





jurisdiction,<sup>1</sup> but that the Commission has previously directed the NYISO to make billing corrections outside of the claims limitation period under Section 7.4 of the NYISO Market Administration and Control Area Services Tariff (“Services Tariff”).<sup>2</sup> NYSEG argued that relief was appropriate in this case because the metering errors were the type of circumstance that this tariff provision, allowing for such a Commission order, was intended for.<sup>3</sup> NYSEG stated that an order granting relief would be appropriate because the losses suffered by the single customer at issue were significant and the metering errors were difficult to detect.<sup>4</sup>

By order dated March 30, 2009, the Commission established settlement judge procedures, instructing NYSEG and National Grid (the other metering authority affected by the metering errors) to try to resolve the dispute with the assistance of the NYISO and a FERC Settlement Judge.<sup>5</sup> The Settling Parties engaged in six months of settlement negotiations assisted by the Settlement Judge, the Honorable Judith A. Dowd, and entered into the Settlement Agreement, which includes a joint stipulation and a stipulated methodology for calculation and issuance of corrected invoices. The Settling Parties could not agree, however, on whether the Commission should order the NYISO to correct the invoices affected by the metering errors during the period in question, which is the Reserved Issue presented to the Commission for determination.

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<sup>1</sup> NYSEG Petition at 16.

<sup>2</sup> *Id.* at 17, citing *Niagara Mohawk Power Corp.*, 123 FERC ¶ 61,314 at P 25 (2008); NYISO Services Tariff, available at [http://www.nyiso.com/public/webdocs/documents/tariffs/market\\_services/services\\_tariff.pdf](http://www.nyiso.com/public/webdocs/documents/tariffs/market_services/services_tariff.pdf).

<sup>3</sup> NYSEG Petition at 19-20.

<sup>4</sup> *Id.* at 16, 20.

<sup>5</sup> *New York State Electric & Gas Corp.*, 126 FERC ¶ 61,292 (2009) (“March 30 Order”).

On October 13, 2009, the Commission issued the Notice, which established the periods requested by the Settling Parties for comments on the Settlement Agreement and briefing on the Reserved Issue. IPPNY moved to intervene in this proceeding by motion dated October 14, 2009, which was granted by Chief Judge Curtis L. Wagner, Jr., in an order issued on November 2, 2009.<sup>6</sup>

## II. ARGUMENT

### A. There Are No Extraordinary Circumstances That Would Justify Correction of The Finalized Invoices.

All of the invoices in question requested by NYSEG to be corrected are finalized.<sup>7</sup> Once an invoice is finalized, the Commission has found that the NYISO tariff precludes “the NYISO’s ability to make further adjustments to finalized invoices except pursuant to an order by this Commission (or a court of competent jurisdiction).”<sup>8</sup> The Commission has determined that only in “extraordinary circumstances” where the “need for accuracy outweighs concerns of financial certainty and significant injustice would result in the absence of Commission action” will it direct that “finalized” invoices be “reopened” to make corrections for past errors.<sup>9</sup> NYSEG has failed to demonstrate extraordinary circumstances are present in this case.

The Commission ruled that where errors had been visible to a customer for as little as ten months, finalized bills would not be reopened for the sake of financial stability.<sup>10</sup> The metering

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<sup>6</sup> *New York State Electric & Gas Corp.*, Order of Chief Judge Granting Motions to Intervene Out-Of-Time, Docket No. EL09-26-000 (Nov. 2, 2009).

<sup>7</sup> NYSEG Petition at 2.

<sup>8</sup> *Niagara Mohawk Power Corp.*, 123 FERC ¶ 61,314 at P 23 (2008).

<sup>9</sup> *Id.* at P 25.

<sup>10</sup> *New York Independent System Operator*, 128 FERC ¶ 61,086 (2009).

errors complained of by NYSEG have been present in the metering data transmitted to the NYISO since their occurrence, ten years ago. NYSEG should have discovered and challenged the errors during the appropriate billing period. Further, the vast majority of refunds sought by NYSEG are the result of metering errors attributable to NYSEG's own equipment. Significant injustice would, therefore, occur *if* the Commission ordered the NYISO to correct the invoices.

The Commission has recognized the vital role that billing finality and resulting financial certainty play in these circumstances:

Since RTO billings disputed successfully by one participant, generally must be paid by others, there would be too much uncertainty on billing and settlement issues if a party was allowed to dispute an invoice for months or years after the transmission provider had been paid and it had in turn paid the market participants.<sup>11</sup>

The settlement provisions of the NYISO Tariff, including those governing invoice challenging procedures in Section 7.2A of the NYISO OATT, are the culmination of extensive stakeholder discussions. Metering errors, such as the one acknowledged by the NYISO in this matter, are inherent and are to be expected from time to time in the complex markets administered by the NYISO. It would be highly disruptive if every such error found resulted in a filing with this Commission and a correction of long-finalized invoices. The NYISO Tariff, which was thoroughly vetted by the stakeholders and approved by the Commission, includes just this trade-off, the possibility that some errors may not be corrected for the sake of financial certainty and stability. Parties choose to participate in the markets administered by the NYISO with full knowledge that after a reasonable time period, billing errors, whatever their source, including those made by the NYISO, will not be subject to correction. This is especially true of the current situation, where NYSEG seeks to have invoices reopened dating all the way back to

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<sup>11</sup> See *Southwest Power Pool, Inc.*, 114 FERC ¶ 61,289 at P 124 (2006).

1999 – a ten-year period. Ordering the reopening of ten years of finalized invoices to compensate one customer for a relatively minor (in light of the time period) loss, which largely resulted from its own failure to discover errors, would make “financial certainty” meaningless.

**B. Correction of The Finalized Invoices Will Set A Bad Precedent.**

Should the Commission order invoices reopened in this case, the inevitable result would be the encouragement of lax oversight and the undercutting of the incentive and obligation of market participants to exercise due diligence in reviewing metering data and resulting invoices within the timeframes set out in the Tariff. It is likely that more metering errors will appear as technology improves and replacement equipment becomes necessary. If old invoices are to be revised each time an error is found, the incentive to pursue such improvements will be substantially impacted.

A market participant that knows that old errors can always be revisited with Commission authorization would have little incentive to invest the time and resources into vigorously monitoring invoices during the appropriate times prescribed by the Tariff. Likewise, the reopening of the invoices contested by NYSEG in this case would provide market participants the perverse incentive to not bring relatively minor errors to the NYISO’s or the Commission’s attention until they have accumulated significantly, so that extraordinary circumstances might be claimed. Even small metering errors, like the ones complained of by NYSEG, will result in a significant amount when allowed to accrue (with interest) over a ten-year period, as was the case here. Allowing NYSEG to recover in this case would result in the equivalent of a Commission statement that a finalized invoice is never to be truly final.

## CONCLUSION

For the foregoing reasons, IPPNY respectfully requests that the Commission order that the finalized invoices may not be corrected as requested by NYSEG.

Respectfully submitted,

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By:

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Dated: November 25, 2009

**CERTIFICATE OF SERVICE**

I hereby certify that on this day, I served the foregoing document by electronic mail or first-class mail upon each person designated on the official service list compiled by the Secretary to the Commission in this proceeding.

David B. Johnson

Dated: November 25, 2009

Document Content(s)

IPPNYInitialBrief.PDF.....1-8