

visible throughout the entire settlement period, or where careful review would have revealed the errors.³ The facts set forth in the Joint Stipulation make evident that these are precisely the circumstances present here.⁴ As is discussed below, in the case of each error of which NYSEG complains, NYSEG had the full settlement period to review the erroneous meter data and resulting invoices. In each instance the errors were visible throughout the entire settlement period, and in each case, careful review would have revealed the errors. On the facts presented here, and in light of Commission precedent and the important policy considerations reflected in that precedent, National Grid respectfully urges the Commission to answer the Reserved Issue in the negative – the NYISO should not be directed to correct the “finalized” invoices disputed by NYSEG.

I. BACKGROUND

A. The Proceeding

On December 23, 2008, NYSEG filed a Petition for Declaratory Order seeking a Commission order directing the NYISO to correct “finalized” invoices reaching back to November 1999 explaining that the errors were “only identified recently.”⁵

National Grid intervened and urged the Commission to deny NYSEG’s petition. National Grid explained, among other things, that the corrections sought by NYSEG reached far outside the NYISO time limits for correcting billings, that the circumstances described by NYSEG were in no way “extraordinary” as the Commission had defined that term, and that there was no “injustice” to NYSEG or its ratepayers that required

³ *New York ISO*, 128 FERC ¶ 61,086 at PP 20, 21.

⁴ *See* Joint Stipulation of Facts Not in Dispute attached as Exhibit 1 to Settlement Agreement (“Joint Stipulation”).

⁵ *Petition for Declaratory Order of New York State Electric & Gas Corporation*, FERC Docket No. EL09-26-000 at 1 (“NYSEG Petition”).

abandonment of the finality of the NYISO's settlement process and reopening nearly a decade of NYISO invoices – there was only a decade-long accumulation of very small metering errors which had only reached the magnitude complained of by NYSEG because NYSEG had failed to detect them earlier.⁶

The NYISO also intervened in this matter and asked the Commission to deny NYSEG's petition. The NYISO explained that “[s]ettlement processes that promote finality and financial certainty are vitally important for the NYISO markets to function effectively” and that “[t]he errors in question are the type of metering errors that the NYISO settlement review provisions were established to address.”⁷

By order dated March 30, 2009, the Commission established settlement judge procedures in this proceeding. Parties to the proceeding participated in six formal settlement conferences between April 14, 2009 and August 25, 2009. On September 21, 2009, NYSEG, National Grid, and New York Municipal Power Agency submitted a partial settlement agreement in this docket which resolves the issues raised in the proceeding, with the exception of a single issue reserved for Commission determination.⁸ A Notice of Filing of Settlement Agreement and Establishing Comment Dates was issued on October 13, 2009 and clarified on October 21, 2009.

B. The NYISO Settlement System and Process

The NYISO billing and settlement system has evolved from the NYISO's inception in 1999 but has, at all times, provided metering authorities such as NYSEG and

⁶ *Motion to Intervene and Comment of Niagara Mohawk Power Corporation d/b/a National Grid USA*, Docket No. EL09-26-000 (January 22, 2009) (“National Grid Comments”) at 3-5.

⁷ *Motion to Intervene and Comment of the New York Independent System Operator, Inc.*, Docket No. EL09-26-000 (January 22, 2009) (“NYISO Comments”) at 5, 6 (citations omitted).

⁸ *See* note 1 *supra*.

market participants with access to the data from individual meter points which is the basis for monthly settlement invoices issued by the NYISO.⁹

The NYISO Services Tariff establishes the process and timeframes for review, challenge and correction of interchange and generator meter data and invoices.¹⁰

- Prior to October 1, 2002, the NYISO tariff allowed twenty-four months for the NYISO to review settlement information and make corrections to the initial invoice followed by a 12-month Customer review period.¹¹
- From October 1, 2002 through December 31, 2006, the NYISO tariff allowed 12-months for the NYISO to review settlement information and make corrections to the initial invoice followed by a 4-month Customer review period.¹²
- Beginning January 1, 2007, a single concurrent 7-month period was established for both NYISO and customer review of settlement information and a specific fifty-five day review period from the date of invoice for a supplier or meter authority to review and challenge generator, tie-line, and subzone load metering data.¹³

In each case, if a customer does not challenge the meter data or invoice within the specified period for review, challenge and correction, the meter data and/or invoice becomes “finalized” and is not subject to further adjustment by the NYISO.¹⁴ In addition, between November 1999 and December 2006, the NYISO and Meter Authority staff actively participated in weekly conference calls hosted by the NYISO during which the

⁹ See Joint Stipulation at ¶¶ 20-25.

¹⁰ *Id.* at ¶ 26. See NYISO Services Tariff § 7.4. The timeframes for review, challenge and correction of interchange meter data and invoices have changed over time since the NYISO commenced operations. All changes have been fully vetted with NYISO market participants, filed with the Commission under Section 205 of the Federal Power Act, and accepted for filing by the Commission. Joint Stipulation at ¶ 33.

¹¹ Joint Stipulation at ¶ 28.

¹² *Id.* at ¶ 29.

¹³ *Id.* at ¶¶ 30-31. As of January 1, 2009, the concurrent time period for NYISO and customer review became five months; the time to review generator, tie-line and subzone load metering data was unchanged. *Id.* at ¶ 32.

¹⁴ Section 7.4 of the NYISO Services Tariff provides in relevant part:

For purposes of this Section 7.4, “finalized” data and invoices shall not be subject to further correction, including by the NYISO, 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.

key topics for discussion were billing and invoicing timelines and unresolved metering issues. This informal process was intended to ensure that Meter Authorities were aware of deadlines for submitting updated meter data prior to initial and true-up invoices and for resolving any metering disputes between Meter Authorities.¹⁵

C. The Metering Errors

Errors associated with four meters underpin NYSEG's request for a Commission order directing correction of "finalized" invoices.

(1) *The Cold Spring-Randolph Meter Error.* NYSEG is the Meter Authority for the Cold Spring-Randolph meter.¹⁶ In September 2003, NYSEG upgraded this meter.¹⁷ During the upgrade process, NYSEG incorrectly set the scaling factor for this meter in its back office system.¹⁸ As a result, each month, for four and a half years, incorrect data was reported from the Cold Spring-Randolph meter to the NYISO and reflected in monthly invoices issued by the NYISO until NYSEG discovered the error in April 2008.¹⁹ Fifty-four (54) months of NYISO invoices issued to scores of NYISO market participants are affected by this error, all of which are now finalized.²⁰

(2) *The Snyder Lake-Hoag Meter Error.* National Grid is the Meter Authority for the Snyder Lake-Hoag meter.²¹ Two errors are associated with this meter. In July 2007,

¹⁵ *Id.* at ¶ 27

¹⁶ Joint Stipulation at ¶ 42. The NYISO Revenue Metering Requirements Manual defines a Meter Authority as "[a]n entity designated by the NYISO that is responsible for a NYISO electric revenue metering system for its calibration, maintenance, operation, and reporting of metered data." *Id.* at ¶ 9.

¹⁷ *Id.* at ¶ 44.

¹⁸ *Id.* at ¶ 44. The average hourly flow at this meter is 4-8 MW. *Id.* at ¶ 42. The monthly error generally ranges between 3200 MWh and 4800 MWh. *Id.* at Appendix 2. Given that there are approximately 730 hours in a month, the error per hour at this metering point was in the range of 4.3 MW to 6.6 MW or approximately 100% of the correct flow. Thus, the meter multiplier was off by a factor of approximately fifty percent (50%).

¹⁹ *Id.* at ¶¶ 44-45 and Appendix 2.

²⁰ *Id.* at ¶ 45, Appendix 2, and Appendix 6 at pp.9-14.

²¹ *Id.* at ¶ 34.

when reviewing data from the Snyder Lake-Hoag meter, NYSEG observed that the polarity of the meter appeared to be reversed and challenged the data.²² National Grid investigated and confirmed that the polarity of the Snyder Lake-Hoag meter was in fact reversed. National Grid also found that incorrect data reflecting the reversed polarity had been reported by the Snyder Lake-Hoag meter to the NYISO each month since November 1999 and reflected in invoices issued each month by the NYISO since that date.²³ Ninety-one (91) months of NYISO invoices issued to dozens of market participants are affected by this polarity error, all of which are now finalized.²⁴

In August 2007, it was noticed that the magnitude of energy flow reported by the Snyder Lake-Hoag meter had dropped in August 2003 by 96% (from 860 MWh (1.08MW/Hr) to 32 MWh (.004MW/Hr)).²⁵ The significantly lower value was reported each month thereafter -- from August 2003 through July 2007.²⁶ National Grid investigated why the magnitude of energy flow had changed so significantly in August 2003 and found that when the Snyder Lake-Hoag meter was replaced in July 2003, the scaling factor in the back-office meter data collection system was not corrected to reflect the new meter multiplier.²⁷ As a consequence, beginning in August 2003 and each month thereafter for four years incorrect meter data was reported from the Snyder Lake-Hoag meter to the NYISO and reflected in monthly invoices issued by the NYSIO until the scaling error was discovered in August 2007.²⁸ Forty-seven (47) months of NYISO

²² *Id.* at ¶ 37.

²³ *Id.* at ¶ 37 and Appendix 1.

²⁴ *Id.* at ¶ 40, Appendix 1, and Appendix 6 at pp. 4-8.

²⁵ *Id.* at ¶ 38.

²⁶ *Id.*

²⁷ *Id.* at ¶ 39.

²⁸ *Id.* at Appendix 1.

invoices issued to numerous market participants are affected by this error, all of which are now finalized.²⁹

(3) *The East Springfield Meter Error.* National Grid is the Meter Authority for the East Springfield meter.³⁰ In March 2007, National Grid submitted data to the NYISO from this meter which NYSEG reviewed.³¹ On April 25, 2007, during the open period provided for revisions to meter data, National Grid reported revised meter data to the NYISO. When National Grid did so, an inadvertent error occurred causing “0” to be reported to the NYISO for energy flow at the East Springfield metering point rather than the correct amount.³² One month of NYISO invoices to scores of NYISO market participants is affected by this error, all of which are now finalized.³³

(4) *The Carrs-Corners Error.* Carrs-Corners is an invalid interchange point which was entered into the NYISO system by mistake at the inception of the NYISO in 1999.³⁴ NYSEG had asked that this point be removed from the NYISO settlement system. When the web-based reconciliation software for the NYISO settlement system was deployed in 2003, meter data was inadvertently assigned to the Carrs-Corners interchange for the months of December 1999 and January 2000.³⁵ The NYISO and NYSEG became aware of this error in early 2004.³⁶ At that time, however, the NYISO informed NYSEG that the NYISO tariffs did not allow the NYISO to revise the affected finalized invoices without an order from the Commission or a court of competent jurisdiction and NYSEG took no

²⁹ *Id.* at ¶ 40, Appendix 1, and Appendix 6 at pp. 4-8.

³⁰ *Id.* at ¶ 46.

³¹ *Id.* at ¶ 47.

³² *Id.*

³³ *Id.* at ¶ 48, Appendix 3, and Appendix 6 at p. 16.

³⁴ *Id.* at ¶ 50.

³⁵ *Id.* at ¶ 51.

³⁶ *Id.*

further action to have the error corrected.³⁷ Two months of NYISO invoices to numerous current and former NYISO market participants are affected by this error, all of which are finalized.³⁸

II. DISCUSSION

A. The Finalized Invoices at Issue Here Should Not be Reopened or Corrected – Extraordinary Circumstances are Not Present

All the invoices which NYSEG seeks to have corrected in this matter are “finalized” in accordance with the terms of the NYISO tariff. 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).”³⁹ The Commission has determined that it is only in the event of “extraordinary circumstances” and when it has determined that “significant injustice would result in the absence of Commission action” that it will reopen finalized invoices.⁴⁰ In the only instance where the Commission has directed that the NYISO reopen and correct finalized invoices,⁴¹ it explained that its decision to do so was due to the “unusual nature and timing of the errors” and its determination that customers should not “be faulted for failing to challenge the errors in final invoices within the *final twenty-five day period* because they had no basis to believe that the data . . . provided to the NYISO included anything other than updates of previously-supplied

³⁷ *Id.*

³⁸ *Id.* at ¶ 52, Appendix 4, and Appendix 2 at p.15.

³⁹ *Niagara Mohawk*, 123 FERC ¶ 63,120 at P 23.

⁴⁰ *New York ISO*, 128 FERC ¶ 61,086 at P 20 *citing Niagara Mohawk*, 123 FERC ¶ 61,314 at P 25.

⁴¹ In this case, *Niagara Mohawk*, 123 FERC ¶ 61,314 (2009), the NYISO resettled the market in accordance with its Tariff for the entire period.

consumption data corrected for certain, limited duplicate data that ... had [been] found.”⁴²

The Commission has determined, however, that there is no extraordinary circumstance where the customer challenging a final invoice had the full settlement period to review data or invoices and find error, or where the errors had been visible throughout the entire settlement period, or where the errors were discoverable during the settlement period with careful review.⁴³

NYSEG seeks to have ninety-nine (99) months, December 1999 through February 2008, of NYISO invoices issued to scores of former and current NYISO market participants reopened and corrected.⁴⁴ For errors associated with the Cold Spring-Randolph meter, NYSEG seeks to have invoices corrected for the 54-month period September 2003 through February 2008.⁴⁵ For errors associated with the Snyder Lake-Hoag meter, NYSEG seeks to have invoices corrected for the 91-month period January 2000 through July 2007.⁴⁶ For errors associated with the East Springfield meter, NYSEG seeks to have invoices corrected for March 2007.⁴⁷ And, for the errors associated with the Carrs-Corners tie, NYSEG seeks to have invoices corrected for December 1999 and

⁴² *Niagara Mohawk*, 123 FERC ¶ 61,314 at P 24 (emphasis supplied). It is also notable that the equitable posture of the party requesting that the Commission correct “finalized” invoices is materially different in *Niagara Mohawk* than is the case here. In *Niagara Mohawk*, the party asking the Commission to correct invoices did so to return funds to market participants and customers received as a result of the billing error reflected in invoices which became “finalized” before the error was discovered. In this case, NYSEG seeks to have 99 months of invoices of scores of market participants reopened and resettled so that NYSEG can receive amounts which it deems due to it notwithstanding the fact that the subject invoices are “finalized” and the fact that NYSEG did not discover the errors within the allowed settlement review periods.

⁴³ *Id.*; see also *New York ISO*, 128 FERC ¶ 61,086 at PP 20, 21.

⁴⁴ See Joint Stipulation at Appendices 1-4 and 6. Unlike *Niagara Mohawk*, 123 FERC ¶ 61,314, where the NYISO was able to resettle and issue corrected invoices in accordance with its Tariff, the NYISO has indicated that it would be a “multi-year” exercise requiring an unduly burdensome commitment of resources and personnel” for the NYISO to resettle in accordance with its Tariff the nine years of invoices that NYSEG seeks to have corrected in this case. NYISO Comments at 11.

⁴⁵ *Id.* at Appendix 2.

⁴⁶ *Id.* at Appendix 1.

⁴⁷ *Id.* at Appendix 3.

January 2000.⁴⁸ Yet, in each instance the stipulated facts show that: (i) NYSEG had the full settlement review period available to it to review and to challenge the metering data and invoices for which it now seeks redress; (ii) the errors which underpin NYSEG's complaints were visible in the meter data available for NYSEG's review and in the invoices reflecting that data; and (iii) with careful review, NYSEG should have discovered the errors for which it now seeks Commission intervention to correct. There is, therefore, no "extraordinary circumstance" present to justify any of the corrections sought by NYSEG.

The Full Settlement Review Period Was Available in Each Instance. For each month that erroneous meter data was submitted and invoices issued between January 2000 and September 30, 2002, NYSEG had the full 24-month settlement period allowed for the NYISO to review and correct meter data and to correct the initial invoices. NYSEG then had the full 12-month customer review period which followed – for a settlement review period totaling thirty-six (36) months to review, challenge and correct the erroneous meter data and affected invoices.⁴⁹ This 36-month settlement review period pertained to each month of erroneous meter data submitted from the Snyder Lake-Hoag meter and each month of invoices issued reflecting that data for the period January 2000 through September 30, 2002. The stipulated facts make clear that both the polarity and the scaling errors attributed to the Snyder Lake-Hoag meter were reflected in the initial metering data submitted each month and not introduced at some later time in the settlement review process.⁵⁰ Thus, NYSEG had the full 36-month settlement review period to review and challenge the meter data submitted each month from this meter and each of the affected

⁴⁸ *Id.* at Appendix 4.

⁴⁹ *Id.* at ¶ 27, 28.

monthly invoices. This 36-month settlement period also applied to meter data and monthly invoices for December 1999 and January 2000 attributed to the Carrs-Corners tie.

For each month that erroneous data was submitted and invoices issued between October 1, 2002 and December 31, 2006, NYSEG had the full 12-month period permitted for NYISO review and correct meter data and invoices as well as the full 4-month customer review period for a total review period of 16 months to review and challenge the erroneous meter data and affected monthly invoices.⁵¹ This 16-month settlement review period pertained to each month of erroneous meter data submitted from the Snyder Lake-Hoag meter and the Cold Spring-Randolph meter and each of the affected monthly invoices issued for the period October 1, 2002 through December 31, 2006. Again, the stipulated facts make clear that the errors associated with these two meters were present in the initial data submitted each month from each of these meters and in the affected invoices issued each month and that these errors were not introduced at some later point in the settlement review process.⁵² Accordingly, in each instance, NYSEG again had the full review period to review, challenge and correct the metering data submitted each month from these meters and each of the affected monthly invoices.

For each month that erroneous data was submitted and invoices issued between January 1, 2007 and February 2008, NYSEG had the full 55-day period available to review and challenge meter data as well as the 7-month period available to review and challenge settlement invoices.⁵³ This review period pertains to each month of erroneous data submitted from the Snyder Lake-Hoag meter and each of the affected monthly

⁵⁰ *Id.* at ¶¶ 36-39.

⁵¹ *Id.* at ¶ 27, 29.

⁵² *Id.* at ¶¶ 36-39, 44.

invoices issued for the period January through July 2007 as well as each month of erroneous data submitted from the Cold Spring-Randolph meter and each of the affected monthly invoices issued for the period January 2007 through February 2008. The stipulated facts make clear that the errors associated with these two meters were present in the initial data submitted from these meters and in the affected invoices issued each month and were not introduced at some later point in the settlement review process.⁵⁴ Thus, NYSEG had the full review period to review, challenge and correct the data submitted each month from these meters as well as each of the affected monthly invoices. The erroneous data from the East Springfield meter and the affected invoices for March 2007 were also subject to the 55-day meter review period and the 7-month period to review invoices. In the case of this meter error, the error was introduced early in the 55-day meter data review period and NYSEG had the substantial portion of the review period to review the data and challenge the error.⁵⁵ In addition, NYSEG had the 7-month customer review period to review and challenge the invoice for March 2007.

Despite having the full settlement period available in virtually every instance to review the meter data submitted and invoices issued each month during this entire 99-month period – settlement periods ranging from 36 months to a concurrent 55 days and 7

⁵³ *Id.* at ¶¶ 30-31.

⁵⁴ *Id.* at ¶¶ 36-39, 44.

⁵⁵ *See* Joint Stipulation at ¶ 47. Based on the NYISO settlement calendar, NYSEG had 43 days (of the 55-day review period) from the date on which the error meter data was provided to the NYISO to review, challenge the data, and request a correction. With the web-based reconciliation settlement system then in place, NYSEG had easy access to the reported data which reflected the obvious error. *See* Affidavit of John O. Leana at ¶ 11 attached to Motion to Intervene and Comments of Niagara Mohawk Power Corporation d/b/a National Grid USA, Docket No. EL09-26-000, dated January 22, 2009 (“Leana Aff.”).

months⁵⁶ -- NYSEG raised no timely challenge to any of the meter data or to any of the invoices which it now seeks to have corrected.

The Errors Were Visible. All of the meter errors which underpin the invoices NYSEG now seeks to have the Commission correct were visible in the NYISO billing and settlement systems in place and to which NYSEG had full access. Between November 1999 and 2000, NYSEG was able to validate energy flows at specific metering points by requesting NYISO hourly data for an individual meter point from the NYISO.⁵⁷ The meter data available from the NYISO during this period included monthly data from the Snyder Lake-Hoag meter measuring energy flows incorrectly due to the reversed polarity as well as data for December 1999 and January 2000 reported for an invalid metering point – Carrs-Corners.

During the period 2000 to 2003, the NYISO billing and settlement system was enhanced so that meter authorities such as NYSEG could download files without a request to the NYISO showing interchange hourly values used to calculate hourly aggregate subzone load based on interchange meter data supplied by meter authorities.⁵⁸ The data that was available to NYSEG to download and review included data from the Snyder Lake-Hoag meter which continued throughout this period to report incorrect energy flows each month due to the reversed polarity.

Beginning in 2003 and through the balance of the period for which NYSEG seeks to have invoices corrected, NYSEG had access to meter data through a web-based application and was able to access individual meter data without requesting it from the

⁵⁶ These settlement periods are in stark contrast to the limited review period – 25 days -- available in the only instance where the Commission found it warranted for it to intervene and order that “finalized” invoices be corrected. *See Niagara Mohawk*, 123 FERC ¶ 61,314 at P 24.

⁵⁷ Joint Stipulation at ¶ 21.

NYISO.⁵⁹ This web-based application gave NYSEG access to meter data submitted each month from the Snyder Lake-Hoag meter reflecting both the polarity and scaling error attributed to this meter and to data submitted each month from the Cold Spring-Randolph meter reflecting the scaling error which NYSEG introduced in September 2003 (as well as data from the replaced meter which had provided correct data until it was replaced and which provided a basis to assess the accuracy of the new meter). NYSEG also had access to the data reported for the East Springfield meter for March 2007 which reflected “0” energy flow at this metering point. Finally, NYSEG clearly had access to data related to the Carrs-Corners tie, having raised and discussed this error with the NYISO when it initially appeared and again in early 2004.

Despite the fact that the erroneous data submitted from the Snyder Lake-Hoag, Cold Springs-Randolph, and East Springfield meters, as well as that related to the incorrect Carrs-Corners tie, was visible in the NYISO settlement system to which NYSEG had full access, NYSEG raised no timely challenge to any of the erroneous meter data submitted or any of the affected monthly invoices issued over this entire 89-month period.

The Errors Were Discoverable. Finally, with careful review, NYSEG should have discovered each of the meter errors it now seeks the Commission’s intervention to correct. As discussed above, the errors associated with the Cold Spring-Randolph, Snyder Lake-Hoag and East Springfield meters were visible in the meter data submitted each month from these meters.

⁵⁸ *Id.* at ¶ 22.

⁵⁹ Joint Stipulation at ¶ 23. In 2007, access to meter data was improved through implementation of the Settlement Data Exchange (“SDX”) which allowed NYSEG to access meter data information directly and provided enhanced meter data analysis and the ability to view individual meter data. *Id.* at ¶ 24.

In the case of the erroneous data from the Cold Spring-Randolph meter, the scaling error which NYSEG introduced caused the energy flow reported from this meter to be overstated by 50% each month for 54 months before the error was discovered.⁶⁰ Had NYSEG compared the average month flow measured at the Cold Spring-Randolph metering point before the meter was upgraded in September 2003 with the average month flow measured at this metering point during any month after the upgrade, the scaling error should have been obvious and discovered. Indeed, it was precisely a comparison of this kind that ultimately lead NYSEG to discover the meter error – NYSEG compared a measurement of the flow at the Cold Spring-Randolph metering point from an independent source with that measured by the upgraded Cold Spring-Randolph meter and immediately discovered the 50% measurement error.⁶¹ The Cold Spring-Randolph meter scaling error was discoverable in the meter data available to NYSEG for each and every month after the scaling error was introduced in September 2003 until it was finally discovered 4 ½ years later.

The metering errors associated with the Snyder Lake-Hoag meter were equally discoverable. NYSEG questioned whether the polarity for the Snyder Lake-Hoag meter was correct when it reviewed and challenged data from that meter in July 2007.⁶² That very same data error which NYSEG discovered when it reviewed the monthly data in July 2007 was, in fact, present in the data submitted from the Snyder Lake-Hoag meter each and every month since November 1999.⁶³ To the extent that the polarity error was

⁶⁰ *Id.* at ¶ 44 and Appendix 2. *See* note 17 *supra*.

⁶¹ *Id.* at ¶ 44.

⁶² *Id.* at ¶ 37.

⁶³ *Id.* at ¶¶ 36-37.

discernable in the meter data submitted for July 2007, it was equally discoverable in the data submitted and the invoices issued for each and every one of the preceding 90 months.

The Snyder Lake-Hoag meter scaling error was similarly discoverable. When the energy flow reported for August 2003 from the Snyder Lake-Hoag meter was reviewed four years later in August 2007, the 96% drop in measured flow was immediately noticed and, as a result, the scaling error which had been introduced in July 2003 discovered.⁶⁴ There was no change in the data for August 2003 that suddenly made the precipitous drop in measured flow for that month only discernable four years later. The data showing the 96% drop in flow measured by the Snyder Lake-Hoag meter for August 2003 was discoverable in the NYISO settlement system data from the moment that measured flow was submitted from the meter in August 2003.⁶⁵ To the extent it was discoverable in August 2007, it was equally discoverable four years earlier in August 2003 and at any time thereafter.

The East Springfield meter data error was also discoverable in the meter data available to NYSEG as well as in the affected invoices issued by the NYISO. The reported measurement of “0” flow of energy across the East Springfield meter was reflected in the data reported from that meter as of April 25, 2007 and remained in the data thereafter. NYSEG had previously reviewed data for March 2007 from this metering point prior to the initial meter data lockdown.⁶⁶ When the data was revised within the permitted time period, “0” was erroneously reported for energy flow at this metering

⁶⁴ *Id.* at ¶ 38.

⁶⁵ *Id.* at ¶¶ 36, 39.

⁶⁶ *Id.* at ¶ 47. As a Meter Authority, presumably NYSEG knew the data was subject to revision.

point.⁶⁷ In light of the flow reported only days earlier which NYSEG had reviewed, this error was not only discoverable, it was obvious.

In sum, there is no “extraordinary circumstance” present that would justify a Commission order directing the NYISO to reopen and correct the finalized invoices at issue here. As the NYISO stated earlier in this proceeding:

In the case at hand, the parties were responsible for reviewing their tie-line metering data and challenging any errors within tariff prescribed time frames. . . . NYSEG asserts that it did not identify or challenge the inaccurate tie-line metering data because the errors were small and hard to detect. NYSEG argues that the errors were difficult to detect and thus extraordinary, not the “garden variety” errors for which the time frames in the NYISO’s settlement process were meant to apply. The NYISO tariffs do not, however, distinguish between “garden variety” errors and other types of errors. Rather, the NYISO tariffs clearly require customers to timely review all tie-line metering data and challenge any errors within specific time frames. *The errors in question are the type of metering errors that the NYISO settlement review provisions were established to address.*⁶⁸

NYSEG’s request that the Commission direct that finalized invoices be reopened and corrected should be denied.

B. Compelling Policy Considerations Counsel Against Reopening Years of Finalized Invoices Affecting Scores of Participants in the Markets Administered by the NYISO

The financial certainty afforded by finalized metering data and invoices is vital to the successful and efficient operation of ISO and RTO markets. As the NYISO explains:

The NYISO’s settlement provisions establish specific time periods for the NYISO and its customers to review, challenge, correct, and finalize settlement information. . . . Customers simply cannot make sound business decisions without the confidence that their financial obligations will not be revised years later. Settlement processes that promote finality and financial certainty are vitally important for the NYISO markets to function effectively.⁶⁹

⁶⁷ *Id.*

⁶⁸ NYISO Comments at 5-6 (citations omitted; emphasis supplied).

⁶⁹ NYISO Comments at 4-5 (citations omitted). The Commission too has recognized the critical role that billing finality and resulting financial certainty play in these circumstances. *See Southwest Power Pool,*

The NYISO's settlement provisions including those establishing the "finality" of invoices are the culmination of extensive stakeholder discussions and reflect their determination of the "appropriate balance of the need for accuracy in invoices with the need for financial certainty."⁷⁰ A majority of NYISO stakeholders have determined that the possibility of uncorrected errors in meter data and invoices is an acceptable trade-off for the benefits of financial certainty, a trade-off which the Commission has approved. Parties participating in NYISO markets structure their risk management practices, financial decisions, and commercial approach to the NYISO markets on the expectation that this agreed upon commercial balance will be honored.⁷¹ Certainty as to the settlement review periods and the resulting "finality" of invoice imposes due diligence obligations on market participants to devote resources to review meter data and invoices consistent with each participant's assessment of risk, financial exposure and cost-benefit analysis.⁷²

Inc., 114 FERC ¶ 61,289 at P 124 (2006) ("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.").

⁷⁰ 128 FERC ¶ 61,086 at P 19 *citing* 123 FERC ¶ 63,314 at P 25.

⁷¹ Indeed, there is an interrelationship between the NYISO tariff billing finality provisions on the one hand and the NYISO's collateral and creditworthiness requirements on the other. As LIPA *et al* describe in their comments filed in this case on November 12, 2009, the provisions that establish the finality of invoices are key underpinnings of the collateral and creditworthiness requirements – one is structured in contemplation of the other. The operation of these provisions in parallel and in conjunction with the other promotes confidence in the NYISO markets, financial certainty, and market efficiency. The NYISO's collateral and creditworthiness requirements do not contemplate that finalized invoices will be revisited and resettled years after they are finalized. And, as a result, market participants have settled expectations regarding their financial obligations for those earlier transactions. Settlement processes that would permit such settled expectations to be upset create uncertainty and instability which are antithetical to the development of efficient markets. NYSEG's request to reopen and resettle 99 months of finalized invoices threatens to undo years of NYISO and Commission efforts to build confidence in NYISO markets and to realize the benefits that efficient and stable energy markets bring to consumers through the establishment and enforcement of rules that promote financial certainty.

⁷² If Commission allows the "finality" of invoices to be revisited in circumstances such as those presented in this matter, it may well become more "cost effective" for market participants to ignore data and invoices related to relatively small metering points to allow the financial implications of any errors associated with such metering point to grow so that the dedication of resources to review and challenge of meter data and invoices becomes more cost-effective.

The Commission has recognized that these settled expectations must be protected if the NYISO markets are to develop and thrive and has made clear that such “finalized” invoices would be reopened and corrected only in “extraordinary circumstances.”⁷³ As the discussion above demonstrates, no “extraordinary circumstance” is present here. Accordingly, National Grid respectfully suggests that the explicit terms of the NYISO tariff and sound policy considerations supporting the continued development and enhancement of the NYISO markets, compel rejection of the 99 months of invoice corrections sought by NYSEG. The currently settled expectations of NYISO market participants should not be upset. NYSEG had full knowledge and understanding of the settlement review periods and “finality” provisions of the NYISO tariff. NYSEG made its own cost-benefit analysis regarding the level of due diligence and resources to expend to review the meter data and monthly invoices associated with the metering points at issue here and should not now be allowed revisit that business decision and its financial consequences.⁷⁴ To permit NYSEG to do so here would substantially undermine the confidence that all other participants in these NYISO markets have in finalized settlement information and the certainty of their business and financial obligations.⁷⁵ The

⁷³ 128 FERC ¶ 61,086 at P 20 *citing* 123 FERC ¶ 63,314 at P 25.

⁷⁴ Nor is this first time that NYSEG has sought Commission intervention to make it whole for its failure to discover billing errors before invoices become final. In *New York ISO*, the Commission rejected NYSEG’s arguments that 46-months of finalized invoices should be reopened and corrected explaining “that NYSEG’s failure to carefully review its invoices for the 46-month period was a primary reason that the error was not discovered earlier. . . . [I]n this case, NYSEG had at least seven months to protest the errors of some of the invoices and a year to protest the other invoices. . . . [C]areful review of the invoices by NYSEG would have revealed the billing errors.” 128 FERC ¶ 61,086 at PP 20-21.

⁷⁵ In fact, if invoices are reopened and corrected on the basis of the circumstances presented here, other load serving entities participating in the NYISO markets may well be compelled to review old metering data for errors or to resurrect errors previously considered finalized pursuant to NYISO tariff provisions and bring those before the Commission for correction. While the magnitude of such finalized errors is not known, as National Grid noted in its earlier comments such errors are known to exist and should be expected to be substantial. *See* Leana Aff. at ¶ 27 (referencing known finalized error associated with Indian-Clinton line valued at \$1 million).

stakeholder-determined and Commission-approved balance between accuracy and financial certainty should be respected and affirmed in this case – final should mean final.

III. CONCLUSION

For the reasons discussed above, National Grid respectfully urges the Commission to answer the Reserved Question in the negative -- the NYISO should not be directed to correct the “finalized” invoices of which NYSEG complains. Further, National Grid respectfully asks that NYSEG’s Petition for Declaratory order in this matter be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list 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 30th day of November, 2009, at Washington, D.C.

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