



Dispute to facilitate Commission consideration of that reserved issue.<sup>2</sup> The Settlement Agreement recognizes that it would be virtually impossible for the NYISO to comply with its tariff in order to reissue invoices for the entire 89-month period sought by NYSEG<sup>3</sup> and therefore provides the Commission, should it decide the reserved issue in the affirmative, with a reasonable approximation of the NYISO's tariff requirements in the Stipulated Methodology For Calculation and Issuance of Corrected Invoices by which the NYISO is to effectuate any such ordered rebilling.<sup>4</sup> The Settlement Agreement explicitly acknowledges that "each term of the Settlement is in consideration and support of every other term."<sup>5</sup> National Grid supports the Settlement Agreement in its entirety, and only in its entirety.<sup>6</sup>

**B. The Stipulated Methodology Reasonably Approximates the Billing Provisions of the NYISO Tariff.**

Certain of the initial comments focus on elements of the Stipulated Methodology. The Stipulated Methodology reflects an accommodation of several considerations of significance. First, the Stipulated Methodology recognizes that any

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<sup>2</sup> Exhibit 1 to Settlement Agreement ("Joint Stipulation").

<sup>3</sup> The NYISO has explained:

As the NYISO has replaced its settlement software and made additional changes to its settlement procedures in the nearly ten year period at issue, the NYISO would have to reconstitute its billing system as it existed throughout multiple time periods. Such a process could only be accomplished over a multi-year period and would require an unduly burdensome commitment of resources and personnel by the NYISO, would divert personnel from other pressing tariff and regulatory commitments, and could expose a greater number of NYISO participants to financial uncertainty.

Motion to Intervene and Comments of the New York Independent System Operator, Inc. Docket No. EL09-26-000, filed January 22, 2009 at 11 ("NYISO Comments").

<sup>4</sup> Exhibit 2 to Settlement Agreement ("Stipulated Methodology").

<sup>5</sup> Settlement Agreement at 2.

<sup>6</sup> Notably, paragraph 12 of the Settlement Agreement provides: "The Settlement Agreement shall terminate if the Commission . . . issues an order rejecting the Settlement Agreement in whole or in material part, or accepting the Settlement Agreement with material conditions or modifications that a Settling Party advises all other Settling Parties in writing are unacceptable."

correction and rebilling of the invoices requested by NYSEG affects not only an allocation of revenues between NYSEG and National Grid, but among scores of other current and former market participants over the affected 89-month period reaching back to November 1999.<sup>7</sup> Second, as noted above, the Stipulated Methodology recognizes that a requirement that the NYISO reissue corrected invoices for the affected 89-month period using its billing software and all of the actual billing determinant data required by its tariff would be virtually impossible for the NYISO to undertake.<sup>8</sup> Third, the Stipulated Methodology must be a reasonable proxy for the full resettlement of the affected NYISO markets that, if possible, the NYISO tariff would otherwise require. It is in recognition of the accommodation of these considerations that the Stipulated Methodology explicitly provides: “Except as provided in paragraphs 1-6 of this Stipulated Methodology, the NYISO will utilize all tariff provisions to collect the corrected energy charges.”<sup>9</sup>

Several initial comments focus on the fact that the Stipulated Methodology would require the NYISO to utilize the provisions of Attachment U of its tariff to recover losses it may incur in the rebilling process due to the fact that certain entities that may have participated in the NYISO market during the affected 89-month period are no longer in business or otherwise still participating in these markets.<sup>10</sup> These comments argue in various formulations that Attachment U could not have been intended for this purpose because the NYISO collateral and creditworthiness

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<sup>7</sup> See Joint Stipulation at Appendices 1-6.

<sup>8</sup> See note 3 *supra*.

<sup>9</sup> Exhibit 2 to Joint Stipulation at ¶ 7 (emphasis added).

<sup>10</sup> Comments of LIPA *et al* at 7-8; Comments of NYISO at 2-3.

requirements do not contemplate that customers will have financial obligations beyond the finality periods established by the NYISO tariff – “NYISO customers could not have reasonably understood their financial obligations to extend for a period of more than ten years, after market participants have withdrawn from and been returned their collateral.”<sup>11</sup> This complaint rings hollow. To the extent that NYISO stakeholders understood that they had approved metering and billing finality provisions which allowed the Commission to set those provisions aside, they cannot complain that they did not understand the potential implications for their “financial obligations” should the Commission exercise that authority. Indeed, in the only case where the Commission has exercised the authority to direct the NYISO to reopen and correct finalized invoices, the NYISO was required to resettle and reissue invoices in accordance with its tariff provisions for the affected period.<sup>12</sup> In that case, had amounts associated with such reissued invoices been uncollectable, the provisions of Attachment U would have applied. Such must be the case here.

However, National Grid does agree that the concerns raised regarding the possible lack of parallelism between the NYISO tariff finality provisions on the one hand and the collateral and creditworthiness provisions on the other hand, if NYSEG’s petition to reopen finalized invoices is granted, are valid. When these various interrelated provisions of the NYISO tariff were developed and approved by stakeholders, the stakeholders believed that all parties would recognize the inter-relatedness of the finality, creditworthiness and collateral provisions of the NYISO tariff, would exercise appropriate due diligence as NYISO market participants, and

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<sup>11</sup> Comments of LIPA *et al* at 7-8.

<sup>12</sup> *Niagara Mohawk Power Corp.*, 123 FERC ¶ 61,314 (2008).

would accept the financial and commercial consequences of their actions. Reaffirmation of this understanding is a compelling reason to deny NYSEG's request to reopen 89-months of finalized invoices – the concerns raised, however, are misplaced as grounds to modify the Stipulated Methodology.

Obviously expecting the Settlement Agreement to be challenged on the grounds that the Stipulated Methodology would require application of Attachment U, NYSEG offers in advance of any such comments<sup>13</sup> to surrender any claims to the amounts charged as a result of the use of the bad debt mechanism.<sup>14</sup> However attractive this offer may be to certain intervenors bothered by this element of the Stipulated Methodology, it is equally disappointing to National Grid as a signatory to the Settlement Agreement with NYSEG where each agreed “that it will not dispute, contest, or otherwise suggest changes to the Stipulated Methodology.” To be clear, National Grid does not agree to any such change to the Stipulated Methodology. Such a change, in National Grid's view, would be material, would cause the Stipulated Methodology to no longer constitute a reasonable proxy for the NYISO tariff billing settlement process, and would be unacceptable.<sup>15</sup> The only alternative to the Stipulated Methodology as agreed to by the settling parties would be to require the NYISO to reissue corrected invoices in full compliance with all applicable tariff requirements, regardless of the burden.

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<sup>13</sup> For otherwise unexplained reasons, NYSEG elected to file its initial comments two days in advance of the due date for comments and before anyone else had filed.

<sup>14</sup> NYSEG Comments at 8.

<sup>15</sup> As a result, such a change would cause the Settlement Agreement to be terminated. *See* note 6 *supra*.

For the foregoing reasons, National Grid respectfully requests that the Commission approve the Settlement Agreement without condition or modification.

Respectfully submitted,

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*Attorneys for National Grid*

Dated: November 23, 2009

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list for the captioned proceeding, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010). Dated this 23<sup>rd</sup> day of November, 2009, at Washington, D.C.

/s/ Stacey Tyrewala

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