

² This is the second complaint filed raising issues regarding Niagara Mohawk's rates in which the NYISO has been identified as a respondent (the first was filed in Docket No. EL12-101-000, on September 11, 2012, as amended September 26, 2012, by the New York Association of Public Power). Neither of these complaints make substantive allegations against the NYISO. Concurrent with this filing, the NYISO is making a separate filing in Docket No. EL12-101-000 to move for dismissal of the NYISO as a party in that proceeding as well.

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 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 but 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. The Complaint alleges that the current TSC for Niagara Mohawk is unjust and unreasonable. It also requests that the Commission issue an order directing several changes to the inputs into the components that are inputs into Niagara Mohawk's TSC (*e.g.*, rate of return on equity, labor allocator, merger related costs).⁵ Additionally, the Complaint asks that the Commission "issue an order establishing the earliest possible refund effective date" as consistent with its policy.⁶

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.

⁶ *Id.*

Significantly, the Complainant admits that Niagara Mohawk “is the party of interest for purposes of this Complaint.”⁷ Additionally, Complainant explains that it “has named NYISO as a Respondent only because the TSC is administered under the NYISO OATT.”⁸

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 Niagara Mohawk’s TSC, 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 TSC 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 rates 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.⁹

⁷ *Id.* at 5.

⁸ *Id.*, citing, NYISO OATT Attachment H §14.2 at Attachment 1 Schedule 8.

⁹ *Martha Coakley, 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,

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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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