

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 services 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, which includes the ROE for Niagara Mohawk. It is annually recalculated using updated data inputs called for in the formula rate; however, the ROE is not updated. The Complaint alleges that the current ROE is unjust and unreasonable. It also requests that the Commission institute paper hearing procedures to investigate Niagara Mohawk's ROE, establishing the earliest possible refund date and directing refunds.⁵

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 the

³ *Martha Coakley, Massachusetts Attorney General, et al. v. Bangor Hydro-Electric Co., et al.*, 139 FERC ¶ 61,090 at P23 (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.* at 4.

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 granted a motion to dismiss under similar circumstances.⁸

⁷ *Id.*, at 4-5 *citing*, NYISO OATT, Attachment H-1, Schedule 8, line nos. 10 and 19.

⁸ *Martha Coakley, Massachusetts Attorney General, et al. v. Bangor Hydro-Electric Co., et al.*, 139 FERC ¶ 61,090 at P23 (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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