

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

New York Association of Public Power

Complainant,

v.

**Niagara Mohawk Power
Corporation d/b/a National Grid,
and**

**New York Independent
System Operator, Inc.**

Respondents.

Docket No. EL12-101-000

**MOTION FOR DISMISSAL OF
THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rule 212¹ of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), the New York Independent System Operator, Inc. (“NYISO”) moves for dismissal with prejudice of the NYISO as a party to this proceeding.² This proceeding was initiated by the complaint filed on September 11, 2012, and as amended on September 26, 2012, in the above captioned docket, by the New York Association of Public Power (“Complainant”) against Niagara Mohawk Power Corporation d/b/a National Grid

¹ 18 C.F.R. 385.212 (2012).

² Because the Complaint did not contain any substantive allegations against the NYISO, the NYISO had no reason to submit an answer on October 1, 2012. However, on November 2, 2012 another party filed a separate complaint that also raised issues regarding Niagara Mohawk’s transmission rates. That complaint similarly identifies the NYISO as a respondent without making any substantive allegations against the NYISO. *See* Docket No. ER13-16-000. Because the NYISO has no direct interest in either complaint proceeding and is willing to comply with Commission orders in both, it is concurrently filing motions to dismiss in both dockets. To the extent the Commission deems this motion to dismiss to be a late filed answer, the NYISO requests leave to submit it out-of-time.

(“Niagara Mohawk”) and the NYISO (“Complaint”). There are no allegations against the NYISO in the Complaint.

Consistent with Commission precedent,³ dismissal should be granted because the NYISO is not the beneficiary, nor is it responsible for establishing the level of Niagara Mohawk’s rate of return on equity (“ROE”) used in transmission service rates, as reflected in Niagara Mohawk’s Wholesale Transmission Service Charge (“TSC”).⁴ The NYISO is a not-for-profit corporation that neither directly receives a portion of the payments made using the TSC nor invoices the TSC. The NYISO simply administers the Open Access Transmission Tariff (“OATT”) in which the Niagara Mohawk TSC is described. The NYISO would administratively submit through eTariff any revisions to its OATT that the Commission orders Niagara Mohawk to make in this proceeding; however, the NYISO is not properly a party to this proceeding.

I. BACKGROUND

Niagara Mohawk’s TSC is calculated using a formula rate contained in Attachment H to the NYISO OATT. It is annually recalculated using updated inputs into the formula rate, which include the ROE for Niagara Mohawk. The Complaint alleges that the current ROE is unjust and unreasonable. It also requests that the Commission issue an order instituting paper hearing procedures to investigate Niagara Mohawk’s ROE, establishing the earliest possible refund date and directing refunds.⁵

³ *Martha Coakely, Massachusetts Attorney General, et al. v. Bangor Hydro-Electric Co., et al.*, 139 FERC ¶61,090 at P 23 (2012).

⁴ Capitalized terms that are not otherwise defined in this filing shall have the meaning specified in the NYISO’s Open Access Transmission Tariff (“OATT”), and if not defined therein, in the NYISO Market Administration and Control Area Services Tariff (“Services Tariff”).

⁵ Complaint at 2.

Significantly, the Complainant admits that Niagara Mohawk “is the real party in interest for purposes of this Complaint.”⁶ Additionally, Complainant explains that it “has named NYISO as a Respondent only because Niagara Mohawk’s ROE is a stated value in the NYISO OATT.”⁷

II. MOTION TO DISMISS

The Commission should promptly dismiss the NYISO as a party to this proceeding. There is no reason to require the NYISO to expend resources to answer the Complaint or participate in this proceeding. It is unnecessary for the NYISO to be a party because it will have no role in considering, or formulating any change to the Niagara Mohawk’s ROE, if such a change is ultimately ordered by the Commission. The NYISO is simply the appropriate entity for administering revisions to the OATT under the Commission’s eTariff system.

As admitted by Complainant, the ROE is reflected in the TSC, which is a Niagara Mohawk rate. The ROE reflected in those rates is not the NYISO’s. The NYISO has no ROE because it is a not-for-profit corporation. Therefore, any order to change the ROE would be directed at Niagara Mohawk, not the NYISO. Because the NYISO’s role is purely administrative with respect to the ROE at issue in the Complaint, NYISO’s lack of pecuniary interest, and Complainant’s own admission that Niagara Mohawk is the party in interest, the Commission should dismiss the NYISO as a party to this Complaint. The Commission has recently granted a motion to dismiss under similar circumstances.⁸

⁶ *Id.* at 4.

⁷ *Id.*, citing, NYISO OATT Attachment H-1 Schedule 8 line nos. 10 and 19.

⁸ *Martha Coakely, Massachusetts Attorney General, et al. v. Bangor Hydro-Electric Co., et al.*, 139 FERC ¶61,090 at P 23 (2012).

III. COMMUNICATIONS

Communications regarding this pleading should be addressed as follows:

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IV. CONCLUSION

For the foregoing reasons, the New York Independent System Operator, Inc. respectfully requests the Commission grant its motion for dismissal.

Respectfully Submitted,

/s/ Vanessa A. Colón
Counsel to the
New York Independent System Operator, Inc.

December 7, 2012

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Commission Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2012).

Dated at Washington, D.C. this 7th day of December, 2012.

/s/ Catherine Karimi

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