

I. Background

The NYISO's tariffs provide explicit time periods for the review, challenge and correction of customer invoices.¹ Once those time periods have passed, settlement data and invoices are deemed "finalized," and invoices are not subject to further correction unless "ordered by the Commission or a court of competent jurisdiction."² In other words, the NYISO does not have authority to adjust finalized invoices unless directed to do so by the Commission or a court of competent jurisdiction.

The NYISO is a not-for-profit corporation formed under Section 501(c)(3) of the Internal Revenue Code. As a not-for-profit corporation, the NYISO does not have the financial means to cover unpaid amounts in its markets. In recognition of its status as a not-for-profit corporation, Attachment U of the NYISO's Open Access Transmission Tariff contains a mechanism that enables the NYISO to recover unpaid amounts once a "bad debt loss" has been declared. The mechanism allows the NYISO to collect the unpaid amounts from all remaining market participants in order to keep the NYISO-administered markets financially whole and functioning.

II. Reply to the Limited Opposition by the Contesting Parties

The Contesting Parties object to paragraph 7 of the Stipulated Methodology of the Proposed Settlement which states that "the NYISO will utilize all tariff provisions to collect the corrected energy charges."³ The Contesting Parties argue that the bad debt recovery mechanism in Attachment U is limited because it is "not for allocating costs after parties have left the market

¹ See NYISO Market Administration and Control Area Services Tariff § 7.4 and NYISO Open Access Transmission Tariff § 7.2A.

² See *id.*

³ *Comments in Limited Opposition of the Offer of Partial Settlement on Behalf of the Contesting Parties*, Docket Nos. EL09-26-000, EL09-26-001, at pp. 1 - 2 (November 12, 2009).

and been returned their collateral”⁴ and is “not intended to remedy billing errors dating back ten years after participants have left the market”⁵

Attachment U does not contain any limitation that precludes its use when bad debt losses result from the Commission or a court of competent jurisdiction ordering finalized bills to be opened. Quite the contrary, the recovery mechanism in Attachment U is the “default” mechanism to be used if the Commission or the court does not specify otherwise. Without that mechanism, the NYISO would be unable to make the markets that it administers financially whole and assure the proper functioning of such markets. The Commission has broad authority when fashioning a remedy⁶, and such a remedy may well specify an alternative mechanism to collect bad debt losses as opposed to using Attachment U, but the record must be clarified that Attachment U is the “default” mechanism that the NYISO is required to use unless ordered otherwise.

It is important to note that NYISO agrees with the Contesting Parties position that New York State Electric & Gas’ (“NYSEG”) offer to be financially responsible for any bad debt losses resulting in the docket should be accepted in the event the Commission orders the NYISO to adjust finalized bills in this proceeding. As the NYISO stated in its Initial Comments to the Proposed Settlement, “[t]he NYISO supports NYSEG shouldering this burden [referring to any bad debt losses] as opposed to socializing these losses to all market participants.”⁷

⁴ *Id.* at p. 7.

⁵ *Id.* at p. 4.

⁶ *See Town of Concord, et al. v. FERC*, 955 F.2d 67, 76 (D.C. Cir. 1992).

⁷ *Initial Comments of New York Independent System Operator, Inc. on the Partial Settlement Agreement*, Docket Nos. EL09-26-000, EL09-26-001, at p. 2 (November 12, 2009).

III. Reply to the Amended Initial Comments of the New York Association of Public Power

In their Amended Initial Comments, the NYAPP mischaracterizes the NYISO's process for allocating sub-zonal load to Load Serving Entities ("LSEs"). The NYAPP states that,

*...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."*⁸

Based on this language, the NYAPP contends, "[t]herefore, the proper treatment of LSEs equipped with hourly interval recording metering systems, e.g., wholesale LSEs, including the NYAPP's Members, is that they are excluded from the sub-zonal load allocation process for distributing Unaccounted for Energy."⁹

NYAPP's contention is incorrect. The section of the NYISO's Accounting and Billing Manual cited by NYAPP (Section 3.2.2.1) does not relate to the allocation of Unaccounted for Energy by Transmission Owners and is not relevant to this proceeding.¹⁰ Rather, this section pertains strictly to the allocation of estimated sub-zonal load to LSEs prior to the issuance of the initial invoice of a month's transactions with the NYISO. This is clearly expressed in Section 3.2.2.1 of the Accounting and Billing Manual which references the "service month's initial invoicing" and in the heading for Section 3.2.2, which is entitled "Allocation of Sub-Zonal

⁸ *Amended Initial Comments of NYAPP on the Settlement Agreement and Partial Offer of Settlement*, Docket Nos. EL09-26-000, EL09-26-001, at p. 4 (November 16, 2009).

⁹ *Id.*

¹⁰ See NYISO Accounting and Billing Manual § 3.2.2.1, available at: <http://www.nyiso.com/public/documents/manuals/administrative.jsp>.

Loads to LSEs and LSE Data Management Prior to Initial Invoicing" (emphasis added).

NYAPP's contention fails to correctly account for the two distinct manners by which electric wholesale loads are allocated to LSEs at different points in time in the NYISO settlements process. For purposes of the initial monthly settlement, due to the limited availability of metered LSE consumption data, the NYISO relies upon forecasts submitted by its LSEs as part of their day-ahead load bids. This process may require the NYISO to adjust an LSE's hourly forecast up or down as more accurate data becomes available in order for the aggregated forecasts to equal the actual sub-zonal loads (as calculated using wholesale tie and generator meter data). It is from this process – the adjustment of an LSE's load forecast up or down – that an entity with hourly interval recording metering systems may be exempt, with the understanding that the entity would update its own forecast by noon the day following the operating day to reflect its actual meter reads for that day.

Following the allocation of estimated loads to LSEs to calculate their initial invoices, the NYISO relies entirely upon load data furnished by its Transmission Owners to make any adjustments to and settle an LSE's wholesale Energy and Ancillary Services Market activity in the relevant Transmission Owner's service territory. Section 3.3 of the NYISO's Accounting and Billing Manual describes the process for LSE metering data management and challenges after invoicing. As stated in Section 3.3.3.1, "It is the expectation of the NYISO that the TOs administer this data in accordance with their respective retail access tariffs and maintain reasonable and appropriate process controls over the accuracy and completeness of this data and the associated metering systems."¹¹ The NYISO does not analyze the Transmission Owners' determination of the actual withdrawal data, including any adjustments for Unaccounted For

¹¹ See *id.* at § 3.3.3.1.

Energy, for LSEs in the relevant Transmission Owner's service territory. Such calculations are made pursuant to each Transmission Owner's respective retail access tariff provisions.

IV. Conclusion

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc., respectfully requests that the Commission consider these reply comments for the purpose of correcting the record in this docket and for any other purpose that the Commission deems necessary.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Rensselaer, NY this November 23, 2009.

/s/ Andrew S. Antinori

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