

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

GDF Suez Energy Resources, NA)	
)	
v.)	
)	
New York Independent System)	Docket No. EL14-89-000
Operator, Inc., and)	
)	
Consolidated Edison Company)	
Of New York, Inc.)	

ANSWER OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

Pursuant to Rules 206 and 213 of the Federal Energy Regulatory Commission’s (“Commission’s”) Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. (“NYISO”) hereby submits an answer in the above-captioned proceeding to GDF Suez Energy Resources, NA’s (“Suez’s”) “Request for Order” (“Suez Request”). Suez asks that the Commission direct the NYISO to (a) reopen and resettle billings for electricity supplied by the NYISO during the November/December 2012 billing period; and (b) refund over-charges paid by Suez for electric service from the NYISO during the November/December 2012 billing period based on erroneous consumption data submitted by Consolidated Edison Company of NY, Inc. (“Con Edison”), together with interest calculated pursuant to Section 35.19a of the Commission’s regulations (“Suez Request”).

The Suez Request is procedurally deficient and should be dismissed by the Commission. In the alternative, the NYISO respectfully requests that the Commission deny the Suez Request on the merits for the reasons set forth below.

¹ 18 C.F.R. §§ 385.206 and 385.213.

I. Copies of Correspondence

All correspondence and service in this proceeding should be directed to:

Robert E. Fernandez, General Counsel
Raymond Stalter, Director, Regulatory Affairs
*James H. Sweeney, Attorney
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, NY 12144
Tel: (518) 356-6000
Fax: (518) 356-8825
jsweeney@nyiso.com

* Designated to receive service.

II. The Suez Request is Procedurally Deficient and Must Be Dismissed

The Suez Request is procedurally deficient because it does not satisfy the complaint requirements under Rule 206, or Federal Power Act Section 306, and it is not properly before the Commission as a Rule 207 petition.² It must therefore be dismissed.

Although the Suez Request is not styled as a Rule 206 complaint, the Commission noticed it as if it were a formal complaint against the NYISO and Con Edison. The Suez Request does not, however, meet the criteria for a formal complaint under Rule 206 of the Commission's Rules of Practice and Procedure. The Commission has on many occasions dismissed complaints for failing to satisfy the basic requirements of Rule 206.³

Under Rule 206, a complaint must, among other things:

- (1) Clearly identify the action or inaction which is alleged to violate applicable statutory standards or regulatory requirements;
[and]
- (2) Explain how the action or inaction violates applicable statutory standards or regulatory requirements.

² 18 C.F.R. §§ 385.206 and 385.207; 16 U.S.C. § 825(e) (2013).

³ See, e.g., *Californians for Renewable Energy, Inc. v. Pac. Gas & Elec. Co.*, 142 FERC ¶ 61,143 at PP 2, 18 (2013) (dismissing complaint for failure to satisfy Rules 203 and 206, and for failure to state a claim); *Shell Energy N. Am (US), L.P. v. Cal. Indep. Sys. Operator, Inc.*, ¶ 61,083 at PP 35, 38 (2012) (dismissing FPA section 206 complaint for failing to satisfy the requirements of Rule 206, as well as failing to meet its FPA section 206 burden of proof.)

The Suez Request admits that “Section 7.4 of the NYISO [Market Administration and Control Area Services Tariff (“Services Tariff”)] Tariff further states that corrections to the invoice may not be made by the NYISO later than five months from the date of the initial invoice for the month in which service is rendered without an order of the FERC or from a court of competent jurisdiction.”⁴ Suez did not challenge the metering data used to prepare the invoices during the time prescribed under the NYISO tariffs. Therefore, the NYISO could not, within the same time provisions called for in the NYISO’s tariffs, correct the invoices which are now brought into question by the Suez Request.

The Suez Request also states that “NYISO issued initial settlement invoices to Suez ... based in part on estimated consumption data provided by Con Ed[ison] to NYISO that overstated New Water Street’s electricity consumption.”⁵ The NYISO has tariff authority to use estimated meter data to settle monthly invoices.⁶ Con Edison “is the responsible metering authority for metering of the amount of electricity delivered over its system to retail electric service customers” such as New Water Street and for delivering meter data to the NYISO for invoicing.⁷

The NYISO issued the November and December 2012 monthly invoices in accordance with its Services Tariff based on the metering data provided by Con Edison, and Suez does not allege otherwise.⁸ Given the undisputed facts underlying the Suez Request,⁹ Suez does not

⁴ Suez Request at p. 5.

⁵ Suez Request at p. 3.

⁶ Services Tariff § 7.2.3 (“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.”).

⁷ *Id.*

⁸ The Services Tariff states, in part, that “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.” Services Tariff § 7.2.3.

⁹ *See* Suez Request at p. 3.

allege any action or inaction by the NYISO to be a violation of its tariffs, and therefore, there is no claim put forth by Suez suitable for a Rule 206 complaint.

Moreover, the Suez Request should not be deemed to be a complaint because it does not meet the requirements of sections 206 or 306 of the Federal Power Act. The Commission has previously explained that section 206 applies to requested changes to public utility tariffs while section 306 encompasses “the filing of complaints regarding any violation of the FPA.”¹⁰ The Suez Request seeks no changes to the NYISO’s tariffs and does not allege a violation of the FPA.

The Suez Request seeks a Commission order to require the NYISO to take action, *i.e.* to reopen and resettle the November and December 2012 billing periods. The Suez Request states that Suez intended to file “[p]ursuant to Rule 207” but does not specify which subsection of Rule 207 is applicable. In the two previous instances in which parties sought the relief that Suez seeks in this proceeding, those petitions were filed under Rule 207(a)(2).¹¹ This subsection governs petitions for declaratory order “to terminate a controversy or remove uncertainty” such as the Suez Request. Suez made no effort to explain why Rule 207(a)(2) does not apply or why its petition should be treated any differently than its predecessors.

However, petitions that fall under Rule 207(a)(2) require payment of a fee. Sections 385.207(c) and 381.302(a) of the Commission’s regulations require that each petition for

¹⁰ See *Richard Blumenthal, Att’y Gen. for the State of Connecticut v. ISO New England Inc.*, 128 FERC ¶ 61,182 at P 55 (2009) (“We note that, with respect to Complainants’ allegations of market manipulation, Complainants improperly filed their complaint under section 206 of the FPA, which applies to rate changes for public utility tariffs. The complaint here does not seek changes in the rates, terms, and conditions of ISO-NE’s tariff, other than with respect to the market monitoring unit provisions of the tariff; Complainants should have filed their market manipulation complaint under section 306 of the FPA, which permits the filing of complaints regarding any violation of the FPA. Accordingly, we will set the market manipulation allegations for hearing pursuant to our authorities under FPA sections 306 and 307 of the FPA.”)

¹¹ *Niagara Mohawk Power Corporation*, 123 FERC ¶ 61,314 (2008); *New York State Electric & Gas Corporation*, 133 FERC ¶ 61,094 (2010).

issuance of a declaratory order be accompanied by payment of the specified fee unless an exception applies.¹² To the best of the NYISO's knowledge, Suez has not paid this fee, and has certainly not articulated any claim for an exception to excuse its failure to pay the required fee.¹³ Suez, simply, submitted a petition under Rule 207 seeking an "order" as opposed to seeking a declaratory order.

III. The Suez Request Should Be Denied Because Suez's Failure to Detect Con Edison's Alleged Error in a Timely Fashion Was Unreasonable and Because Suez's Requested Relief Would Harm Third Parties

The NYISO tariffs explicitly prohibit the NYISO from adjusting customer invoices that have been finalized absent an order from the Commission or a court of competent jurisdiction.¹⁴ "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."¹⁵ The Suez Request asks the Commission to issue such an order directing the NYISO to "resettle" and refund over-charges paid by Suez to correct alleged errors in finalized customer invoices for the service months of November and December 2012. The alleged errors resulted from the "estimated consumption data provided by Con Edison to NYISO that overstated New Water Street's electricity consumption during those billing periods by approximately 9.7 gigawatt hours ("GWh") (*i.e.*, by more than 260%)."¹⁶ The NYISO has tariff authority to use estimates, including estimated meter data, to settle a monthly invoice.¹⁷

¹² 18 C.F.R. §§ 385.207(c) and 381.302(a).

¹³ Upon review of 18 C.F.R. § 381.302(b), there is no exception specified that would apply to the Suez Request filed with the Commission.

¹⁴ Services Tariff § 7.4.

¹⁵ *Id.*

¹⁶ Suez Request at p. 3.

¹⁷ Services Tariff § 7.2.3.

Any charges based on estimates shall be subject to true-up in 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.¹⁸

Suez admits to not challenging the invoices during the tariff prescribed meter data challenge period, despite the current claim that the metering data inflated consumption by more than 260%.¹⁹ Such a dramatic difference between estimated consumption data (*i.e.*, estimated metering data) and actual consumption data (*i.e.*, actual metering data) should have been apparent to Suez prior to the end of the challenge period. As the financially responsible party serving this load under the NYISO tariffs, Suez, like any Load Serving Entity (“LSE”), has a strong incentive to closely review all settlement data, including meter data, provided to it and to challenge data that are not consistent with expected outcomes. The final opportunity for Suez to challenge the meter data for the November and December 2012 invoices lapsed in early May and early June 2013, respectively. Since neither Suez nor Con Edison challenged or updated the meter data prior to the tariff imposed deadline, the NYISO could not true-up any charges in Suez’s November/December 2012 monthly invoices.

The NYISO respectfully requests that the Commission deny the Suez Request for the following reasons, as discussed in detail below:

(A) NYISO customers rely on the financial certainty afforded by finalized metering data. The NYISO tariffs establish specific time periods for reviewing and challenging metering data. Customers are obligated to thoroughly review their metering data during these periods prior to the time such data is finalized. A Commission order requiring the NYISO to re-bill NYISO customers for two billing months that occurred more than a year and half ago would upset the

¹⁸ *Id.*

¹⁹ Suez Request at pp. 5-6.

settled financial expectations of these NYISO customers and would be clearly inconsistent with the intent of the NYISO's settlement provisions to provide customers with financial certainty. The NYISO does not believe that such extraordinary action by the Commission is warranted under the circumstances described by Suez.

(B) In addition, the NYISO is concerned that Commission action will harm the other energy service companies ("ESCOs") or LSEs in Con Edison's service territory. These entities were not involved with the Con Edison metering data underlying the Suez Request. If the Commission grants the Suez Request, certain entities will be required to bear unexpected costs related to invoices finalized nearly a year ago.

A. The Commission Should Not Upset NYISO Customers' Settled Expectations Regarding Previously Finalized Invoices

Both Suez and Con Edison failed to identify the metering data at issue within the time frame established in the NYISO tariffs for the review and challenge of such data. The Commission should not permit any party to revisit the invoices and upset the settled expectations of NYISO customers for a metering data discrepancy that occurred during two months more than one and a half years ago. The NYISO's settlement provisions establish specific time periods for the NYISO's customers to review, challenge, correct, and finalize settlement information.²⁰ These provisions culminated from extensive discussions among the NYISO and its stakeholders that balanced customers' interests in attaining accurate settlements with their interests in obtaining the financial certainty of finalized invoices not subject to continuing revisions.²¹

Customers cannot make sound business decisions without the confidence that their financial

²⁰ See Services Tariff § 7.4.

²¹ See NYISO Management Committee, Motion Regarding Proposal to Shorten the NYISO Settlement Cycle, September 29, 2006, available at: http://www.nyiso.com/public/webdocs/committees/mc/meeting_materials/2006-09-29/agenda_06_Motion_re_settlements_cycle_proposal.pdf ("Whereas, the NYISO and Market Participants seek to balance the benefits of financial certainty with adequate assurances regarding the accuracy of NYISO-issued customer invoices. . . .").

obligations will not be revised after the settlement process. Settlement processes that promote finality and financial certainty are vitally important for the NYISO-administered markets to function effectively.²²

The Suez Request demonstrates the possibility that NYISO customers may discover settlement errors after bills have been finalized. Nevertheless, a majority of NYISO stakeholders viewed the possibility of uncorrected errors as an acceptable trade-off for the benefits of financial certainty as evidenced by their approval of the settlement time limits in 2006.²³ Because the NYISO cannot correct errors discovered after relevant deadlines, customers must commit resources to carefully and thoroughly evaluate their invoices to obtain the benefits of financial certainty. The NYISO's settlement processes can only function effectively if customers carefully review their settlement information. All NYISO customers must understand this responsibility to thoroughly review their settlement information and challenge any errors within tariff prescribed time periods. Indeed, the NYISO provides notices to customers within the settlement time periods reminding them of this responsibility and of upcoming deadlines.

In the case at hand, Suez was responsible for reviewing its metering data and challenging any errors within tariff prescribed time frames.²⁴ Neither Suez nor Con Edison timely identified the metering data issue for the affected service months despite the magnitude of the discrepancy alleged by Suez. Suez argues that the error was difficult to identify and that it was *unable* to

²² See New York Independent System Operator, Inc., New York Independent System Operator, Inc.'s Proposed Tariff Revisions Regarding the Review, Challenge, and Correction of Customer Settlement Information, Docket No. ER06-783-000 at p. 7 (March 27, 2006) ("Section 7.4.C of the Services Tariff has also been revised to more clearly establish the finality of a Close-Out Settlement by explicitly prohibiting the NYISO from making changes to an invoice after the issuance of a Close-Out Settlement for that month absent Commission or judicial intervention. This clarification will provide certainty regarding the finality of prior settlements that is vitally important to the effective functioning of the NYISO markets.").

²³ *Id.*

²⁴ See Services Tariff § 7.4.1.1.3 and 7.4.1.1.4.

detect the billing error before the close of the settlement period.²⁵ The data used for these settlement periods was readily available to Suez within all NYISO tariff-prescribed time frames, and it is a reasonable expectation that Suez, as with all Market Participants, have the expertise needed to identify and act on such anomalous outcomes within such timeframes. It is for this reason that the NYISO tariffs do not provide for different treatment of errors depending on the difficulty of detection. Rather, the NYISO tariffs clearly require customers to timely review all metering data and challenge any errors within specific time frames.²⁶ The errors in question are within the types of metering errors that the NYISO's settlement review provisions are intended to address.

In asserting that the Commission should grant the order it seeks, Suez relies on the Commission's June 30, 2008, order requiring the NYISO to correct the finalized invoices affected by a metering error by Niagara Mohawk Power Corporation ("Niagara Mohawk Order").²⁷ In that case, Niagara Mohawk inadvertently submitted erroneous metering data at a late stage of the settlement process.²⁸ The affected customers were not aware that their data had been changed late in the settlement process and did not identify the error until after their invoices were finalized.²⁹ The Commission determined that those specific circumstances were extraordinary because the affected customers were not on notice regarding the late adjustment of their metering data and should not, therefore, have been faulted for their untimely action in reviewing and identifying the error due to "the unusual nature and timing of the errors."³⁰

²⁵ Suez Request at pp. 9-10.

²⁶ See Services Tariff § 7.4.1.1.3.

²⁷ *Niagara Mohawk Power Corporation*, 123 FERC ¶ 61,314 (2008).

²⁸ Niagara Mohawk Order at pp. 4-5.

²⁹ *Id.*

³⁰ *Id.* at P 24.

Suez relies on the Niagara Mohawk Order to support correction of billing errors that were not discovered until after the close of the settlement period prescribed in the NYISO's Services Tariff.³¹ However, unlike the Niagara Mohawk case where the Commission found that affected customers did not have a reasonable opportunity to review their metering data, Suez, as noted above, was on notice and had the full time period prescribed by the NYISO tariffs to review its invoices including the underlying meter data. The metering data provided by Con Edison to develop Suez's invoices for November and December 2012 was virtually unchanged for the entire length of the NYISO's settlement process. The NYISO posted the relevant initial invoices on December 7, 2012 and January 8, 2013 and Suez's period to challenge each month's metering data ended on May 1, 2013 and June 3, 2013, respectively, more than four months later. The facts surrounding the Suez Request do not rise to the extraordinary nature described in the Niagara Mohawk case. Suez was not surprised by revised meter data at the end of the NYISO settlement process and should have identified the alleged metering data inaccuracies during the tariff prescribed metering data review and challenge period.

Suez also relies on *Exelon Corporation v. PPL Electric Utilities Corporation and PJM Interconnection*, 111 FERC ¶ 61,065 (2005) ("Exelon"), to support its claim for reimbursement of over-charges. The facts in Exelon, like the Niagara Mohawk case, are readily distinguishable from the facts involved in the Suez Request. The dispute in Exelon was related to a billing error in PJM and "PJM's Tariff and Operating Agreement do not contain a time limit to complain about billing errors."³² The Commission found "absent any specific tariff provision establishing a time frame to dispute such errors, that no specific time frame exists within which to dispute this

³¹ Suez Request at p. 8.

³² Exelon Order at P 26.

billing error.”³³ Contrary to the billing error in Exelon, the NYISO tariffs prescribe a specific time frame for customers to challenge metering data before an invoice becomes final.³⁴ In addition, in Exelon the customer “had no way of knowing through the bills issued by PJM that it was being improperly charged” for congestion at a specific location, “since the bills contained only a single statement of congestion charges, not attributed to any specific locations.”³⁵ Again, contrary to the Exelon case, Suez had complete visibility to the metering data that was used to generate its invoices from NYISO for November and December 2012.

As Suez did not timely challenge the metering data for the November and December 2012 invoices and as the circumstances underlying the invoice discrepancies do not appear to be extraordinary, the Commission should not permit Suez to upset the settled expectations of NYISO customers for service months at the end of 2012.

B. Additional NYISO Customers Will Be Affected if the Suez Request is Granted

The Suez Request acknowledges that other parties, in addition to Con Edison and Suez, would be affected by a Commission order directing the NYISO to reopen and resettle the November/December 2012 billing periods.³⁶ The NYISO is also concerned that other ESCOs and LSEs in Con Edison’s service territory would be affected. These entities were not responsible for the metering data at issue, have received finalized invoices for both of the service months at issue, and have no reason to expect that invoices finalized in accordance with the NYISO tariffs may now be subject to adjustments.

³³ *Id.*

³⁴ See Services Tariff §§ 7.4.1.1.3 and 7.4.1.1.4.

³⁵ Exelon Order at P 24.

³⁶ Suez Request at pp. 8-9.

The harm to these other ESCOs and LSEs also justifies the rejection of Suez's request for waiver of Services Tariff Section 7.4. Suez's waiver request fails to satisfy the fourth prong of the Commission's waiver analysis by resulting in the undesirable consequence of harming third parties. Requiring entities to bear unexpected costs resulting from market activity more than one and half years ago, and after finalized invoices, is an unjustified harm to third parties not involved in the Suez Request.

IV. Conclusion

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc. respectfully requests that the Commission deny the Suez Request.

Respectfully submitted,

/s/ James H. Sweeney

James H. Sweeney, Attorney
New York Independent System Operator, Inc.

Dated: September 2, 2014

Cc: Michael Bardee
Gregory Berson
Anna Cochrane
Jignasa Gadani
Morris Margolis
Michael McLaughlin
David Morenoff
Daniel Nowak

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 in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. §385.2010.

Dated at Rensselaer, NY this 2nd day of September, 2014.

/s/ Mohsana Akter

Mohsana Akter
New York Independent System Operator, Inc.
10 Krey Blvd.
Rensselaer, NY 12144
(518) 356-7560