electric utility with a service obligation.”

NYAPP has Members located on the electric system of Niagara Mohawk, including the City of Sherrill and Oneida-Madison Electric Cooperative (one delivery point). Several NYAPP’s Members are located on the electric system of NYSEG, including the Delaware County Electric Cooperative, Oneida-Madison Electric Cooperative (several delivery points), 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.

A. Distribution Utilities with Interval Metering must not be Allocated Any Additional Unaccounted for Energy.

NYAPP contests the Settlement Agreement to the extent that the Settling Parties intend to allocate the costs of additional Unaccounted for Energy to NYAPP Members located on the Niagara Mohawk system, including the City of Sherrill and Oneida-Madison Electric Cooperative, in violation of the NYISO’s Accounting and Billing Manual. NYAPP believes confusion has been created because the definition of LSE

under the NYISO is broader than the definition under the Federal Power Act and Code of Federal Regulations. The NYISO's definition of LSE includes more than distribution utilities with an obligation to serve (or "wholesale LSEs") but also "aggregations of retail customers" (or "retail LSEs," also called "ESCOs" in New York).

In fact, Section 3.2.2.1 of the NYISO's Accounting and Billing Manual, on the Allocation of Sub-Zonal Loads to LSEs, states that "LSEs are usually an aggregation of multiple retail customers."

As a result, LSEs' consumption is determined by the aggregation of the meter readings of their retail customers, as adjusted by the TOs according to their respective retail access tariff provisions for load profiling, distribution loss allocations, and unaccounted-for-energy (UFE) allocations.

See Attachment A, page 1 of 2. On the other hand, Section 3.2.2.1 of the NYISO's Accounting and Billing Manual recognizes that "[s]ome LSEs are equipped with hourly interval recording metering systems," including municipal and cooperative distribution utilities.

LSEs that are designated as providing actual hourly metering data are excluded from the sub-zonal load allocation process described above, and their metered consumptions are excluded from the denominator of the allocation ratio for the service month's initial invoicing.

See Attachment A page 2 of 2.¹ Therefore, the proper treatment of LSEs equipped with hourly interval recording metering systems, e.g., wholesale LSEs, including NYAPP's Members, is that they are excluded from the sub-zonal load allocation process for distributing Unaccounted for Energy.

1 *New York Independent System Operator Manual 14: Accounting and Billing Manual at § 3.2.2.1, Sub-Zonal Load Allocation to LSEs for Initial Settlement (September 2009).*
<http://www.nyiso.com/public/webdocs/documents/manuals/administrative/acctbillmnl.pdf>

The Joint Stipulation of Facts Not in Dispute provides that Niagara Mohawk “allocates UFE to LSEs based on hourly subzone loads determined by the NYISO and Rule 39 of its retail tariff.” Exhibit 1 to the Settlement Agreement at ¶ 15. Rule 39 governs Niagara Mohawk’s Retail Access Program; it is applicable to retail LSEs, and not to wholesale LSEs. Rule 39.18 provides that Niagara Mohawk will report to the NYISO each “ESCO load requirement” times an Unaccounted for Energy Factor to determine the ESCO’s load for NYISO billing purposes. Niagara Mohawk Tariff No. 220, Leaf No. 216 (*see* Attachment B).² On its face, Rule 39 is not applicable to wholesale LSEs, since is a part of Niagara Mohawk’s retail tariff.

The Joint Stipulation of Facts Not in Dispute also states: UFE is not allocated to *all* municipal LSEs in the National Grid subzones.” Exhibit 1 to the Settlement Agreement at ¶ 15 (emphasis supplied). What this should say is that Unaccounted for Energy is not applicable to *any* municipal (or cooperative) load in Niagara Mohawk’s subzones, because they all have hourly interval recording metering systems. The Settling Parties leave the door open to additional costs for Unaccounted for Energy being allocated to certain wholesale LSEs.³

For its part, 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.

2 *Niagara Mohawk Power Corporation, d/b/a National Grid, P.S.C. No. 220 Schedule for Electric Service (“P.S.C. No. 220 Electricity Tariff”), Leaf No. 216 (Effective Date: April 27, 2009).*

3 Paragraph 8 of the Settlement Agreement states that Niagara Mohawk has agreed not to seek recovery of additional Unaccounted for Energy costs “from NYMPA or its members.” This does not apply to the full requirements customers of NYPA, none of whom are members of NYMPA.

NYSEG's Initial Comments at 7. 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 Niagara Mohawk system, including the City of Sherrill and Oneida-Madison Electric Cooperative.

Indeed, Appendix 5 of the settlement suggests that the Settling Parties believe Unaccounted for Energy was undercharged to "LSE Name" "NYPA-SHRLLE3_NM_MOHAWK," and that additional Unaccounted for Energy should be charged. NYAPP believes this is an error and that no Unaccounted for Energy should be charged to the City of Sherrill and Oneida-Madison Electric Cooperative as a result of this settlement.

Therefore, to the extent the refund methodology proposed by the Settling Parties would attempt to collect additional charges for Unaccounted for Energy from NYAPP Members located on the National Grid system, NYAPP partially contests the Settlement Agreement.

B. It is not Just and Reasonable for the Settling Parties to Propose to Collect 45 Percent of the Refund Amounts from LSEs on the Niagara Mohawk System and Distribute 100 Percent of the Refunds to NYSEG, with no Refunds to LSEs on the NYSEG System.

The Settlement Agreement appears to contain a mismatch, that, without further explanation, makes the settlement not just and reasonable. The Settling Parties propose that 21 million dollars be collected from entities on the Niagara Mohawk system. However, according to Appendix 5, less than 55 percent of the refunds would come from Niagara Mohawk. The remaining 45 percent (in excess of 10 million dollars) is proposed

to be collected from other entities on the Niagara Mohawk system. On the other hand, 100 percent of the refunds are proposed to go to NYSEG, with no mechanism for distributing appropriate dollars to LSEs that were alleged to have been overcharged on the NYSEG system. This is a mismatch: it is not just and reasonable for the settlement to propose to collect from LSEs on the Niagara Mohawk system, but not propose to compensate LSEs on the NYSEG system.

The Joint Stipulation of Facts Not in Dispute states that metering errors caused an overstatement in NYSEG's Unaccounted for Energy and an understatement in Niagara Mohawk's Unaccounted for Energy.

As a result, [LSEs] in the NYSEG subzones were erroneously charged for an excessive amount of UFE, and LSEs in the National Grid subzones were erroneously charged for understated amounts of UFE.

Exhibit 1 to the Settlement Agreement at ¶ 14. If some LSEs were undercharged and some were overcharged, why does the settlement only describe how LSEs will be charged additional amounts for Unaccounted for Energy and not explain how LSEs overcharged will get refunds? It is not just and reasonable for NYSEG to collect 100 percent of any refunds.

The Joint Stipulation of Facts Not in Dispute also states that "NYSEG is solely responsible for UFE in its subzones." *Id.* at ¶ 18. The Settling Parties are silent as to how this statement can be consistent with the statement above, that "[LSEs] in the NYSEG subzone were erroneously charged for an excessive amount" of Unaccounted for Energy. If Appendix 5 lists all of the LSEs on the Niagara Mohawk system that are proposed to be charged for understated Unaccounted for Energy, then there should be a

corresponding list of all of the LSEs on the NYSEG system that will be refunded amounts that were overcollected for Unaccounted for Energy.

Therefore, to the extent the refund methodology proposed by the Settling Parties would attempt to collect additional charges for Unaccounted for Energy from LSEs located on the Niagara Mohawk system, while providing no mechanism to distribute refunds for overcharges to LSEs on the NYSEG system, NYAPP partially contests the Settlement Agreement.

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

1. Accept for filing NYAPP's Amended 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 16, 2009

Respectfully submitted,

/s/ **Thomas L. Rudebusch**

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For the New York Association of Public Power

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 16th day of November 2009.

/s/ **Thomas L. Rudebusch**

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Attachment A

interconnection, Generator, and sub-zone Load hourly meter data beyond two business days of the end of the service month is at the NYISO's discretion.

3.2.2 Allocation of Sub-Zonal Loads to LSEs and LSE Meter Data Management Prior to Initial Invoicing

The NYISO Open Access Transmission Tariff §§ 7.2A.2a and 7.2A.3a and Market Services Tariff §§ 7.4.2.A and 7.4.3.A detail the time periods during which LSE hourly billing quality metering data may be revised and challenged.

3.2.2.1 Sub-Zonal Load Allocation to LSEs for Initial Settlement

LSEs are usually an aggregation of multiple retail customers. As a result, LSEs' consumption is determined by the aggregation of the meter readings of their retail customers, as adjusted by the TOs according to their respective retail access tariff provisions for load profiling, distribution loss allocations, and unaccounted-for-energy (UFE) allocations. This information is seldom available until retail customer meter readings have been obtained well after the NYISO's issuance of a service month's initial invoice. Since TOs' retail meter reading cycles span months, the NYISO's market design incorporates an estimation process to render an invoice for wholesale market purchases within five business days after the first day of the month following the service month, with an opportunity to "true-up" LSE withdrawals (i) at four and six months after the issuance of a service month's initial invoice for service months prior to January 1, 2009, and (ii) at four months after the issuance of a service month's initial invoice for service months after December 31, 2008. The estimation process involves determining how much electricity is consumed within each TO's transmission district (i.e., sub-zone) and then allocating the sub-zonal withdrawal to the LSEs within the respective sub-zones.

The first step in allocating sub-zonal withdrawals to each LSE within a particular sub-zone is to determine the amount of electricity consumed within each sub-zone. Sub-zonal withdrawals are derived from the metering data for the transmission district (sub-zonal) transmission tie-line interconnections and Generator injections within each sub-zone, or as computed by the respective TOs and submitted to the NYISO, adjusted for transmission losses. Sub-zonal withdrawals are computed by adding the net transmission interconnection flows into a sub-zone to the total amount of energy injected into the sub-zone by Generators operating within the sub-zone, or are computed by the respective TOs and submitted to the NYISO, and subtracting the sub-zonal transmission losses. This calculation is performed for each real-time dispatch (RTD) interval, each of which is nominally five minutes in length. The metering systems that provide the real-time data are not typically revenue grade. As a result, the NYISO adjusts this data to revenue quality values using the transmission interconnection and Generator hourly revenue quality metering data submitted, as described above. Hourly sub-zonal withdrawals are computed in the same way as those at the RTD interval level.

Each RTD interval sub-zonal withdrawal value is adjusted by multiplying by the ratio of the hourly sub-zonal withdrawal, computed using revenue quality metering data, and the hourly integration of the RTD interval sub-zonal withdrawals over the hour. The hourly integration of RTD interval withdrawals is a time- and load-weighting of the RTD interval sub-zonal

withdrawals over the hour. Each RTD interval withdrawal is multiplied by the length of the RTD interval (in seconds) and then divided by 3,600 seconds per hour, the results of which are summed over the hour to arrive at the hourly integrated real-time sub-zonal withdrawal.

The NYISO's market design methodology for allocating sub-zonal withdrawals to individual LSEs within each sub-zone for initial invoicing is based on the hourly forecasts provided by the LSEs in their hourly DAM bids. For each sub-zone, the forecasted hourly consumptions of each LSE are totaled to determine a total hourly consumption forecast for the sub-zone. The hourly sub-zonal loads, as described above, are allocated to each LSE according to the ratio of their respective hourly forecasted withdrawal to the total of the forecasted hourly withdrawals submitted by all LSEs within a particular sub-zone.

Some LSEs are equipped with hourly interval recording metering systems. By noon the day following the service day, LSEs have the ability to update their hourly load forecasts with better estimates of their withdrawals, and LSEs equipped with interval recording metering systems (e.g., municipalities with metered points of demarcation) may update their forecast with actual metered withdrawals. LSEs that are designated as providing actual hourly metering data are excluded from the sub-zonal load allocation process described above, and their metered consumptions are excluded from the denominator of the allocation ratio for the service month's initial invoicing.

3.3 Settlement and Invoice Challenges

Settlement information is subject to review, comment, and challenge by Customers and correction or adjustment by the NYISO for errors in arithmetic, computation, or estimation at any time for up to seven (7) months from the date of the initial settlement invoice for service months prior to January 2009 and for up to five (5) months for service months thereafter, subject to the following limitations:

- Suppliers, Transmission Owners, and non-Transmission Owner Meter Data Service Providers may review, comment on, and challenge Generator and sub-zonal transmission tie-line interconnection metering data for fifty-five (55) days from the date of the initial invoice for the month in which service is rendered. Following this review period, the NYISO has five (5) days to process and correct Generator and sub-zonal transmission tie-line interconnection metering data, after which time it shall be finalized.
- Customers may review, comment on, and challenge the LSE bus metering data for one hundred forty-five (145) days from the date of the initial invoice for the month in which service is rendered. Following this review period, the NYISO has five (5) days to process and correct the LSE bus metering data, after which it shall be finalized.

At ninety (90) days from the date of the initial invoice, the NYISO will have posted updated advisory settlement information for the service months' four-month resettlement. Customers may review, comment on, and challenge this settlement information up to approximately five business days prior to the issuance of the four-month resettlement. At approximately five business days prior to the issuance of the four-month resettlement, the NYISO temporarily suspends further updates to process the resettlement. Further updates are permitted once the four-month resettlement invoice has been issued.

Attachment B

PSC NO: 220 ELECTRICITY
NIAGARA MOHAWK POWER CORPORATION
INITIAL EFFECTIVE DATE: APRIL 27, 2009

LEAF: 216
REVISION: 0
SUPERSEDING REVISION:

GENERAL INFORMATION

39. RETAIL ACCESS PROGRAM (Continued)

39.17 INDEMNIFICATION

39.17.1 An ESCo/Direct Customer, to the fullest extent of the law, shall indemnify, defend, and save harmless the Company from and against any loss, damage, liability, cost, suit, charge, expense (including attorneys' fees), claim, investigation, proceeding, or cause of action, which may at any time be imposed on, incurred by, or asserted against the Company and in any way relates to or is claimed to relate to or arise out of any damage or injury to property (including real property, personal property, and environmental damages), persons (including injuries resulting in death), or any economic losses, by or to third parties (including customers), that are directly or indirectly caused by or arise out of or are in any way connected with the ESCo/Direct Customer's acts or omissions (including the ESCo/Direct Customer's performance or non-performance of its agreements with customers).

39.18 SPECIAL PROVISIONS

39.18.1 The ESCo/Direct Customer shall be responsible for all losses determined by the Company based on the actual subzone loads from the NYISO and shall settle directly with the NYISO.

39.18.1.1 Losses reported to the NYISO shall include losses on the Company's underlying delivery systems not included in the NYISO Tariff. The Company losses to be allocated through the NYISO settlement process include the following efficiency factors:

LOCAL TRANSMISSION EFFICENCY FACTORS

- 1.0267 Underlying Transmission, compounded by 1.02562 for delivery at Subtransmission.
- 1.0267 Underlying Transmission, compounded by 1.04162 for delivery at Primary.
- 1.0267 Underlying Transmission, compounded by 1.06336 for delivery at Secondary.

39.18.1.2 In addition to the adjustment under Section 39.18.1.1, the remaining unaccounted for energy will be allocated to all LSEs as follows:

AVERAGE UNACCOUNTED FOR ENERGY FACTOR

The Company will calculate an Average Unaccounted for Energy Factor defined as the quantity of unaccounted energy, equal to the sum of remaining unaccounted for energy in all six of the Company's subzones, calculated for the four most recent months reported to the NYISO for NYISO billing and settlement purposes, divided by the sum of all the LSE load requirements for all six of the Company's subzones for the same four month period. An Average Unaccounted for Energy Factor will be updated each month.

The Company will report each ESCo load requirement to the NYISO for NYISO billing and settlement purposes as the ESCo retail load times the Local Transmission Efficiency Factors times one (1) plus the Average Unaccounted for Energy Factor.

Document Content(s)

Amended Initial Comments of NYAPP in EL09-26.PDF.....1-14