

152 FERC ¶ 61,114
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

GDF Suez Energy Resources, NA

Docket No. EL14-89-001

v.

New York Independent System
Operator, Inc., and
Consolidated Edison Company of
New York, Inc.

ORDER DENYING CLARIFICATION

(Issued August 7, 2015)

1. On January 20, 2015, the New York Independent System Operator, Inc. (NYISO) requested clarification of the Commission's December 18, 2014 order granting the complaint filed by GDF Suez Energy Resources, NA (Suez) in the above-captioned proceeding.¹ As discussed below, we deny NYISO's request for clarification.

I. Background

2. Suez is a non-residential retail electricity supplier and load serving entity under the state of New York's retail access program and purchases the electricity for its retail customers from NYISO. During the period at issue, Suez provided electric generation service at retail to 55 Water Street in lower Manhattan (55 Water Street), a commercial office building. Consolidated Edison Company of New York, Inc. (Con Ed), a regulated public utility in New York State, delivered the electricity to 55 Water Street, and served as the metering authority.

3. On August 8, 2014, Suez filed a complaint (Complaint) against NYISO and Con Ed. The Complaint concerned billings that were affected by Superstorm Sandy

¹ *GDF Suez Energy Res., NA v. New York Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,257 (2014) (December 2014 Order).

in 2012. Due to flooding in lower Manhattan caused by Superstorm Sandy, actual meter data was unavailable and, consequently, Con Ed provided NYISO with estimated meter data² for 55 Water Street for the November 2012 and December 2012 billing periods. NYISO subsequently issued initial settlement invoices for the November 2012 and December 2012 billing periods based on that estimated data.³ Suez paid the NYISO invoices in full. Subsequently, the 150-day meter data finalization deadline provided in section 7.4.1.1 of NYISO's Services Tariff for each invoice expired.⁴ Approximately a

² The estimated meter data was based on 55 Water Street's historical usage. Con Ed Answer at 3.

³ Suez Complaint at 4; Con Ed Answer at 3. Section 7.2.3 of the NYISO's Market Administration and Control Area Service Tariff (Services Tariff) allows NYISO to use estimated meter data to issue its initial invoices:

The ISO may use estimates, including estimated meter data, in whole or in part to settle a weekly or monthly invoice in accordance with ISO Procedures. The ISO shall use meter data submitted to the ISO in accordance with Article 13 of this ISO Services Tariff. Any charges based on estimates shall be subject to true-up invoices subsequently issued by the ISO after the ISO has obtained the requisite actual information, provided that the ISO shall only true-up charges based on meter data prior to the deadline for finalizing meter data established in Section 7.4 of this ISO Services Tariff. A true-up charge shall include interest amounts calculated at the rate set forth in Section 7.3 of this ISO Services Tariff from the weekly or monthly due date for the charge until the date of payment of the true-up amount for that charge.

NYISO, Services Tariff, 7.2 MST Billing Procedures and Payments (2.0.0), § 7.2.3.

⁴ *Id.*, 7.4 MST Billing Disputes (2.0.0), § 7.4.1.1.4. Section 7.4.1.1.4 provides:

The meter authority shall provide to the ISO any final updates or corrections to LSE bus metering data within one hundred thirty (130) days from the date of the initial invoice. The ISO shall then post any updated and corrected LSE bus metering data within one hundred thirty-five (135) days from the date of the initial invoice. Customers may then review, comment on, and challenge the LSE bus metering data for an additional ten (10) days. Following this review period, the ISO shall have five (5) days to process and correct the LSE bus

month and a half after the metering data had been “finalized,”⁵ Con Ed issued corrected meter data for each invoice.⁶

4. Suez requested both NYISO and Con Ed to modify the invoices to include the corrected data. Neither NYISO nor Con Ed would rebill or reimburse Suez absent a Commission order because section 7.4 prohibits NYISO from reopening and resettling billing after the finalization deadline unless ordered by the Commission or a court of competent jurisdiction.⁷ Suez therefore requested that the Commission issue an order requiring NYISO to reopen and resettle billings for electricity supplied by NYISO during the November/December 2012 billing periods, and to refund over-charges paid by Suez, with interest. Suez claimed that NYISO’s initial invoices overstated 55 Water Street’s usage by approximately 9.7 gigawatt hours, or by more than 260 percent, which Suez estimated at approximately \$700,000.⁸

5. The December 2014 Order granted the Complaint. The Commission found that under the extraordinary circumstances produced by Superstorm Sandy, significant injustice would result in the absence of the requested Commission action. The Commission found that Suez had “no obligation under the Services Tariff to challenge the estimated meter data in order to receive corrected bills based on corrected meter data because section 7.2.3 affirmatively requires NYISO to correct and true-up estimated meter data, whether or not there is a challenge to those estimates.”⁹ Moreover, the Commission found that, because Con Ed did not have the corrected meter data available until approximately a month and a half after the respective deadlines under section 7.4.1.1.4 for finalizing the meter data had passed, the meter data could not have been corrected in time to prevent the original estimated meter data from being “finalized” after 150 days, even if Suez had submitted a challenge within the 150-day period.¹⁰ The

metering data, after which it shall be finalized.

⁵ *See id.*

⁶ As we noted in the December 2014 Order, the corrected meter data Con Ed later submitted was not “actual” meter data but was the result of an agreement with 55 Water Street and its consultant, Energy Watch, on bill calculations. December 2014 Order, 149 FERC ¶ 61,257 at P 5 & n.8.

⁷ NYISO, Services Tariff, 7.4 MST Billing Disputes; December 2014 Order, 149 FERC ¶ 61,257 at P 5.

⁸ Suez Complaint at 3.

⁹ December 2014 Order, 149 FERC ¶ 61,257 at P 17.

¹⁰ *Id.*

Commission, therefore, ordered NYISO to reopen and resettle Suez's billings for the November/December 2012 billing periods based on the corrected meter data supplied by Con Ed, and to refund over-charges paid by Suez, with interest, calculated pursuant to 18 C.F.R. § 35.19a (2014), within thirty days of the date of the December 2014 Order, and to file a refund report detailing the principal amounts plus interest paid to Suez within forty-five days of the date of the December 2014 Order.¹¹

6. On January 20, 2015, NYISO filed a request for clarification of the December 2014 Order. On February 4, 2015, Suez filed an answer.

II. Request for Clarification

7. In its request for clarification, NYISO asks the Commission to clarify that it "did not intend to indicate: (1) that customers are not required to play any role at all in the pursuit of accurate meter data within the tariff-prescribed settlement timeline; or (2) that the tariff authorizes customers to challenge meter data after expiration of the 150-day timeframe for finalized meter data."¹² NYISO states that NYISO does not independently review meter data for accuracy, and that it depends on transmission owners and meter authorities to submit accurate meter data and customers to challenge potentially inaccurate data.¹³ NYISO states that it agrees with the December 2014 Order that a challenge to meter data is not a required prerequisite to receive a corrected invoice, but asserts that customer participation in the review of meter data before it becomes final is an important component for the settlement process to result in accurate, timely invoices.¹⁴

¹¹ On January 9, 2015, NYISO filed the Refund Report. NYISO stated that it reopened and reprocessed Suez's billings for the November/December 2012 billing periods and posted the refund details along with the regularly scheduled May 2014 final bill on January 6, 2015, for a twenty-five day review by customers in accordance with section 7.4.1.2 of the Services Tariff. NYISO explained that the total refund amount, including interest, is \$541,621.87, which would be electronically transferred to Suez in the form of a credit during the week of February 9, 2015, approximately fifty-six days after issuance of the December 2014 Order. NYISO believes that it has complied with the Commission directed refunds by posting the refund calculation on January 6, 2015, for inclusion in the February 2015 Monthly Invoice. However, NYISO requested a thirty-day extension if the Commission believes that NYISO should have processed the exchange of funds within thirty days of the December 2014 Order. Given that NYISO posted the refund details on January 6, 2015 for review by customers, within the thirty-day refund period and that the electronic transfer of refund amount owed to Suez would have occurred in February 2015, as NYISO stated in the refund report, we find NYISO's request for extension to be moot.

¹² NYISO Request for Clarification at 2.

¹³ *Id.* at 5.

NYISO also states that settlement processes that promote finality and financial certainty are vitally important for the NYISO-administered markets to function effectively.¹⁵

III. Discussion

A. Procedural Matters

8. On February 4, 2015, Suez submitted an answer to NYISO's rehearing request. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2014), prohibits answers to requests for rehearing. We will, therefore, reject Suez's answer.

B. Commission Determination

9. We deny NYISO's request for clarification. As the Commission stated in the December 2014 Order, customers have "no obligation under the Services Tariff to challenge the estimated meter data in order to receive corrected bills based on corrected meter data because section 7.2.3 affirmatively requires NYISO to correct and true-up estimated meter data, whether or not there is a challenge to those estimates."¹⁶ While we agree with NYISO that, in general, customer participation in the review of meter data is optimal, we maintain that the Services Tariff does not require customer participation in the review of *estimated* meter data. Specifically, regarding the use of estimated data, the Services Tariff does not affirmatively give customers a role in the settlement process until NYISO posts updated and corrected metering data.¹⁷ Where, as here, the deadline passes and the metering data is finalized before NYISO corrects the meter data, the Services Tariff does not describe any role for the customer.

10. Additionally, as the Commission noted in the December 2014 Order, the Services Tariff provides that "'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."¹⁸ Therefore, it is not necessary to provide further clarification

¹⁴ *Id.* at 2.

¹⁵ *Id.* at 5.

¹⁶ December 2014 Order, 149 FERC ¶ 61,257 at P 16.

¹⁷ According to NYISO's Services Tariff, a customer has ten days to review and comment on NYISO's updated and corrected metering data. There is no provision in the Services Tariff for such a review period on estimated metering data. NYISO, Services Tariff, 7.2 MST Billing Procedures and Payments, § 7.2.3.

¹⁸ December 2014 Order, 149 FERC ¶ 61,257 at P 4 (citing NYISO, Services

on this issue, as the Services Tariff does not allow customers to challenge meter data after expiration of the 150-day timeframe for finalized data, absent a Commission decision or an order by a court of competent jurisdiction. The Commission has exercised this authority only where, as in this case, it has determined that there were extraordinary circumstances and that significant injustice would result in the absence of Commission action.¹⁹ Accordingly, we deny NYISO's request for clarification.

The Commission orders:

NYISO's request for clarification is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Tariff, 7.4 MST Billing Disputes).

¹⁹ December 2014 Order, 149 FERC ¶ 61,257 at PP 16-18; *Niagara Mohawk Power Corp.*, 123 FERC ¶ 61,314, at P 25 (2008).