

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

New York State Electric & Gas Corporation     )  
  ) Docket Nos. EL09-26-000  
  ) EL09-26-001

**INITIAL BRIEF OF  
NEW YORK STATE ELECTRIC & GAS CORPORATION**

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**INITIAL BRIEF OF  
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Pursuant to the terms of the Settlement Agreement and Offer of Partial Settlement (“Settlement Agreement”) filed in the above-captioned proceeding on September 21, 2009, and the Federal Energy Regulatory Commission’s (“FERC” or the “Commission”) notice (“Notice”), issued on October 13, 2009, New York State Electric & Gas Corporation (“NYSEG”) hereby submits this Initial Brief (“Brief”). This Brief addresses the single remaining issue in the above-captioned proceeding that NYSEG, Niagara Mohawk Power Corporation d/b/a National Grid (“National Grid”), and the New York Municipal Power Agency (“NYMPA”) (collectively, the “Settling Parties”) have been unable to resolve in settlement (“Reserved Issue”). With respect to the Reserved Issue, NYSEG states as follows:

**I. STATEMENT OF RESERVED ISSUE AND EXECUTIVE SUMMARY**

The Reserved Issue, set forth in paragraph 5 of the Settlement Agreement, is whether the Commission should direct the New York Independent System Operator, Inc. (the “NYISO”) to correct inaccurate invoices that resulted from certain metering errors. Such a correction would refund to NYSEG amounts mistakenly billed to NYSEG because of the metering errors. The errors correspond to over \$21 million (twenty-one million dollars) of losses to NYSEG, a single wholesale customer. The magnitude of

these errors is exceptional. Inaccurate billings of this magnitude are not found every day, and very rarely is the Commission presented with this type of case.

Unlike the tariffs of other Independent System Operators (“ISOs”) and Regional Transmission Organizations (“RTOs”), the NYISO tariffs expressly allow for FERC to issue this type of refund order. Specifically, Section 7.4 of the NYISO Market Administration and Control Areas Services Tariff (“NYISO Services Tariff”) provides:

For purposes of this Section 7.4, “finalized” data and invoices shall not be subject to further correction, including by the ISO, except as ordered by the Commission or a court of competent jurisdiction; *provided, however*, that nothing herein shall be construed to restrict any stakeholder’s right to seek redress from the Commission in accordance with the Federal Power Act.<sup>1</sup>

Market participants decided to include this type of “safety net” tariff provision in both the NYISO Services Tariff and the NYISO Open Access Transmission Tariff<sup>2</sup> during the formation of the NYISO, and have subsequently decided not to modify these provisions over the years, despite their recognition of the value of transaction finality in most circumstances. The facts presented here demonstrate why the market participants included a remedy in the NYISO tariffs in the first instance and have chosen to retain those provisions over time.

The Settling Parties, with the assistance of the NYISO, have developed the Refund Methodology for Calculation and Issuance of Corrected Invoices (the “Refund Methodology”).<sup>3</sup> The Refund Methodology sets forth an equitable, straightforward, and

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<sup>1</sup> New York Independent System Operator, Inc., Market Administration and Control Area Services Tariff, § 7.4, *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>2</sup> New York Independent System Operator, Inc., FERC Electric Tariff, Original Volume 1, § 7.2A, *available at* [http://www.nyiso.com/public/webdocs/documents/tariffs/oatt/body\\_oatt.pdf](http://www.nyiso.com/public/webdocs/documents/tariffs/oatt/body_oatt.pdf) (“NYISO OATT”).

<sup>3</sup> Attached as Exhibit 2 to the Settlement Agreement.

practical method of correcting the metering errors and issuing a refund to the NYSEG. Therefore, a FERC order, issued pursuant to the express provisions of Section 7.4 of the NYISO Services Tariff (“Section 7.4”) that directs the NYISO to refund NYSEG the incorrectly metered amounts, will not be an undue administrative burden on the NYISO and will not lead to further litigation.

Given the facts, NYSEG’s interests, as the only customer overcharged, cannot be disregarded. When appropriate, the Commission has used its equitable power to order refunds when a customer has been overcharged, even if doing so would upset certain settled expectations of others.<sup>4</sup> Under these circumstances, the magnitude of the loss to NYSEG, the express tariff provision allowing for the relief requested, the practical and straightforward Refund Methodology, and the circumstances leading to the errors, all warrant the Commission order that NYSEG requests. The identity of those undercharged and the amounts they were undercharged is not in dispute. In fact, undercharges to only two entities – National Grid and the New York Power Authority (“NYPA”) – account for over half of the undercharges. To the extent that the NYISO is unable to collect amounts undercharged from certain LSEs, it is possible that the Refund Methodology could result in some amounts being collected through the NYISO OATT’s bad debt mechanism.<sup>5</sup> To allay any concerns that this would result in any inequity (*i.e.*, refunds being provided by those that did not directly benefit from the earlier undercharges), NYSEG is willing to

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<sup>4</sup> Another party to this proceeding – National Grid – has very recently asked the Commission for relief from the NYISO invoicing provisions and also requested that FERC balance customer concerns with transaction finality. The Commission granted National Grid’s request for relief, finding that “the need for accuracy outweigh[ed] concerns of financial certainty and significant injustice would result in the absence of Commission action.” *Niagara Mohawk Power Corp.*, 123 FERC ¶ 61,314, at P 25 (2008).

<sup>5</sup> See NYISO OATT, Attachment U.

surrender any claims to the amounts owed by these entities through the use of the bad debt mechanism.

In addition, the Refund Methodology does not result in any need to revisit economic decisions that entities made in the NYISO markets. The metering errors at issue in this proceeding did not affect pricing or availability in a way that would have caused market participants to change their behavior in response. The Refund Methodology will not result in markets being resettled and there will be no “daisy chain” or “ripple effect” that has been present in other refund cases.

It is also important to note that a case like this is unlikely to reoccur. Due to the dedicated efforts of the NYISO, the New York Transmission Owners (“NYTOs” or “Transmission Owner(s)”), the New York Public Service Commission (“NYPSC”), and other market participants, meter data visibility has improved dramatically over the years since the initiation of the NYISO. Meter installations have also been improved and will continue to progress as a result of ongoing initiatives currently underway at each Metering Authority.<sup>6</sup> As a result, similar errors are unlikely to occur — and if they did occur would be unlikely to go undetected for long periods of time.

For these reasons, as explained below, the Commission should grant NYSEG’s request for an order directing the NYISO to refund the amounts affected by the metering errors.

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<sup>6</sup> A NYTO is the “Metering Authority” for the interchange and generation meters within its service footprint. Metering Authorities are responsible for the calibration, maintenance, and operation of the meters under its control. *See* Joint Stipulation of Facts Not in Dispute ¶¶ 7-9, attached as Exhibit 1 to the Settlement Agreement (“Joint Stipulation”).

## II. BACKGROUND

Between the commencement of the NYISO operations in 1999 and 2008, inaccurate metering data was submitted for particular metering points, three of which were under National Grid's metering authority and one of which was under NYSEG's authority.<sup>7</sup> These metering errors resulted in an overstatement of energy consumption for certain NYSEG subzones and understatement of an equal but offsetting quantity of energy in certain National Grid subzones. The NYISO issued invoices based on these misstatements of consumption, causing an overstatement of Unaccounted for Energy ("UFE") in NYSEG's subzones and an understatement of UFE in certain National Grid subzones. This resulted in NYSEG being charged for an excessive amount of UFE (overcharged) and also resulted in certain Load Serving Entities ("LSEs") in National Grid's subzones (including National Grid) being charged for an understatement of UFE (undercharged). Data visibility issues, dating from the commencement of the NYISO operations in 1999, made the errors essentially undetectable until well after the end of the billing correction period, when those systems improved.

Due to billing correction provisions in the NYISO Services Tariff,<sup>8</sup> the NYISO is unable to take any further action regarding this issue without a FERC order. Accordingly, on December 23, 2008, NYSEG filed a Petition for a Declaratory Order in the above-captioned proceeding.<sup>9</sup> NYSEG respectfully requested that the Commission direct the NYISO to order refunds to NYSEG to "correct" for the overcharges. NYSEG

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<sup>7</sup> Further detail on the role of metering authorities is found at pages 9-10 herein.

<sup>8</sup> NYISO Services Tariff §§ 7.4.1, 7.4.2.

<sup>9</sup> Petition for Declaratory Order of New York State Electric & Gas Corp., Docket No. EL09-26-000 (Dec. 23, 2008) ("NYSEG Petition"). National Grid, the NYISO, NYMPA, Municipal Electric Utilities Association of New York, Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., Central Hudson Gas & Electric Corporation, the NYPSC, NYPA, Long Island Power Authority, and the Long Island Lighting Company d/b/a LIPA intervened in this proceeding.

pointed out that such an order is expressly provided for in Section 7.4 of the NYISO Services Tariff.

By order dated March 30, 2009, the Commission established settlement judge procedures in this proceeding.<sup>10</sup> On April 7, 2009, Chief Administrative Law Judge Curtis L. Wagner, Jr. appointed the Honorable Judith A. Dowd as the settlement judge. Over the course of the next six months, NYSEG worked with other parties to the proceeding and Commission Staff with the able guidance of Judge Dowd.<sup>11</sup> The Settling Parties successfully negotiated the Settlement Agreement, which includes both a Joint Stipulation of Facts and the Refund Methodology.

In response to the Settling Parties' Joint Motion,<sup>12</sup> the Commission issued a Notice regarding the Settlement Agreement on October 13, 2009, which established a procedural schedule. NYSEG files this brief in accordance with that Notice.

### III. FACTS

The Commission has equitable discretion regarding whether or not to direct the NYISO to issue refunds.<sup>13</sup> It is the nature of equity to look at the “particular circumstances” in applying the principles of justice.<sup>14</sup> Therefore, this section provides further detail on the underlying facts at issue in this proceeding.

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<sup>10</sup> *New York State Electric & Gas Corp.*, 126 FERC ¶ 61,292 (2009) (“March 30 Order”).

<sup>11</sup> Parties to this proceeding participated in formal settlement conferences before Judge Dowd on April 14, 2009, May 7, 2009, June 2, 2009, July 1, 2009, July 28, 2009, and August 25, 2009. In addition to these formal conferences, the parties have communicated less formally since the March 30 Order, including numerous calls and e-mail exchanges regarding the Settlement Agreement, the Joint Stipulation, and the Refund Methodology.

<sup>12</sup> Motion of the Settling Parties to Issue Notice of Settlement Agreement, to Allow Late Intervention, and to Brief the Commission on a Single Reserved Issue, Docket No. EL09-26-000, *et al.* (Sept. 21, 2009) (“Joint Motion”).

<sup>13</sup> *Central Maine Power Co.*, 64 FERC ¶ 61,376, at 63,610 (1993) (citing *Towns of Concord v. FERC*, 955 F.2d 67 (D.C. Cir. 1992)).

<sup>14</sup> See Black's Law Dictionary 579 (8th ed. 1999).

As explained in Section A, below, the NYISO is a large, complex system that relies upon advanced technology. Section A.1 explains that the NYTOs report their metering data to the NYISO, which processes the data and issues invoices. Section A.2 defines UFE, how misstatements of consumption resulted from the metering errors, and how UFE is allocated to LSEs in NYSEG and National Grid subzones. Section A.3 provides detail regarding how, at the commencement of NYISO operations in 1999, the NYISO billing and settlement system had only basic functionality and has since improved over time with significant improvements taking place in 2007. Section A.4, below, describes how the NYISO and the NYTOs have worked together since the start of the NYISO to substantially improve and refine the NYISO billing and settlement system. Although systems have improved over time, earlier systems made the metering errors at issue in this proceeding, some of which commenced from the early years of the NYISO and continued until very recently, exceptionally difficult to detect because of data visibility and processing capacity limitations.

Section B, below, provides specifics on each metering error and how the errors resulted in misstatements of consumption, causing an overstatement of UFE to NYSEG's subzones and an increase in charges to NYSEG as NYSEG is solely responsible for UFE for each of its subzones. The errors resulted in corresponding understatements of energy consumption in certain National Grid subzones. This resulted in certain LSEs in National Grid's subzones (including National Grid) to be undercharged for the understatement of UFE. Section B also describes claims regarding certain metering errors that NYSEG has agreed not to pursue.<sup>15</sup>

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<sup>15</sup> Settlement Agreement ¶ 9.

## A. Overview of NYISO Metering

The NYISO is an extremely complex system. From inception, its markets have been frequently described as the most complex and ambitious undertaking in the restructured independent system operator ISO/RTO environment. The NYISO operates 10,775 miles of high-voltage lines,<sup>16</sup> and has a 47,225 square-mile footprint divided into 11 zones demarcating the major New York State transmission system interfaces. These zones are further subdivided into 34 subzones, which generally conform to each NYTO's load boundaries within a given zone.<sup>17</sup> There are approximately 730 interchange and generation meter points on the NYISO grid, which record more than 530,000 hourly meter data points each month.<sup>18</sup> All of this data is submitted to the NYISO by Metering Authorities and is then processed and compiled by the NYISO settlement and billing computer system, which calculates and applies Locational Based Marginal Prices ("LBMPs") to the applicable meter data.<sup>19</sup> The resulting invoices are then issued on a monthly basis and reissued periodically for customer review and LSE true-ups.<sup>20</sup>

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<sup>16</sup> New York Independent System Operator, Inc., *About Us*, [http://www.nyiso.com/public/company/about\\_us/index.jsp](http://www.nyiso.com/public/company/about_us/index.jsp) (last visited Nov. 20, 2009).

<sup>17</sup> *Id.*; Joint Stipulation ¶ 5.

<sup>18</sup> Joint Stipulation ¶ 6.

<sup>19</sup> See New York Independent System Operator, Inc., Accounting and Billing Manual, Manual 14 (Aug. 2009), available at <http://www.nyiso.com/public/webdocs/documents/manuals/administrative/acctbillmnl.pdf>; see also New York Independent System Operator, Inc., Decision Support System (DSS) Consolidated Invoice Mapping Document Version 2.7 (Sept. 17, 2009) (outlining the inputs for invoice calculation), available at [http://www.nyiso.com/public/webdocs/market\\_data/market\\_access/DSS/ConsolidatedInvoicetoDSSMapping.pdf](http://www.nyiso.com/public/webdocs/market_data/market_access/DSS/ConsolidatedInvoicetoDSSMapping.pdf).

<sup>20</sup> Joint Stipulation ¶ 26.

## 1. Basics of the NYISO Metering System

Under the “Agreement between the New York Independent System Operator and Transmission Owners” (“TOA”)<sup>21</sup> and the NYISO Revenue Metering Requirements Manual (“RMRM”),<sup>22</sup> the NYTOs serve as the “Metering Authorities” for the interchange and generation meters in their respective service footprints.<sup>23</sup> A “Metering Authority” is responsible for the calibration, maintenance, and operation of the meters under its control, as well as for reporting “timely, accurate, and reliable” metering data to the NYISO.<sup>24</sup> Although the TOA provided that the meters and data systems in place when the NYISO commenced operations were acceptable as a foundation for initial operations, the NYTOs are obligated to cooperate with the NYISO to enhance and upgrade these meters.<sup>25</sup> Current requirements for revenue meters, as set forth in the RMRM, include the ability to provide local interval storage, remote communications, and next-day reporting.<sup>26</sup>

Metering Authorities submit interchange and generator meter data to the NYISO, which then settles the markets and produces initial invoices for the prior month.<sup>27</sup> The NYISO issues revised invoices at set intervals to give LSEs and Metering Authorities the opportunity to review and true-up the initial invoice balances.<sup>28</sup> These intervals have been steadily shortened since the NYISO commenced operations in 1999, and Metering

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<sup>21</sup> Available at [http://www.nyiso.com/public/webdocs/documents/regulatory/agreements/nyiso\\_agreement/nyiso\\_to\\_agreement.pdf](http://www.nyiso.com/public/webdocs/documents/regulatory/agreements/nyiso_agreement/nyiso_to_agreement.pdf).

<sup>22</sup> Revenue Metering Requirements Manual, Manual 25 (July 2005) available at [http://www.nyiso.com/public/webdocs/documents/manuals/administrative/rev\\_mtr\\_req\\_mnl.pdf](http://www.nyiso.com/public/webdocs/documents/manuals/administrative/rev_mtr_req_mnl.pdf).

<sup>23</sup> Joint Stipulation ¶¶ 7-9.

<sup>24</sup> *Id.* ¶¶ 9, 13; RMRM §§ 1.2, 2.2.1.

<sup>25</sup> Joint Stipulation ¶ 8; TOA § 2.05

<sup>26</sup> Joint Stipulation ¶ 13; RMRM §§ 2.2, 2.2.3, 3.1.

<sup>27</sup> Joint Stipulation ¶ 26.

<sup>28</sup> *Id.*

Authorities currently have only 55 days from the date of the initial invoice for the month to review and challenge generator and interchange metering data.<sup>29</sup>

## 2. UFE/Socialization

The metering errors at issue in this proceeding caused a misreporting of energy usage in the affected subzones, leading to a misallocation of UFE to certain LSEs operating in these subzones. UFE is the difference between retail customer meter readings within a subzone and subzonal energy withdrawals measured from interchange metering data and generator injections within a subzone, as adjusted for transmission losses. UFE for a subzone is allocated in accordance to the retail tariff provisions applicable to the Metering Authority's (National Grid and NYSEG in this case) subzone. Under the applicable tariffs, NYSEG is solely responsible for the UFE in its subzones, paying the cost of this “lost” energy itself instead of allocating a percentage to certain other LSEs, which is the case under National Grid’s retail tariff provisions.<sup>30</sup>

Due to the metering errors, an overstatement of energy consumption for certain NYSEG subzones and an understatement of an equal but off setting quantity of energy in certain National Grid subzones resulted in an overstatement of UFE in NYSEG's subzones and a corresponding understatement of UFE in certain National Grid subzones.<sup>31</sup> Therefore, the metering errors caused NYSEG alone to pay for some UFE

<sup>29</sup> *Id.* ¶ 30. Initially, the customer review period for invoices was two years. *Id.* ¶ 28. This period was shortened to 12 months in 2002, and to seven months in 2007. *Id.* ¶¶ 29-31. On January 1, 2009, the customer review period was reduced to five months. Also in January 2007, the review period for meter data was decoupled from the invoice review period, and Metering Authorities were granted only 55 days to review and challenge generator, interchange and subzone load metering data. *Id.* ¶ 30.

<sup>30</sup> *Id.* ¶ 18. National Grid’s tariff provisions, until 2005, socialized the UFE generated in a subzone among the LSEs serving load in that subzone. After 2005, LSEs subject to UFE, except for the NYPA and National Grid, were allocated UFE costs based on the average UFE across all of National Grid’s subzones. National Grid and NYPA were allocated UFE based on their share of the load in the subzone where the UFE was created. *Id.* ¶ 15.

<sup>31</sup> *Id.* ¶ 14.

costs that should have been paid by certain of the LSEs in National Grid's subzones, including National Grid itself.

### 3. Data Visibility Issues in Early Years

When the NYISO commenced operation in November 1999,<sup>32</sup> the data management systems reflected the system limitations and limited institutional experience of the time. At its inception, the NYISO market was the most ambitious of any ISO in the nation: the NYISO market participants elected to begin simultaneously day-ahead and real-time energy market operations, as well as ancillary services and capacity markets, rather than phasing in market functions over time. Because of systems limitations, limited institutional experience with operating a centralized energy market, and the decision not to phase in market functions, the NYISO and the NYISO market participants faced early challenges with markets, data processing systems, and the billing system.<sup>33</sup> The NYTOs, the NYISO, and the other market participants cooperated to develop the NYISO, to commence NYISO operations, and to address challenges on an ongoing basis as they arose. As a result, the NYISO system has evolved steadily.

Among the issues that the NYTOs and the NYISO addressed together were the specifications for the NYISO settlement and billing software, which have undergone several stages of improvements. During the same period, the NYTOs steadily improved

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<sup>32</sup> *Id.* ¶ 7.

<sup>33</sup> *See, e.g., New York Independent System Operator, Inc.*, 93 FERC ¶ 61,187 (2000) (extending the NYISO's authority to invoke temporary emergency procedures because of "software and market flaws"); *New York Independent System Operator, Inc.*, 93 FERC ¶ 61,142, at 61,440 (2000) ("NYISO states it has made corrections to the problems it was aware of but explains that many previously undetected problems have recently surfaced. . . . NYISO states it has formed a special sub-group to advise on additions or revisions to NYISO's billing and settlement procedures to provide timely, accurate billing and settlement information to market participants."); *New York Independent System Operator, Inc.*, 92 FERC ¶ 61,073 (2000) ("[I]n fairness NYISO believes that both it and the transmission owners have found the billing procedures to be much more demanding than anticipated . . .").

their internal back-office analytic programs to take advantage of the improvements in the NYISO billing and settlement system.

#### **4. Description of the Evolution of the Billing System**

The NYISO billing system evolved over time through four phases. The earliest phase was the system used for the NYISO start-up, and this system remained in place until 2000, when limited system upgrades were implemented. In 2003, the NYISO switched to a web-based system, which was significantly improved in 2007 to create the system in use by the NYISO today. Subheadings (a)-(d) describe these systems in detail.

##### **a. 1999 to 2000**

Used from 1999 until 2000 to store and process data, the initial NYISO settlement and billing system, referred to as the “xx files” system, had fundamental limitations that restricted access to metering data<sup>34</sup> and made verification extremely difficult. The xx files data was available only in a confidential, proprietary, Comma Separated Value (“CSV”) format.<sup>35</sup> CSV files are used for data transfers from one computer system to another and are not formatted for direct data analysis;<sup>36</sup> the data first has to be converted into a useable format prior to examination for metering issues.

The xx files system reported only monthly Mload data,<sup>37</sup> which is the aggregate monthly load for each subzone as submitted by the Metering Authorities. Metering Authorities did not have access to the data submitted by other Metering Authorities, on

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<sup>34</sup> Joint Stipulation ¶ 21.

<sup>35</sup> *Id.*

<sup>36</sup> See Ohio State University, What is CSV? / Converting Spreadsheet Data to CSV Format, available at <http://8help.osu.edu/1701.html> (“A CSV file is a specially formatted plain text file which stores spreadsheet or basic database-style information in a very simple format, with one record on each line, and each field within that record separated by a comma.”).

<sup>37</sup> Joint Stipulation ¶ 21.

which the Mload totals were based.<sup>38</sup> Nor did the Metering Authorities have access to the underlying data from individual meters; even hourly aggregate totals were unavailable.<sup>39</sup> If a Metering Authority sought to confirm the submitted meter data, it would have to make a specific request for the hourly data for that meter point from the NYISO.<sup>40</sup>

#### **b. 2000 to 2003**

In 2000, the NYISO improved its settlement and billing system to create the “AdHoc files” system.<sup>41</sup> The AdHoc files system allowed Metering Authorities to log into a File Transfer Protocol (“FTP”) site and download Mload file data based on aggregate hourly load per subzone, without making a special request of the NYISO.<sup>42</sup> The same FTP site allowed Metering Authorities to download files showing the generator and interchange hourly data that the NYISO had used to calculate the hourly Mload files.<sup>43</sup> However, the AdHoc files system still had limitations affecting the analysis of meter data due to file transfer size limitations and server time-outs.<sup>44</sup>

#### **c. 2003 to 2007**

In 2003, the NYISO implemented the Web Based Reconciliation (“WBR”) settlement and billing system, which improved data access and visibility.<sup>45</sup> WBR allowed a Metering Authority to log into a web-based application and access individual meter data without making specific requests to the NYISO for difficult-to-analyze data

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<sup>38</sup> See e.g., *NYISO Billing and Accounting Working Group Status Report 082400*, attached hereto as Attachment A.

<sup>39</sup> See Joint Stipulation ¶ 21.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* ¶ 22.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> See NYISO Billing and Accounting Working Group, Meter Authority Test Plan: July 28 – August 1, at 3 (July 21, 2003), available at [http://www.nyiso.com/public/webdocs/committees/bic\\_bawg\\_mtf/meeting\\_materials/2003-07-22/wbr\\_test.pdf](http://www.nyiso.com/public/webdocs/committees/bic_bawg_mtf/meeting_materials/2003-07-22/wbr_test.pdf) (Discussing file size limitations in the context of an upgrade from AdHoc).

<sup>45</sup> Joint Stipulation ¶ 23.

files.<sup>46</sup> Significantly, if large amounts of metering data were required, Metering Authorities still had to download a CSV file, and limitations on data transfers and system time-out issues made the download of large amounts of meter data difficult and time consuming.<sup>47</sup>

#### **d. 2007 to Present**

In October 2007, the NYISO implemented the Settlement Data Exchange (“SDX”).<sup>48</sup> Like the WBR system, SDX allows Metering Authorities to access meter data directly through the internet, without the assistance of the NYISO.<sup>49</sup> SDX provides enhanced meter data viewing features, such as on-line analysis for limited hours of individual interconnection and generator meter data. If large amounts of meter data are required, Metering Authorities still have to download a CSV file. However, the SDX implementation improved data transfer and processing times, while more general improvements in computer and network technology have made all stages of data acquisition and processing faster and more straightforward.

#### **B. Meter Issues in this Proceeding**

The NYSEG Petition identified seven metering errors that resulted in overcharges to NYSEG. As noted above, NYSEG agreed as part of the Settlement Agreement not to pursue claims related to three of these errors, due to the difficulty of calculating the damages. All seven errors are described below. However, NYSEG only seeks refunds for the errors associated with the Snyder-Lake Hoag, Cold Springs-Randolph, East Springfield and Carrs Corners interchange ties.

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<sup>46</sup> *Id.*  
<sup>47</sup> *See id.*  
<sup>48</sup> *Id.* ¶ 24.  
<sup>49</sup> *Id.*

## 1. Snyder Lake-Hoag

Snyder Lake-Hoag is a 34.5 kV interchange tie under National Grid's Metering Authority, which connects the National Grid and NYSEG subzones within the NYISO Capital Zone.<sup>50</sup> The Snyder Lake-Hoag interchange is relatively small, having an average hourly energy flow of 0.9 to 2.4 MWs.<sup>51</sup> At the time of the meter errors, from 1999 until August 2007, the Snyder Lake-Hoag meter did not record hourly profile data, provide next-day reporting, or have remote communications capability,<sup>52</sup> even though these features are required by the RMRM.<sup>53</sup>

National Grid's problems with the Snyder Lake-Hoag meter originated in the period immediately before the commencement of the NYISO operations in 1999. During that period, each Metering Authority's personnel worked with the NYISO to determine the data polarity of each meter under that Metering Authority's control.<sup>54</sup> The polarity of the meter data determines how the meter reports energy flow; if the polarity of the meter data is set incorrectly, the meter data recorded by the meter will report that energy is flowing in the opposite direction from the actual flow of electricity.<sup>55</sup> The Snyder Lake-Hoag meter data's polarity was set in reverse, and its data was recorded from the inception of the NYISO as flowing in the wrong direction.<sup>56</sup>

In July 2007, while reviewing data from the Snyder Lake-Hoag meter -- relying on the improvements to the meter data visibility implemented in 2007 -- NYSEG noticed that the data it received regarding the meter indicated that the polarity of the meter was

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<sup>50</sup> *Id.* ¶ 34.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* ¶ 13; RMRM §§ 2.2, 2.2.3, 3.1.

<sup>54</sup> Joint Stipulation ¶ 35.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* ¶ 36; *see also* NYSEG Petition at 8-9.

reversed.<sup>57</sup> NYSEG informed National Grid of this issue, and National Grid confirmed that the polarity on its Snyder Lake-Hoag meter data was reversed, and had been since the inception of the NYISO in 1999.<sup>58</sup> In August 2007, while reviewing historical data from the Snyder Lake-Hoag meter, NYSEG noticed a second issue.<sup>59</sup> The amount of energy flow National Grid reported from the Snyder Lake-Hoag meter on a monthly basis had abruptly dropped from 860 MWh (1.08 MW/hr) to 32 MWh (.004MW/hr) in August 2003.<sup>60</sup> The meter continued to report these low values until August 2007, when the meter values suddenly “spiked.”<sup>61</sup>

After NYSEG pointed out this issue to National Grid, National Grid also determined that it had failed to update the meter multiplier (also called the “scaling factor”) when it had replaced the Snyder Lake-Hoag meter in July 2003.<sup>62</sup> The meter replacement did not correct the issue with the meter’s polarity because that information was encoded in the NYISO/National Grid systems.

The NYISO made corrections for the invoices affected by the Snyder Lake-Hoag polarity error only for those invoices it could correct on its own (without a FERC order directing it to do so), September through December 2006. Similarly, the NYISO made corrections for the Snyder Lake-Hoag meter multiplier error only for invoices for December 2006.<sup>63</sup>

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<sup>57</sup> See Joint Stipulation ¶ 37.

<sup>58</sup> *Id.* ¶ 38.

<sup>59</sup> *Id.*; NYSEG Petition at 7.

<sup>60</sup> Joint Stipulation ¶ 38.

<sup>61</sup> *Id.*; NYSEG Petition, Chier Aff. ¶¶ 16-17.

<sup>62</sup> Notably, although National Grid had replaced this meter since the commencement of the NYISO operations, the new meter did not have the required features of hourly profile data, next-day reporting, and remote communications capability.

<sup>63</sup> Joint Stipulation ¶ 40.

NYSEG's total losses due to the issue with the Snyder Lake-Hoag meter totaled \$7,331,512.38, including interest, through November 2009.<sup>64</sup> No other entity experienced losses because of this error.

## 2. Cold Springs-Randolph

Cold Springs-Randolph is a 115 kv/34.5 kV interchange tie, under NYSEG's Metering Authority, which connects the National Grid and NYSEG subzones in the West Zone.<sup>65</sup> The tie has an average hourly flow of 4 to 8 MWs.<sup>66</sup>

NYSEG upgraded the Cold Springs-Randolph meter in September 2003 as part of a statewide meter replacement program.<sup>67</sup> Although the TOA provided that all meters in place at the time of the initiation of the NYISO were approved for initial NYISO operations, NYSEG launched a program in 2001 to ensure that all of its meters met NYPSC and NYISO revenue meter requirements.<sup>68</sup>

The Cold Springs-Randolph meter's meter multiplier was set incorrectly during the upgrade. NYSEG discovered the error in April 2008, when it installed redundant meter data sources<sup>69</sup> to the interchange tie point, and corrected the error immediately.<sup>70</sup> The Cold Springs-Randolph interchange tie is now monitored by three independent data sources.

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<sup>64</sup> See *id.*, App. 1; NYSEG Petition, Chier Aff., Ex. E.

<sup>65</sup> Joint Stipulation ¶ 42.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* ¶ 43. NYSEG instituted a meter replacement program in 2001, and to the best of NYSEG's knowledge, all of its meters comply with RMRM and NYPSC standards. NYSEG has also informed the NYISO that it believes most, if not all, of its instrument transformers comply with the relevant standards in the RMRM; however, NYSEG is conducting a physical verification process to confirm that its instrument transformers are in compliance.

<sup>68</sup> *Id.*

<sup>69</sup> There was originally no back-up metering at either Snyder Lake-Hoag or Cold Springs-Randolph. Back-up metering on the smaller ties was often unavailable in the NYISO. Therefore, it was not possible to compare the meter data to a redundant source and realize that the numbers did not add up. See NYSEG Petition at 12; NYSEG Petition, Chier Aff. ¶ 20.

<sup>70</sup> Joint Stipulation ¶ 44.

The NYISO corrected the invoices affected by the Cold Springs-Randolph error only for those invoices it could correct on its own (without a FERC order), for March and April of 2008.<sup>71</sup> NYSEG's total losses due to the Cold Springs-Randolph meter issue totaled \$14,036,825.98, including interest, through November 2009.<sup>72</sup>

### 3. East Springfield and Carrs-Corners

National Grid is the Metering Authority for both the East Springfield and the Carrs-Corners meters.<sup>73</sup> Unlike the errors with either the Snyder Lake-Hoag or the Cold Springs-Randolph meter, these errors were short lived, but occurred late in the billing process due to correct data being overwritten, as was the case in *Niagara Mohawk*.<sup>74</sup> In the case of East Springfield, National Grid submitted accurate data for this meter in March 2007. However, after NYSEG had already reviewed and validated the data, National Grid inadvertently reset all of the entries to zero.<sup>75</sup>

Carrs-Corners is an invalid interchange point. The Carrs-Corners interchange tie was entered into the NYISO system by mistake at the inception of the NYISO in 1999. Data was inadvertently assigned to this point in December 1999 and January 2000, due to an error in the deployment of the WBR system in 2003.<sup>76</sup>

NYSEG's total losses due to the issues with the East Springfield meter and the Carrs-Corners invalid interchange totaled \$354,593.92, including interest through November 2009.<sup>77</sup>

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<sup>71</sup>

*Id.*

<sup>72</sup>

*See id.*, App. 2; NYSEG Petition, Chier Aff., Ex. G.

<sup>73</sup>

Joint Stipulation ¶¶ 46, 49.

<sup>74</sup>

*See Niagara Mohawk* at P 25.

<sup>75</sup>

Joint Stipulation ¶¶ 46-47.

<sup>76</sup>

*Id.* ¶ 51.

<sup>77</sup>

*See id.*, App. 3-4, NYSEG Petition, Chier Aff., Ex. F.

#### 4. The Other Three Errors

The Ausable-Stickney Bridge Tie is a small distribution point under National Grid's metering authority and used by National Grid, on occasion, to supply backup load. From 2002 until early 2009, National Grid did not submit information from this point to the NYISO. National Grid has informed NYSEG that it did not check this meter on a regular basis;<sup>78</sup> however, a new meter installed in April 2009 has resolved this issue prospectively.<sup>79</sup>

The Andover-Palmiter Tie and the Willow-Bishop Hill Tie are both under National Grid's metering authority, and the switches for these points are normally open, so there is no energy flow. However, National Grid has often reported small amounts of load on these ties, even though the readings should be "0."<sup>80</sup> National Grid and NYSEG have decided to raise this issue in the appropriate working group.<sup>81</sup> Although NYSEG agreed, as part of the settlement, not to pursue claims related to these three errors, the Commission may still consider them to be relevant to the context in which all of these errors occurred.

#### IV. ARGUMENT

Section A, below, analyzes the "safety net" provisions present in the claims limitation clauses in both the NYISO OATT and the NYISO Services Tariff. These "safety nets" provide a clear path for market participants to seek relief from this Commission if they are overcharged and the error is not discovered until after the end of

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<sup>78</sup> NYSEG Petition, Chier Aff. ¶ 28.

<sup>79</sup> Settlement Agreement ¶ 9.

<sup>80</sup> NYSEG Petition, Chier Aff. ¶ 31.

<sup>81</sup> Settlement Agreement ¶ 9.

the correction period. Although there have been opportunities for the NYISO market participants to eliminate the “safety net,” they have not done so.

As set out in Section B, the Settling Parties have agreed to a straightforward and practical billing methodology that the NYISO could use should the Commission grant the relief requested by NYSEG.

Section C refers to the relevant standards in equity and identifies some of the many equitable considerations that support FERC granting relief to NYSEG and weighs them against the limited equitable considerations contrary to such a conclusion. Some of the most significant equitable considerations here are that the losses are to a single customer, NYSEG, are large (\$21 million), the entities that were undercharged (including National Grid) and the amounts by which they were undercharged are clearly identifiable and that the parties to the proceeding have worked hard to develop, and have agreed to, a straightforward and equitable method of issuing refunds in the form of the Refund Methodology.

Section D describes how the systems in place did not support finality for the particular invoices at issue in this proceeding. Section E explains how this has changed and that the Commission is unlikely to see a metering error of this magnitude before it again (*i.e.*, granting relief to NYSEG here is not likely to open the floodgates to a rash of meter error cases, now or in the future).

Finally, granting NYSEG the requested relief in this proceeding is consistent with FERC refund precedent, as discussed in Section F.

**A. The NYISO Tariff Expressly Provides for Market Participants to Seek a Commission Order to Reopen Finalized Invoices and the NYISO Stakeholders Have Reaffirmed This Option**

Both the NYISO Services Tariff and the NYISO OATT incorporate a “safety net” in their claims limitations clauses,<sup>82</sup> which allow market participants to seek an order from the Commission directing the NYISO to reopen a finalized invoice in those “extraordinary circumstances” where “significant injustice” would occur.<sup>83</sup> These clauses also state that the time limits for the correction of invoices are not to interfere with the right of market participants to seek a remedy from the Commission under the Federal Power Act (“FPA”).<sup>84</sup> Although both the NYISO OATT and the NYISO Services Tariff contain the “safety net,” only the NYISO Services Tariff is directly relevant to this proceeding.<sup>85</sup>

Despite the opportunity to remove this safety net from the NYISO tariffs’ claims limitations provisions, the NYISO market participants have not done so. The minutes of the NYISO Management Committee (“Management Committee”) meeting from September 29, 2006,<sup>86</sup> demonstrate that the “safety net” has been reaffirmed since the NYISO Services Tariff was drafted.<sup>87</sup> The Management Committee expressly compared

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<sup>82</sup> Section 7.4; NYISO OATT § 7.2A.

<sup>83</sup> *Niagara Mohawk* at P 25.

<sup>84</sup> See FPA §§ 205, 206, 309, 16 U.S.C. §§ 824d, 824e, 825h.

<sup>85</sup> See NYISO Services Tariff § 7.4 (“For purposes of this Section 7.4, “finalized” data and invoices shall not be subject to further correction, including by the ISO, except as ordered by the Commission or a court of competent jurisdiction; *provided, however*, that nothing herein shall be construed to restrict any stakeholder’s right to seek redress from the Commission in accordance with the Federal Power Act.”)

<sup>86</sup> NYISO Management Committee, Proposal to Shorten the NYISO Settlement Cycle (Sept. 29, 2006), at 12-13, *available at* [http://www.nyiso.com/public/webdocs/committees/mc/meeting\\_materials/2006-09-29/final\\_MC\\_Minutes\\_092906.pdf](http://www.nyiso.com/public/webdocs/committees/mc/meeting_materials/2006-09-29/final_MC_Minutes_092906.pdf) (“MC Minutes”).

<sup>87</sup> MC Minutes at Motion #8 and Motion #9.

the importance of “accuracy” to the importance of “finality” and “financial certainty” and reaffirmed the language of Section 7.4.<sup>88</sup>

The tariff filing shall specify that corrections to customer settlement information . . . shall only be made within the relevant time frames established in the tariffs, as they are hereby proposed to be revised, in accordance with a “true-up” methodology, unless the NYISO is directed to do otherwise by FERC or a court of competent jurisdiction.<sup>89</sup>

The NYISO stakeholders decided to retain the safety net in the NYISO tariffs because they believe that accuracy is important to protect the rights of market participants.<sup>90</sup>

The inclusion of a “safety net” in the NYISO’s claims limitation clauses is not boilerplate language. Instead, it reveals the decision of those in the NYISO market to balance accuracy with finality rather than simply to endorse finality. Each ISO has determined its own policy on the matter of claims limitations and the reopening of finalized invoices. For example, the equivalent section in the PJM Interconnection, L.L.C. (“PJM”) tariff cuts off all claims after two years.<sup>91</sup> Likewise, and significantly, the ISO New England Inc. (“ISO-NE”) billing policy<sup>92</sup> does not contain the same sort of generalized exception to limits on claims as the NYISO tariffs. Indeed, further support for the existence of the “safety net” is the fact that the correction period for metering errors in the NYISO is so short, only 55 days, as compared with two years in PJM. When

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<sup>88</sup> *Id.*

<sup>89</sup> *Id.* at Motion #9.

<sup>90</sup> Compare OATT § 7.2A and NYISO Services Tariff § 7.4 with MC Minutes at 14.

<sup>91</sup> See PJM Operating Agreement § 15.6(a), available at <http://www.pjm.com/documents/agreements/~media/documents/agreements/oa.ashx>.

<sup>92</sup> See ISO New England Billing Policy § 6.2, available at [http://www.iso-ne.com/stlmnts/assur\\_crdt/pol\\_amndts/billing\\_policy\\_exhibit\\_1d.pdf](http://www.iso-ne.com/stlmnts/assur_crdt/pol_amndts/billing_policy_exhibit_1d.pdf). Although ISO-NE permits market participants to take disputes over closed invoices to the Commission, the ISO-NE tariff specifies a specific procedure for doing so, rather than featuring a generalized exception like that in the NYISO OATT. The ISO-NE billing policy has been incorporated into the relevant tariff.

the NYISO market participants shortened the revision period so drastically, they were relying in part on Section 7.4 to provide a guarantee of accuracy if large and serious errors were to occur.

The circumstances in this proceeding present the sort of circumstances that Section 7.4 was intended to address, *i.e.*, the type of situation where the need to protect the customer, NYSEG, and bill accurately outweighs the importance of finality. The magnitude of these errors is very large, totaling over \$21 million in dispute, and a single entity bore the entire burden of these losses. Also, those that were undercharged and the amounts by which they were undercharged are clearly identifiable. In addition, the errors were extremely difficult to identify, as evidenced by the fact that no party involved, whether NYSEG, the NYISO or National Grid, detected them at the time, and technological limitations made it extremely difficult to do so. Section 7.4 was included in the NYISO tariffs, and the NYISO market participants have elected to retain it, to protect customers from errors of this scale and scope.

**B. The Refund Methodology Provides a Practical Way for the NYISO to Correct the Errors**

The Refund Methodology reflects the Settling Parties' efforts to develop an equitable, simplified method of rebilling that the NYISO could use to correct the invoices that were affected by the metering errors. The Refund Methodology makes use of the NYISO's manual adjustment process to allow for the correction of errors without resettling the NYISO markets for the affected months, a process that the NYISO states "would be exceedingly difficult."<sup>93</sup>

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<sup>93</sup> Motion to Intervene and Comments of the New York Independent System Operator, Inc., Docket No. EL09-26-000, at 3 (Jan. 22, 2009).

Under the Refund Methodology, if the Commission directs the NYISO to issue refunds for the metering errors, the NYISO will use the manual adjustment process either to issue a single prospective bill reflecting the corrections, or to reissue invoices for each month affected by the metering errors. The Settling Parties have agreed to corrected hourly meter data for each of the affected meters;<sup>94</sup> this data will be used as the basis for calculating the NYISO's manual adjustments. The NYISO will then apply the historical LBMPs for each subzone to the corrected hourly meter data, and assign the resulting amounts to the appropriate NYSEG or National Grid subzones. Responsibility for the corrected amounts will then be distributed in accordance with the historical allocation of UFE to LSEs in those subzones. Only LSEs historically subject to UFE will be affected by these corrections (*i.e.*, those LSEs that did not benefit from the undercharge will not now be directly affected by the rebilling). This would be a manageable process. Undercharges to National Grid and NYPA account for over half of the amounts at issue.

The Refund Methodology represents a compromise made by the Settling Parties between the typical need for accuracy in billing and the need to mitigate any administrative burdens associated with ensuring such accuracy here. The results that will be reached by the use of the Refund Methodology will provide a close approximation to the result that would have existed had the meter errors not occurred, but without the challenges associated with resettling the markets. Therefore, the Refund Methodology provides, as the Commission has requested in another case involving overcharges, a "feasible" method by which the NYISO can effect a remedy, using "reasonable estimation."<sup>95</sup>

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<sup>94</sup> Included as Appendices 1-4 to the Joint Stipulation.

<sup>95</sup> *New York Independent System Operator, Inc.*, 126 FERC ¶ 61,100, at PP 16, 17 (2009).

## 1. NYSEG is Willing to Forgo Bad Debt Recovery

It is possible that a market participant with no connection to National Grid's subzones would be concerned that it was not aware that it could be affected by this proceeding. It is possible that such an entity could be affected by provisions included in the Refund Methodology. Specifically, the Refund Methodology provides that the NYISO use all tariff provisions to collect from those LSEs in National Grid's subzones that were mistakenly undercharged for UFE. If the NYISO is unable to collect these amounts from certain LSEs because they are no longer customers of the NYISO, or some other reason, some amounts might be collected through the NYISO OATT's bad debt mechanism.<sup>96</sup> NYSEG anticipates that any amounts that would need to be collected by the NYISO by use of the bad debt provision are small in comparison to the overall amounts that would need to be refunded to NYSEG from certain of the LSEs in National Grid's subzones, including National Grid. However, to allay any concerns that there was not a proper notice to certain customers and that they may be subject to some small charge as a result of the use of the bad debt mechanism, or if there is any other concern about the use of that mechanism as set out in the Refund Methodology, NYSEG is willing to surrender any claims to the amounts owed by these entities.

### C. There are Many Equitable Considerations that Support FERC Granting Refunds to NYSEG Using the Refund Methodology and Few That Oppose it

The Commission has "equitable discretion concerning whether to order refunds,"<sup>97</sup> although its "primary responsibility" is to "afford customers a complete,

<sup>96</sup> See NYISO OATT, Attachment U.

<sup>97</sup> *Central Maine*, 64 FERC at 63,610 (citing *Towns of Concord*, 955 F.2d 67).

permanent, and effective bond of protection against excessive rates and charges.”<sup>98</sup>

FERC has stated that:

The Commission’s practice has been to order full refunds of any amounts collected above the just and reasonable level, absent contrary equitable considerations. Refunds are restitutionary, rather than punitive, relief. Because the statutory goal of refunds is customer restitution, the Commission does not set refund levels based on a degree of culpability regarding overcollections. Rather, our refund task in this and other cases is to determine objectively the amount of overcollections that should be returned to customers.<sup>99</sup>

The Commission has considered numerous equitable factors in determining when refunds are warranted. In *Estate of French*, the Fifth Circuit listed some of these factors as:

[T]he passage of time, amounts owed, whether the sales are still jurisdictional, whether the refunds would pass to consumers who actually paid the money, the relative size of the producer, and whether on balance there is a benefit to the public interest.<sup>100</sup>

In the specific context of refunds for errors or tariff violations occurring in ISOs and RTOs, the Commission has considered: whether or not there was an “improper windfall,”<sup>101</sup> whether or not the tariff violation was merely “technical,”<sup>102</sup> and whether or not there was a “reasonable method to determine whether refunds are owed.”<sup>103</sup> The Commission has also considered whether ordering refunds would itself create inequities,

<sup>98</sup> *Gillring Oil Co. v FERC*, 566 F.2d 1323, 1326 (5th Cir. 1978) (quoting *Atlantic Refining Co. v. Public Service Commission*, 360 U.S. 378, 388 (1959)).

<sup>99</sup> *San Diego Gas & Electric Co. v. Sellers of Energy & Ancillary Services*, 97 FERC ¶ 61,275, at 62,185 (2001).

<sup>100</sup> *Estate of French v. FERC*, 603 F.2d 1158, 1163 (5th Cir. 1979).

<sup>101</sup> *New York Independent System Operator, Inc.*, 110 FERC ¶ 61,244, at 62,008 (2005); *see also Puget Sound Energy, Inc. v. Jurisdictional Sellers of Energy*, 96 FERC ¶ 63,044 (2001) (citing *Koch Gateway Pipeline Co. v. FERC*, 136 F.3d 810 (D.C. Cir. 1998)).

<sup>102</sup> *New York Independent System Operator*, 110 FERC ¶ 61,244 at 62,008; *see also Koch Gateway*, 136 F.3d 810.

<sup>103</sup> *PJM Interconnection, L.L.C.*, 119 FERC ¶ 61,318, at P 240 (2007).

such as by “creat[ing] substantial uncertainty in the New York markets,” or when “customers cannot effectively revisit their economic decisions.”<sup>104</sup> Likewise, if it would be extremely burdensome to administer the refunds, or if “computation of refunds would be complex and would encourage needless litigation,”<sup>105</sup> the Commission may decide that refunds are inequitable. However, FERC also seeks to avoid the “undesirable consequences” of denying an injured party a remedy,<sup>106</sup> and has directed the NYISO in the past to investigate “whether any course of restitution is feasible,”<sup>107</sup> even when it appears that the issuance of refunds would be extremely difficult.

In the present case, there are few contrary equitable considerations, and many equitable considerations that favor refunds. The amounts owed are very large, over \$21 million, and refunds would go to NYSEG, which is the entity that is actually owed the money, and then a portion of the refunds would flow through NYSEG’s revenue-sharing plan to NYSEG’s customers.<sup>108</sup> National Grid and certain of the LSEs in its subzones, however inadvertently, received a windfall from the metering errors, as they did not pay for energy consumption for which they were responsible. Those entities and the amounts they were undercharged are clearly identifiable.

These metering errors were not mere technical violations of the tariff that had little impact; they were clear errors that resulted in large losses to one market participant. Although some time has passed since these errors began, these errors continued into the recent past, and were only discovered recently. The visibility of meter data evolved

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<sup>104</sup> *New York Independent System Operator*, 92 FERC at 61,307.

<sup>105</sup> *Id.*

<sup>106</sup> *New York Independent System Operator*, 126 FERC ¶ 61,100 at P 16.

<sup>107</sup> *Id.* at P 17.

<sup>108</sup> *See* NYSEG Petition at 3.

slowly over time and the earlier lack of transparency in the bills explains the time that elapsed from when the errors first occurred until discovery.

The Refund Methodology identifies which entities owe and how much: refund calculations in this instance will not create uncertainty, are not unduly complex, and will not lead to further litigation, as the amounts owed and the relevant LBMPs are preserved in NYISO records. In addition, in this circumstance, there is no need to revisit economic decisions that entities made in the NYISO markets; the metering errors did not affect pricing or availability in a way that would have caused market participants to change their behavior in response. Finally, these refunds are in the public interest because they will assure that the interests of New York's consumers are protected and provide incentives to the NYISO market participants to address issues with metering and billing accuracy in the NYISO.

**D. The Operations and Related Systems at Issue in this Proceeding Did not Support Finality**

The NYISO metering and billing system was developing in its early years, and therefore NYSEG, like other market participants, was presented only aggregated subzone data. Also, as was common on smaller ties, there was no back-up metering at either Snyder Lake-Hoag or Cold Springs-Randolph, so meter data could not be checked with a redundant source.<sup>109</sup> In addition, because certain of the errors at issue in this proceeding existed for some time, and were consistent over time, errors were not noticed due to a change in the Mload from month to month or hour to hour.<sup>110</sup> Normal fluctuations in

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<sup>109</sup> See *id.*, Chier Aff. ¶ 20.

<sup>110</sup> See NYSEG Petition at 8; Motion for Leave to Answer and Answer to Comments of New York State Electric & Gas Corp., Docket No. EL09-26-000, at 9-10 (Feb. 6, 2009) (“NYSEG Answer”).

system load made undetectable the small irregularities in the Mload files<sup>111</sup> that might have alerted NYSEG, National Grid, or the NYISO to the presence of a meter malfunction. The significant constraints on data visibility in the early years of the NYISO were only corrected after the metering errors (with the exception of East Springfield) came into existence.

### **1. The xx Files System and the Snyder Lake-Hoag Polarity Error**

The polarity error with the Snyder Lake-Hoag meter originated<sup>112</sup> while the xx files system, described above in Section III.A.4.A, was in place. During this time, a Transmission Owner that was not the Metering Authority for a particular metering point had difficulties detecting which meter was responsible for causing any errors and it could not, therefore, request the relevant data from the NYISO.<sup>113</sup> The Transmission Owner could only review the hourly data of a small number of meters, because conversion and data analysis required a very substantial dedication of time and resources, and acquisition of the data itself required a special request from the NYISO.<sup>114</sup> These inherent limitations in the billing and settlement system meant that Metering Authorities had no practical ability to identify a metering error unless that error was large enough to affect significantly the monthly Mload for a given subzone.

Because Snyder Lake-Hoag is a relatively small interchange in comparison to others, it was virtually impossible to identify this irregularity in the monthly Mload for NYSEG's or National Grid's subzone in the Capital Zone.<sup>115</sup> Moreover, the polarity

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<sup>111</sup> Loads in a given subzone vary due to many factors, such as seasonal variation in load, weather events, outages, and flows into and out of the subzone. It was therefore virtually impossible to detect small errors (such as those at issue here) in monthly or hourly Mload data. *See* NYSEG Petition at 12.

<sup>112</sup> *Id.* at 7-9.

<sup>113</sup> *See* Joint Stipulation ¶ 21.

<sup>114</sup> *Id.*

<sup>115</sup> NYSEG Petition, Chier Aff. ¶¶ 21-22.

error was present when the NYISO commenced operations, so there was no “change” in the Mload files that a reviewer could detect.

## **2. The AdHoc Files System, the Cold Springs-Randolph Error, and the Snyder Lake-Hoag Scaling Factor Error**

The Cold Springs-Randolph meter error and the scaling factor error with the Snyder Lake-Hoag meter both date from this period.<sup>116</sup> During this time, although there were certain improvements that made it easier to identify irregularities in data, it took significant time and effort to process meter data files, due to data transfer limitations and the need to convert the data into a useable format prior to analysis.<sup>117</sup> Meter data still needed to be downloaded and processed from all meters in an affected subzone even if NYSEG, National Grid or the NYISO had detected a problem.

## **3. The WBR and SDX System Improvements**

The implementation of the WBR system, described above at section III.A.4.C, improved the NYISO metering and billing system significantly, and even made historical meter data available to the Metering Authorities. However, because of data transfer limitations, an audit of the historical meter data was not practical.

Therefore, even when the NYISO’s systems were upgraded, the errors at issue in this proceeding remained difficult to identify until improvements to the system, as described above at section III.A.4.D, was implemented, improving data visibility and data analysis capabilities.

If metering systems are such that persistent errors are able to go unnoticed and uncorrected – as had been the case in the NYISO - it becomes very complicated and

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<sup>116</sup> *Id.* ¶¶ 15, 35.

<sup>117</sup> *Id.* ¶ 21.

difficult to support an argument that the underlying system supports transaction finality. Instead, the “safety net” provisions in the tariff should be relied upon.

**E. The Petition is the Only Claim at FERC Regarding the NYISO Metering Errors and Systems Continue to Improve**

The sorts of errors at issue in this proceeding are a result of data visibility issues dating from the commencement of NYISO operations in 1999. The meter issues in this proceeding are extraordinary and have not been seen by the Commission before. General improvements to network technology and data management systems have now made data acquisition and processing faster, more transparent and more straightforward. Moreover, NYSEG and the other NYTOs have continued to expend considerable effort to develop back-office systems to process, analyze, and verify information provided by the NYISO billing and settlement system.

This proceeding is the first time that a NYISO market participant has petitioned the Commission for an order directing the NYISO to correct a final invoice due to a metering error. This, along with the improvements described above, supports a conclusion that if the Commission chooses to grant NYSEG the relief requested, it would not result in a flood of similar petitions for FERC orders.

**F. Granting NYSEG the Relief Requested Would Conform With Commission Precedent**

As the federal courts have recognized, the Commission has a general policy of granting refunds when a customer is overcharged. In the past, the Commission has ordered refunds, with interest, under circumstances similar to those in this proceeding, both in the NYISO and in other ISOs and RTOs. Indeed, when large errors occur that are easily rectified, refunds should be denied only in those circumstances where the equities argue strongly against restitution.

## 1. The Commission's General Policy of Refunds

The Commission enjoys considerable discretion in fashioning remedies under the FPA,<sup>118</sup> including the authority to order the correction of past invoices when customers have been overcharged.<sup>119</sup> Both the federal courts, and the Commission, have noted that FERC has a “general policy of granting full refunds for overcharges,” when billing errors and tariff violations occur.<sup>120</sup> Such refunds are “a form of equitable relief,”<sup>121</sup> and are particularly appropriate when the underlying error has resulted in a “windfall”<sup>122</sup> or when failure to grant restitution “would give offense to equity and good conscience.”<sup>123</sup>

## 2. The Commission Has Ordered Refunds in Similar Cases

The Commission has previously granted relief under the same clause, Section 7.4, under which NYSEG requests relief here.<sup>124</sup> On February 13, 2008, in Docket No. EL08-40-000, National Grid filed a petition for a declaratory order, requesting that the Commission direct the NYISO to refund amounts that had been improperly billed. A software error had caused National Grid to submit inaccurate data to the NYISO, and certain LSEs within National Grid's service territory had been overcharged. The Commission granted National Grid's request for an order directing the NYISO to correct

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<sup>118</sup> See, e.g., *Louisiana Public Service Commission v. FERC*, 174 F.3d 218, 225 (D.C. Cir. 1999) (citing *Niagara Mohawk Power Corp. v. FPC*, 379 F.2d 153, 159 (D.C. Cir. 1967)).

<sup>119</sup> See FPA § 309, 16 U.S.C. § 825h; *Towns of Concord v. FERC*, 955 F.2d at 73.

<sup>120</sup> *Consolidated Edison Co. v. FERC*, 347 F.3d 964, 972 (D.C. Cir. 2003) (quoting *Towns of Concord v. FERC*, 955 F.2d at 76); *New York Independent System Operator, Inc.*, 110 FERC ¶ 61,244 at P 64; *Enron Power Marketing, Inc. v. Western Resources, Inc.*, 89 FERC ¶ 61,135, at 61,388 (1999); *Entergy Services, Inc.*, 82 FERC ¶ 61,098, at 61,369 (1998).

<sup>121</sup> *Keyspan-Ravenswood, LLC v. FERC*, 474 F.3d 804, 811 (2007) (quoting *Towns of Concord v. FERC*, 955 F.2d at 75).

<sup>122</sup> See *Puget Sound Energy*, 96 FERC ¶ 63,044 (citing *Koch Gateway*, 136 F.3d 810).

<sup>123</sup> *Id.* (citing *Towns of Concord v. FERC*, 955 F.2d at 75-76).

<sup>124</sup> See generally *Niagara Mohawk*.

the invoices, finding that “the need for accuracy outweighs concerns of financial certainty and significant injustice would result in the absence of Commission action.”<sup>125</sup>

In that proceeding, FERC did not establish explicit criteria, a formula, or a multi-prong test that sets out what circumstances must be present to qualify for relief under Section 7.4 of the NYISO Services Tariff. Also, the Commission did not state that future petitioners for relief under Section 7.4 must present facts that are substantially similar to those presented by National Grid in that case. That being said, there are significant similarities between the present case and *Niagara Mohawk*. In *Niagara Mohawk*, the errors were difficult to detect because of the short time period for data review after the errors were introduced.<sup>126</sup> In the present case, the errors were also difficult to detect, because there was no practical way for market participants to review and process data from individual meter points using the NYISO’s early data management system. Likewise, as in *Niagara Mohawk*, “to refrain from [directing refunds] would yield an unjust and unreasonable result, requiring some customers to pay too much for energy purchases over the relevant periods, while others would pay too little due to erroneous billing data.”<sup>127</sup> In this case, NYSEG paid for UFE for which it was not responsible, while certain of the LSEs in National Grid’s service territory, including National Grid, failed to pay for UFE for which they were responsible. Further, as the Commission notes in *Niagara Mohawk*, despite the opportunity and equal ability to do so, other parties with access to the data also failed to detect the errors.<sup>128</sup> This is also the case in the present proceeding.

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<sup>125</sup> *Id.* at P 25.

<sup>126</sup> *Id.* at P 24.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

In addition to *Niagara Mohawk*, the Commission has previously issued orders directing the NYISO to issue refunds to parties that had been harmed by errors in the NYISO markets.<sup>129</sup> The Commission has also ordered refunds where other ISOs have violated their tariffs or charged customers the wrong rate.<sup>130</sup> For example, Exelon Corporation (“Exelon”) filed a complaint against PPL Electric Utilities Corporation (“PPL”) and PJM on behalf of Exelon’s subsidiary, PECO Energy Company (“PECO”),<sup>131</sup> requesting reimbursement for over \$39 million of energy used by PPL, but billed to PECO by PJM due to an error in PJM’s computer system:

The Commission finds that PECO is entitled to reimbursement for the congestion charges that PJM erroneously billed to it at the Elroy substation. All parties recognize that these charges were improperly billed due to an error in the State Estimator coding. PECO also had no way of knowing through the bills issued by PJM that it was being improperly charged, since the bills contained only a single statement of congestion charges, not attributed to any specific locations. Since PECO was overcharged and had no way of knowing that they were being charged for energy properly attributable to PPL, we find that PECO is entitled to reimbursement of the overcharged amount.<sup>132</sup>

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<sup>129</sup> See, e.g., *KeySpan-Ravenswood, LLC v. New York Independent System Operator, Inc.*, 127 FERC ¶ 61,086 (2009); *New York Independent System Operator, Inc.*, 117 FERC ¶ 61,305 (2006); *H.Q. Energy Services (U.S.), Inc. v. New York Independent System Operator, Inc.*, 115 FERC ¶ 63,068 (2006); *New York Independent System Operator, Inc.*, 115 FERC ¶ 61,026, at PP 1-3 (2006); *New York Independent System Operator, Inc.*, 114 FERC ¶ 61,267 (2006); *New York Independent System Operator, Inc.*, 112 FERC ¶ 61,347, at PP 6-7 (2005).

<sup>130</sup> See, e.g., *DTE Energy Trading, Inc. v. Midwest Independent Transmission System Operator, Inc.*, 119 FERC ¶ 61,109 (2007) (ordering refunds because the ISO had misapplied the tariff rate); *Wisconsin Electric Power Co. v. Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,005 (2006) (ordering refunds for congestion costs even though the time period for correcting the underlying error had passed); *Exelon Corp. v. PPL Electric Utilities Corp.*, 117 FERC ¶ 61,176 (2006) (ordering refunds even though the time period for disputing bills had passed before the error was noticed); *Quest Energy, L.L.C. v. Detroit Edison Co.*, 106 FERC ¶ 61,227 (2004) (ordering refunds for a period of several years because the formula rate had been misapplied); *ISO New England, Inc.*, 90 FERC ¶ 61,141, at 61,425 (2000) (consistent with the filed rate doctrine, the ISO already has the authority, and is required to correct all prices that do not reflect the filed rate).

<sup>131</sup> *Exelon Corp. v. PPL Electric Utilities Corp.*, 111 FERC ¶ 61,065 (2005), *reh’g denied*, 114 FERC ¶ 61,298 (2006).

<sup>132</sup> *Id.* at P 24 (internal citations omitted).

Like PECO, NYSEG had no practical way to know that it was being overcharged, because the bills contained an aggregated statement of subzone load, not data attributable to individual meters.

Similarly, DTE Energy Trading, Inc. filed a complaint against the Midwest Independent Transmission System Operator, Inc (“MISO”) because the MISO had overcharged customers who were switching transmission paths.<sup>133</sup> The Commission found that the MISO had violated its tariff.<sup>134</sup> The Midwest Transmission Owners (the “MTOs”) requested rehearing, insisting that they had had no part in the MISO’s error and had not received a windfall because of it. The MTOs argued that refunds would upset rate certainty, especially since so much time had passed. The Commission found, however, the difficulties that would be faced by the MISO and the MTOs were “outweighed by the need to ensure that public utilities charge their customers the filed rate.”<sup>135</sup> In this case as well, the need for NYSEG not to be overcharged should outweigh the difficulties of issuing refunds, particularly when those undercharged are clearly identifiable and the amounts of undercharges are identifiable as well.

## V. CONCLUSION

The Supreme Court has stated that Commission jurisdiction: “was so framed as to afford consumers a complete, permanent and effective bond of protection from excessive rates and charges.”<sup>136</sup> Public policy objectives of the FERC are also relevant here — to ensure that rates are just and reasonable and consistent with filed tariffs and to protect

<sup>133</sup> *DTE Energy Trading*, 119 FERC ¶ 61,109.

<sup>134</sup> *DTE Energy Trading, Inc. v. Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,062 (2005).

<sup>135</sup> *DTE Energy Trading*, 119 FERC ¶ 61,109 at P 20 (quoting *City of Holland v. Midwest Independent Transmission System Operator, Inc.*, 112 FERC ¶ 61,205 (2005)).

<sup>136</sup> *See Atlantic Refining Co.*, 360 U.S. at 388.

customers<sup>137</sup> — especially when a method for correction can easily be implemented and has been agreed upon by the involved parties. Where it would be very straightforward to implement the refund, and an undisputed error has caused a wholesale customer to be charged unjust and unreasonable rates such as is clearly evident in this case,<sup>138</sup> the Commission should order a refund.

For the reasons set forth above, NYSEG respectfully requests that the Commission issue an order directing the NYISO to correct the invoices affected by the metering errors in accordance with the Refund Methodology and to refund the agreed to amounts to NYSEG.

Respectfully submitted,

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Dated: November 30, 2009

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<sup>137</sup> See *id.* (“[Commission regulation] was so framed as to afford consumers a complete, permanent and effective bond of protection from excessive rates and charges.”).

<sup>138</sup> See, e.g., *Long Island Power Authority v. New York Independent System Operator, Inc.*, 118 FERC ¶ 61,109, at P 39 (2007) (rejecting tariff interpretation that could lead to an unjust and unreasonable result); *Texas Eastern Transmission Corp.*, 49 FERC ¶ 61,395, at 62,458 (1989) (rejecting tariff interpretation that would produce unjust and unreasonable result).

# **ATTACHMENT A**

December 2000  
BAWG Report

Wesley Yeomans  
December 12, 2000

# Billing & Accounting WG

- Status Report-Year 2000 Accomplishments
- Status Report-Outstanding Issues
- Duration to Challenge Settlement
- Billing Data & Format Sub WG
  - Reformatting, Centralizing, Data Retention
- Metering Sub Working Group
  - Con Ed Subzones (state-estimator)
  - Metered Billing Determinant Data Management

# YR 2000 Accomplishments

- BAWG meetings have served as a great means for billing code explanations, Q & A, and disclosure of billing problems from NYISO staff.
- Support from NYISO Billing & Accounting staff has been fantastic.
- Establishment of two sub-working groups
  - Billing Data & Format Sub Group
  - Meter Data Sub Group
- Resolution of the TCC under/over collection problem.
- Accounting & Billing Workshops for Market Participants
- Process for initiating rebill established.
- Posting time weighted hourly generator LBMP prices.

# YR 2000 Accomplishments

- Generator Performance Penalties implemented in January for non-regulating units (still off for regulating units).
- Notification process for format changes
- Initially R. S. 1 reporting of past actual expenses and future expenses unbundled on web site. Eventually unbundled and charged in actual billing.
- Methodology for Year 2000 VSS payments resolved.
- Early BPCG billing code problems fixed, implemented in rebills.

# YR 2000 Accomplishments

- Bilateral balancing code problems fixed, implemented in rebills.
- Code correction for real time starts, implemented in rebills.
- Corrections to M Load definitions, signs, meter authorities.
- M Load definitions have been migrated to the D Load definitions thus improving on preliminary loads.
- Improvements/corrections in the “mapping” hourly files to daily files and daily files to invoices and the documentation of such..

# YR 2000 Accomplishments

- Many billing data format and posting improvements.
- DFAX of external MW reporting for TO TSC billing have been fixed.
- SCD-PTS LBMP price interval fixed, implemented in rebills.
- BPCG billing code for units run out-of-merit with out DA or RT schedules has been fixed. These units have been paid energy LBMP but not BPCG. Will be corrected in True Ups.
- LBMP congestion sign problem for November & December True Up. Will be corrected in next True Up for those months.

# Outstanding Issues

- True Up software being modified to be able to capture code corrections. Thus “Rebill” will be the same thing as a “True Up”.
- Rebills for June 2000 to current needed to capture code corrections.
- True Ups for April through current need to be completed. NYISO and TOs will try to implement the 3-6-12-24 true up schedule beginning in January 2001.
- Need code correction for start ups for Reserve Pick Ups for prior to having a DA or RT schedule.

# Outstanding Issues

- Many VSS payments for November 18, 1999- current still need to be made.
- Solicitation for Year 2001 VSS data/forms in progress.
- Price correction LBMP posting issues.
- Generator Performance Penalties are still off for regulating units. Waiting on written letters from TOs on status of generation signal data.
- True Up process

# Duration to Challenge Settlement

- Section 7.2A of the OATT states “... customer’s right to challenge the accuracy of Settlement information is limited to twelve months from the month in which the Settlement information is received.”
- Section 7.4 of the Services Tariff states that “a customer’s right to challenge the accuracy of Settlement information is limited to twenty-four months from the month in which service is rendered.”
- B & A Manual states “a customer’s right to challenge the accuracy of settlement information is limited to 24 months from the date that the settlement information is received.”

# Duration to Challenge Settlement

- The BAWG is concerned about the delay in receiving True-Up settlement data.
- The BAWG recommends that the OATT, the Services Tariff, and the B & A Manual all state that the “...Customer has twelve months from the month in which the Settlement information is received.”

# Billing Data & Format Sub WG

- **1. Format Change to Invoice:** NYISO to modify format of invoice to match the prototype as developed by the NYISO Billing Data & Format sub WG.
- **2. Centralize Invoice:** Project to group all NYISO billing into centralized invoice.
- **3. Retention Period Billing:** All billing data including SCD data be made available for 24 months.
- **4. Retention Period Bid:** Obtain bid box data for billing verification, current retention of 45 days is unacceptable.

# Billing Data & Format Sub WG

- **5. Bid vs Billed Data:** Obtain bid vs bill data including DAM commitment by hour vs paid. This would provide MP when unit run off base points or backed down and when generation performance penalties occurred.
- **6. Out of Merit Flagging & RPU Flag:** Request for Out-of-Merit flag, Local Reliability flag, and Eligible for Min. Gen. Flag.
- **7. Daily NYISO Settlement Cash Flow**  
Currently, the daily and MTD settlement cash flow is on a NYISO-wide basis. The requests this on a company-wide basis.

# Billing Data & Format Sub WG

- **8. Version Log:** There needs to be an association file which maps the appropriate file versions to the line items appearing in Billing statements posted to their secured web sites. This cross reference needs to be a CSV file so that a computer application can perform the necessary queries of Hourly settlement files to recreate the line items appearing on the Billing Statement.

# Billing Data & Format Sub WG

- **The BAWG recommends that all eight Billing Data & Format Sub GW projects be added to the NYISO Project List.**

# Metering Sub WG

- Con Ed Actual Subzone Load
  - Con Edison has been providing (and the NYISO has been using) a state estimated load from Con Edison for the Con Edison actual subzone load for the True Up settlement.
  - If this load is lower than a “generation +/- SZ ties” approach, the residual load has been allocated amongst all LSE’s in R.S. 1.

# Metering Sub WG

- Con Ed Actual Subzone Load (Continued)
  - The BAWG recommends that the Con Edison provides actual subzone loads based on actual generation and subzone tie metering as provided by the defined Metering Authorities for the actual subzone loads for the True Up Settlements.

# Metering Sub WG

- Metered Billing Determinant Data Management:

- A gigantic problem in the True Up Settlement process is the tremendous difficulty TO's are having in reviewing and approving of the NYISO actual subzone loads.
- TOs send only the data whereby they are the meter authority to the NYISO. The NYISO produces actual subzone loads with this data.

# Metering Sub WG

- The Metering Sub WG of BAWG has developed a functional requirements document for a project to develop the necessary infrastructure to allow TO's to quickly and efficiently review other TO's subzone ties and the NYISO subzone loads.
- The BAWG recommends that the Metered Billing Determinant Data Management Project be added to the NYISO Project List.

### **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 Washington, DC, this 30th day of November, 2009.

/s/ Claire M. Brennan

Claire M. Brennan

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