

141 FERC ¶ 61,081  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
Cheryl A. LaFleur, and Tony T. Clark.

New York Independent System Operator, Inc.

Docket No. ER12-2568-000

ORDER ACCEPTING PROPOSED TARIFF REVISIONS  
SUBJECT TO CONDITIONS

(Issued October 31, 2012)

1. On August 31, 2012, the New York Independent System Operator, Inc. (NYISO) filed proposed revisions to the Black Start and System Restoration services (Restoration Services) provisions in its Market Administration and Control Area Services Tariff (Services Tariff) and its Open Access Transmission Tariff (OATT) (Restoration Services Rate Schedule). Principally, NYISO proposes to revise the rates, terms, and conditions under which generators provide Restoration Services in the Consolidated Edison Company of New York, Inc. (Con Edison) local restoration plan to restore electric service to New York City in the event of a major system disturbance (Con Edison Plan). NYISO proposes that its tariff revisions be made effective no later than November 1, 2012. Additionally, NYISO requests that the Commission waive the filing requirements of section 35.13 of the Commission's regulations.<sup>1</sup> In this order, we grant NYISO's request for waiver, and accept NYISO's proposed tariff revisions, subject to conditions, to become effective November 1, 2012, as requested.

**I. Background**

2. Under a Commission-approved North American Electric Reliability Corporation (NERC) reliability standard, registered transmission operators must have a system

restoration plan that includes information regarding black start-capable generators.<sup>2</sup> Black start generators have the capability to start up following a system-wide blackout

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<sup>1</sup> 18 C.F.R. § 35.13 (2012). This provision requires public utilities to file certain detailed cost and other information related to an examination of traditional cost-of-service rates. NYISO states that waiver is appropriate because its proposed revisions are not a traditional rate filing and NYISO is not a traditional investor-owned utility. NYISO August 31, 2012 Filing, at 18.

without the availability of an outside electric supply. Such generators are used to restore the transmission system in the event of such a blackout. NYISO is the sole registered transmission operator in New York State. The New York State Reliability Council (NYSRC) Reliability Rules provide that NYISO must have a plan to restore the New York Control Area (NYCA) bulk power system that includes both restoration of the New York transmission backbone and local transmission areas.<sup>3</sup> Accordingly, section 15.5.1 of Rate Schedule 5 of the NYISO Services Tariff provides that NYISO shall develop and review the system plan (NYISO Plan), but indicates that full restoration of the system may require additional Restoration Services from generators located in local transmission owner areas under local transmission owner restoration plans. Sections 15.5.2 and 15.5.3 further separate these local transmission owner restoration plans into two categories: (1) the Con Edison Plan, applicable to generators within the Consolidated Edison Transmission District, which is governed by section 15.5.3 of Rate Schedule 5; and (2) all other local restoration plans, which are governed by the same tariff provisions as the NYISO Plan, namely section 15.5.2 of Rate Schedule 5. To that end, section 15.5.3 of the Services Tariff includes special provisions applicable to generators in the Con Edison Plan under which they receive compensation from NYISO for Restoration Services.

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<sup>2</sup> NERC Reliability Standard EOP-005-2 addresses the requirements of registered Transmission Operators as it pertains to black start plans. The standard is *available at*: <http://www.nerc.com/files/EOP-005-2.pdf>. According to NYISO, “[b]lack start capability represents the key Generators that, following a system-wide blackout, can start without the availability of an outside electric supply and are available to participate in system restoration activities that are under the control of the NYISO or, in some cases, under local Transmission Owner Control. If a partial or system-wide blackout occurs, these units assist in the restoration of the New York Control Area (NYCA).” NYISO Ancillary Services Manual at 7-1, Version 3.20, revised 4/19/2012, *available at*: <http://www.nyiso.com/public/webdocs/documents/manuals/operations/ancserv.pdf>.

<sup>3</sup> In applying NYSRC Reliability Rule G-R1, measure G-M1 to that rule requires that:

The NYISO shall develop and maintain a NYCA system Restoration Plan (NYCA SRP) that will assure the prompt restoration of the NYCA system following a major or total blackout. The NYCA SRP shall define that system restoration take place at two integrated levels: restoration of the NYCA backbone system in accordance with a NYISO System Restoration Plan (NYISO SRP) and restoration of local areas in accordance with transmission owner restoration plans (transmission owner SRPs).

NYSRC Reliability Rules For Planning And Operating the New York State Power System, at 57, Version 30, November 10, 2011.

3. NYISO states that Con Edison maintains and administers the Con Edison Plan to provide for the accelerated restoration of electric service in New York City following a major system disturbance by means of black start capable generating units located there. However, NYISO states that in September 2010, certain generators notified NYISO of their intent to withdraw from the Con Edison Plan at the conclusion of their current commitment period. It states that, of the generators that notified NYISO of their concerns, only TC Ravenswood, LLC (Ravenswood) proceeded to withdraw units from the Con Edison Plan. NYISO states that the Commission subsequently approved Ravenswood's withdrawal from the Con Edison Plan in September 2011.<sup>4</sup> NYISO states that, in support of their withdrawal, generators noted their concern that black start testing requirements could harm their steam turbine units as well as their hesitation to commit to a three-year term due to financial considerations largely unrelated to providing black start service.<sup>5</sup> As a temporary remedy for Ravenswood's withdrawal from the Con Edison Plan, NYISO notes that it has been procuring Restoration Services from Ravenswood on an interim basis pursuant to a stand-alone rate schedule which was accepted by the Commission on May 24, 2012.<sup>6</sup>

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<sup>4</sup> *TC Ravenswood, LLC*, 136 FERC ¶ 61,213 (2011) (September 27, 2011 Order).

<sup>5</sup> In a *Declaratory Ruling Regarding Blackstart Service*, Docket No. 11-E-0423 at 4, n.4 (State of New York Public Service Commission, September 28, 2011) (New York PSC Ruling), the New York PSC ruled that the New York PSC's consent would be required before an electric corporation currently providing Black Start Service in New York City could discontinue that service. On November 8, 2011, in response to the New York PSC Ruling and an October 28, 2011 letter from NYISO that the NYSRC continued to treat Ravenswood as a Black Start Service provider and NYISO expected Ravenswood to test its units for black start capability, Ravenswood filed a complaint with the Commission in Docket No. EL12-9-000. In its complaint, Ravenswood requested that the Commission find, *inter alia*, that the New York PSC lacked jurisdiction to make its Ruling and that neither NYISO nor the NYSRC could use the New York PSC Ruling to require Ravenswood to continue to provide Black Start Service under the NYISO Services Tariff. Ravenswood's complaint is pending before the Commission.

<sup>6</sup> The Ravenswood Spot Black Start Rate Schedule was filed by Ravenswood in Docket No. ER12-1418-000 pursuant to section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d (2006), and accepted by the Commission effective May 1, 2012, subject to conditions. NYISO August 31, 2012 Filing, at 6, n.13 (citing *TC Ravenswood, LLC*, 139 FERC ¶ 61,151 (2012) (Ravenswood May 24, 2012 Order)). The Commission found that Ravenswood's Filing should be accepted as an interim solution, subject to further order of the Commission, to allow the parties an opportunity to work in the stakeholder process toward a mutually agreeable long-term solution. *Id.* P 38. Accordingly, the Commission established settlement proceedings and accepted the filing to be effective May 1, 2012, subject to refund and further order of the Commission. *Id.* P 39 and

4. NYISO states that it began extensive discussions with Con Edison, generators providing Restoration Services, and other interested parties to review and to develop improvements in the Con Edison Plan. NYISO states that the tariff revisions it developed and included in the instant filing will make the Con Edison Plan more robust and effective and will strengthen the ability of New York City to recover from a major disturbance in a safe, orderly, and prompt manner. After several stakeholder meetings and the review of NYISO's Business Issues Committee and Operating Committee, NYISO states that the proposed revisions in the instant filing were approved by the NYISO Management Committee at its July 25, 2012 meeting by 78.5 percent affirmative vote, and subsequently by the NYISO Board of Directors at its August 21, 2012 meeting.

## **II. Summary of NYISO's August 31, 2012 Filing**

5. NYISO proposes to revise its Services Tariff to specifically state that Restoration Services are provided under the NYISO Plan or an individual transmission owner's Restoration Plan and that the proposed rate schedule establishes the terms under which a generator shall provide, and be paid by NYISO for providing Restoration Services under either plan.

6. While all of the proposed revisions outlined below only impact generators providing Restoration Services under the Con Edison Plan, NYISO's proposed revisions do include minor changes to the provisions governing generators under the NYISO Plan or individual transmission owner plans other than the Con Edison Plan. Notably, proposed section 15.5.1, which applies to all generators providing Restoration Services within NYISO, states that the individual transmission owners shall designate the generators that will be included in their plans. Proposed section 15.5.1 further states that customers may not self-supply Restoration Services, while the existing provisions do not address self-supply. With respect to cost allocation, proposed section 15.5.3 governs the allocation of charges to support payments to generators under the NYISO and individual transmission owners' plans, excluding the Con Edison Plan. The revisions clarify that each customer shall pay for Restoration Services based on its share of the supply of load in NYCA that is not used to supply station power as a third-party provider under Part 5 of the NYISO OATT. The proposed revisions further provide that each customer shall be credited, based on its supply of load that is used to supply station power as a third-party provider under Part 5 of the NYISO OATT, based on the customer's share of the NYCA load that is not used to supply station power. Lastly, proposed section 15.5.3 states that customers located in a transmission district that maintains a Restoration Services plan shall be additionally charged for the costs of NYISO's payments to generators providing Restoration Services under the relevant transmission owner's plan.

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Ordering Paragraph (A). The Commission also directed that any proposals that result from the stakeholder process shall be considered in the settlement process. *Id.* P 40.

7. Turning to NYISO's proposed changes with respect to Restoration Services under the Con Edison Plan, NYISO proposes to change the method a transmission owner uses to designate generating units to participate in the Con Edison Plan. NYISO states that under the current provisions, Con Edison designates steam turbine units on an individual, unit-by-unit basis, but designates gas turbine units on a facility-wide basis. Under proposed section 15.5.4.2.1, Con Edison will designate, on an individual basis, both steam and gas turbine units necessary to implement the Con Edison Plan.<sup>7</sup>

8. The proposed revisions also clarify the applicability of the proposed Restoration Services provisions to generators participating in the Con Edison Plan. Under the proposed revisions, on or before November 1, 2012, Con Edison must designate the generating units with Restoration Services capability to be included in its plan beginning November 1. Further, under the proposed revisions, a generator that committed to participate in the Con Edison Plan before November 1, 2012, may elect by December 3, 2012, to complete its current commitment period under the existing terms of the Services Tariff.<sup>8</sup> At the conclusion of the current term, the generator would begin a new three-year term under the proposed provisions, unless it notifies NYISO one year prior to the end of its current commitment period that it will withdraw from the Con Edison Plan. Lastly, a unit that commits after November 1, 2012, to provide Restoration Services must provide such services under the proposed terms.<sup>9</sup>

9. Next, the proposed revisions change the compensation mechanism for Restoration Services provided under the Con Edison Plan. NYISO states that the current compensation mechanism was the product of a negotiation process between NYISO and stakeholders in 2005 and has not been updated since that time. NYISO states that under its proposed revisions, it will adopt an approach recently developed and adopted by ISO New England, Inc. (ISO-NE) and subsequently accepted by the Commission.<sup>10</sup> NYISO's proposed methodology provides compensation for the incremental costs associated with adding Restoration Services capability to a generating unit. NYISO states that to that end, it will use a range of proxy incremental capital and operating and maintenance costs for installing and maintaining Restoration Services capability based on the type of equipment required to black start a unit of a certain size.<sup>11</sup> NYISO adds that the range of

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<sup>7</sup> NYISO August 31, 2012 Filing, at 8.

<sup>8</sup> *Id.* at 8; Section 15.5.4 to Rate Schedule 5. If the generator fails to provide this notice to NYISO, it is required to provide, and shall be paid for providing, Restoration Services under the proposed terms.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 9 (citing *ISO New England, Inc.*, Docket No. ER12-729-000 (February 17, 2012) (delegated letter order)).

proxy costs, which will be taken from the ISO-NE cost figures, will be adjusted to reflect the comparatively higher costs of construction and operation of a generating unit in New York City compared to New England. Notably, under proposed section 15.5.4.2.3.3, Restoration Services providers may apply to NYISO to recover the unit-specific costs they incur solely as a result of their compliance with NERC critical infrastructure protection (CIP) reliability standards applicable to the provision of Restoration Services.<sup>12</sup> NYISO notes that it will continue to reimburse generators for damage to black start-related equipment that occurs in response to NYISO operational orders.

10. Proposed section 15.5.4.2.3.2 provides that if a generator providing Restoration Services determines that its actual incremental costs of providing those services exceeds the payment determined under section 15.5.4.2.3.1, the generator shall have the right to file a proposed rate for the recovery of its actual incremental costs of providing those services with the Commission pursuant to section 206 of the FPA.<sup>13</sup> The Commission then will review the filing to determine if the costs are reasonably and prudently incurred for the purpose of Restoration Service and exceed the payments under the tariff. Upon such finding, the generator's unit-specific rate will be included as an addendum to NYISO's Rate Schedule 5.

11. NYISO also proposes to modify the testing criteria for steam turbine units providing Restoration Services. NYISO asserts that the existing testing criteria pursuant to NYISO's Black Start Capability Test do not align with the operating characteristics of steam turbine units.<sup>14</sup> According to NYISO, the current Black Start Capability Test requires steam units to perform a full start-up from hot condition, synchronize to the transmission system within six hours, and be firm to the system and operating within eight hours. NYISO argues that the size and age of the steam turbine units providing Restoration Services under the Con Edison Plan make them susceptible to unnecessary wear and the potential for damage under existing testing criteria. Therefore, NYISO states that its proposed revisions require steam turbine units to perform the existing, full start-up test only once every three years. In the intervening two years, under NYISO's proposal, the unit will perform what NYISO labels an "intervening years test," requiring a unit to energize its light and power bus, add any auxiliary load necessary to add fire to the boiler, and demonstrate ten minutes of steady operation supplying this load. NYISO states that the unit will not be required to add fire to the boiler or synchronize to the transmission system during an intervening years test.<sup>15</sup>

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<sup>11</sup> *Id.* at 8-9.

<sup>12</sup> *Id.* at 11.

<sup>13</sup> 16 U.S.C. § 824e (2006).

<sup>14</sup> NYISO August 31, 2012 Filing at 12.

12. The revised testing criteria allow generators to perform a Black Start Capability Test from May 1 through April 30, but no testing will be allowed during June, July, and August.<sup>16</sup> The current testing criteria do not allow testing from May 1 through October 31.<sup>17</sup>

13. Additionally, NYISO's testing criteria revisions will provide Restoration Services providers under the Con Edison Plan a 30-day grace period following a failed test. Under proposed section 15.5.4.2.3.4, providers will have 30 days in which to complete a Black Start Capability Test without forfeiting any Restoration Services payments.

14. Next, NYISO proposes to revise the participation requirements of the Con Edison Plan in two important ways. First, NYISO proposes to stagger commitment periods to limit the number of generators that could potentially withdraw from the Plan at any time. NYISO states that it is working with Con Edison and generators to designate units into one of three different groups, each with a commitment period beginning on November 1, 2012, but ending on April 30, 2015, April 30, 2016, and April 30, 2017 respectively. Second, NYISO proposes to extend the advance notice required to withdraw from the Con Edison Plan from the current one year to two years prior to the end of the commitment period. NYISO asserts that both of these proposed provisions will provide NYISO and Con Edison ample time to procure replacement Restoration Services capability from other resources.<sup>18</sup>

15. Additionally, pursuant to proposed section 30.2.5 of its OATT, NYISO proposes, with certain exceptions, to require a developer proposing to interconnect a new unit to NYISO Zone J (New York City) or to modify (i.e., increase the capacity of or make a material modification to the operating characteristics of) an existing unit already interconnected to Zone J that will commence commercial operation after November 1, 2012, to install Restoration Services capability for that unit.<sup>19</sup> NYISO proposes to make the determination of whether this requirement will apply on a case-by-case basis, and only after several processes have occurred and been considered by NYISO. NYISO states that it will make its determination following an opportunity for Con Edison and the project developer to demonstrate both the need for Restoration Services from a unit and the unit's suitability to provide this service. Con Edison will

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<sup>15</sup> *Id.* at 12-14 (citing proposed Rate Schedule 5, Appendix A, Section IV).

<sup>16</sup> NYISO August 31, 2012 Filing, Attachment III, at Rate Schedule 5, Appendix II, Section II.

<sup>17</sup> NYISO August 31, 2012 Filing at 14.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 15.

perform a study at its own expense contemporaneously with a unit's Interconnection System Reliability Impact Study to determine whether the unit would provide a material benefit<sup>20</sup> to system restoration. Following this study, the developer may demonstrate to NYISO that for technical, financial, spatial, and/or other reasons, the unit is not an appropriate candidate for Restoration Services. In addition, with respect to NYISO's determination of whether the candidate is suitable for the Restoration Services capability requirement, NYISO states that Consolidated Edison and NYISO will defer to a determination by the New York State Board on Electric Generation Siting and the Environment. Further, if the project, as of November 1, 2012, has received one or more draft/final air permits or completed a draft environmental impact statement, NYISO will not require the developer to install Restoration Services capability for that project.<sup>21</sup>

16. Under NYISO's proposed revisions, generators that have installed Restoration Services capability pursuant to proposed section 30.2.5, will be placed in the Con Edison Plan and are entitled to remain in the plan for at least 25 years or for whatever period the Commission determines is appropriate if the generator receives a unit-specific rate to cover its annual incremental costs.<sup>22</sup>

17. Lastly, NYISO states that it plans to conduct a review of these tariff revisions approximately one year after their effective date to determine their effectiveness in ensuring a robust Con Edison Plan and consider whether further revisions may be required.

### **III. Notice of Filings and Responsive Pleadings**

18. Notice of NYISO's August 31, 2012 Filing was published in the *Federal Register*, 77 Fed. Reg. 21,553 (2012), with interventions and protests due on or before September 21, 2012.

19. The New York Public Service Commission (New York PSC) filed a notice of intervention. Hess Corporation, TC Ravenswood, LLC, the City of New York (NYC),

<sup>20</sup> NYISO and Consolidated Edison state that a unit provides a "material benefit" if its inclusion in the Consolidated Edison Plan improves the speed, adequacy, or flexibility of the plan. NYISO August 31, 2012 Filing at 16; Con Edison September 21, 2012 Comments at 2.

<sup>21</sup> NYISO August 31, 2012 Filing at 16.

<sup>22</sup> *Id.* at 16-17.



Con Edison, the Long Island Power Authority (LIPA), and the Indicated New York Transmission Owners (NYTOs)<sup>23</sup> filed timely motions to intervene.

20. On September 21, 2012, the NRG Companies<sup>24</sup> (NRG) filed a motion to intervene and limited protest. On October 9, 2012 NYISO filed an answer to NRG's protest. On October 17, 2012, NRG filed an answer to NYISO's answer.

**A. Comments and Protests**

21. NYC states that it strongly supports the tariff amendments described in NYISO's Filing. NYC notes that New York City is heavily reliant on electricity, which is essential to the operation of the city's transportation system, as well as its many large buildings that rely on the use of elevators. NYC further asserts that the financial markets based in the City cannot operate without electricity. NYC notes that the 2003 northeast blackout and the 2006 Long Island City outage demonstrate the city's reliance on electricity and the need for the prompt restoration of the city's electric system.<sup>25</sup>

22. NYC further states that, with the changes to the Con Edison Plan set forth in the NYISO Filing, it has greater confidence that generators providing Restoration Services under the Con Edison Plan will not leave the program or cease providing this important service. NYC argues that the increased cost of Restoration Services under the Con Edison Plan (which NYC estimates to be between \$13 and \$15 million per year) are dwarfed by the substantial costs associated with an extended outage in New York City. NYC asserts that Restoration Services are akin to an insurance policy, and argues that the cost of this insurance is reasonable given the potential impact and consequences of a delay in system restoration. NYC further states that the filing recognizes that there is a need for new generating units capable of providing black start service. NYC contends that the aging fleet of existing Restoration Services providers currently in the Con Edison Plan, as well as the fact that only one NYISO market participant opposed the NYISO's proposed revisions is further evidence that the Commission should find the NYISO Filing just and reasonable and in the public interest.<sup>26</sup>

<sup>23</sup> For purposes of this filing, the Indicated New York Transmission Owners are Orange and Rockland Utilities, Inc., the New York Power Authority (NYPA), Central Hudson Gas & Electric Corporation, and Consolidated Edison Company of New York, Inc.

<sup>24</sup> For purposes of this filing, the NRG Companies are NRG Power Marketing LLC, Arthur Kill Power LLC, Astoria Gas Turbine Power LLC, Dunkirk Power LLC, Huntley Power LLC, and Oswego Harbor Power LLC.

<sup>25</sup> NYC September 21, 2012 Comments at 2-4.

<sup>26</sup> NYC September 21, 2012 Comments at 4-6.

23. The New York PSC commends NYISO and the stakeholders for their efforts to improve the effectiveness of the existing system restoration program. It asserts that the filing should facilitate the retention of needed black start facilities in the program and the identification and inclusion of new facilities that materially assist in Con Edison's Plan.<sup>27</sup> Accordingly, the New York PSC states that it supports the filing and urges the Commission to approve it.<sup>28</sup> The New York PSC states, however, that it continues to have significant concerns with the ability of NYISO and Con Edison to ensure the availability of adequate black start facilities and that black start may still be jeopardized due to generators "opting out." The New York PSC notes that under NYISO's Restoration Services program and the proposed revisions, generators may provide notice of their intent to "opt out" of the program, but, according to the New York PSC, such notice fails to account for the lead-time necessary to procure alternative black start facilities and is therefore likely insufficient. The New York PSC therefore states that it urges the Commission to deny Ravenswood's complaint in Docket No. EL12-9-000 and to clarify that the New York PSC's consent is required in addition to the applicable "opt out" notice provision.<sup>29</sup>

24. Similar to NYC and the New York PSC, Con Edison states that it fully supports NYISO's Filing as a means of encouraging Restoration Services providers to remain in the Con Edison Plan, enhancing the restoration of service in New York City.<sup>30</sup> Con Edison notes that it will continue to evaluate the effectiveness of NYISO's proposed revisions and will use those findings to ensure its Plan remains as effective as possible.<sup>31</sup>

25. Like NYC and Con Edison, the NYTOs strongly support the NYISO Filing. The NYTOs urge the Commission to accept the filing as quickly as possible.<sup>32</sup>

26. NRG states that while it supports the majority of the terms of NYISO's proposed revisions, it protests NYISO's attempt to eliminate a generator's right to file its own rate schedule for Restoration Services with the Commission.<sup>33</sup> NRG argues that under section 15.5.4.2.3.2 of NYISO's proposal, a generator can file a unit-specific rate

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<sup>27</sup> New York PSC September 21, 2012 Comments at 3.

<sup>28</sup> *Id.* at 4.

<sup>29</sup> *Id.* at 5.

<sup>30</sup> Con Edison September 21, 2012 Comments at 2.

<sup>31</sup> *Id.* at 3.

<sup>32</sup> NYTOs September 21, 2012 Comments at 2-3.

<sup>33</sup> NRG September 21, 2012 Limited Protest at 2 (citing 16 U.S.C. 824d (2006)).

pursuant to section 206 if its actual costs exceed the payment under the NYISO Tariff. NRG contends that as public utilities, generators have the right under section 205 of the FPA to file a rate schedule with the Commission to provide services in the NYISO markets. NRG further contends that replacing a generator's section 205 filing right with a right to file under section 206 is inconsistent with the court's holding in *Atlantic City Electric Co. v. FERC*.<sup>34</sup>

27. NRG further argues that although NYISO has taken the position that utilities can voluntarily forfeit their section 205 filing rights by contract pursuant to *Atlantic City*, generators did not voluntarily waive their section 205 rights by participating in the NYISO market. NRG contends that there is no language in the NYISO tariffs explicitly stating that generators have voluntarily waived their section 205 rights.<sup>35</sup> NRG further contends that signing a required document in order to join the NYISO market does not meet the voluntary threshold required by *Atlantic City*, because generators who want to participate in the NYISO market have no choice but to sign the ISO Agreement to become members of the NYISO. NRG urges the Commission to recognize generators' right to file under section 205, and thereby reject NYISO's attempt to limit a generator's filing rights to those under section 206.<sup>36</sup>

28. NRG further contends that under NYISO's proposed revisions, generators will have to meet the higher standard of proof under section 206 in order to obtain a unit-specific rate for Restoration Services. NRG argues that generators will not only have to prove the proposed unit-specific rate is just and reasonable, but also demonstrate that the proxy rate under the NYISO tariff is unjust and unreasonable.<sup>37</sup> NRG contends that NYISO attempts to alleviate this additional section 206 burden by including a provision that binds the parties to the NYISO tariff to agree that the proxy rates are unjust and unreasonable should FERC find that a generator's actual, incremental costs are reasonably incurred. NRG argues that in spite of the proposed language, the 206 burden will remain, and furthermore that NYISO has failed to make a compelling case for the invention of a hybrid section 205/section 206 standard of review. NRG urges the Commission to resolve this conflict by removing the section 206 filing requirement from NYISO's proposed revisions.

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<sup>34</sup> 295 F.3d 1, 20-21 (D.C. Cir. 2002).

<sup>35</sup> NRG September 21, 2012 Limited Protest at 4.

<sup>36</sup> NRG September 21, 2012 Protest at 5.

<sup>37</sup> NRG September 21, 2012 Protest at 5 (citing 16 U.S.C. § 824e (2006)).

**B. Answers**

29. In its October 9, 2012 answer to the NRG Protest, NYISO urges the Commission to deny NRG's objection to the section 206 filing requirement and approve NYISO's proposed revisions without modification. In support, NYISO contends that under the ISO Agreement, a NYISO market participant is only permitted to unilaterally amend the terms of the NYISO's tariffs by making a section 206 filing with the Commission.

30. NYISO further argues that it will not be difficult for a generator that can demonstrate it is not recovering its actual costs under the NYISO proxy rate to satisfy the section 206 standard adopted in proposed section 15.5.4.2.3.2. NYISO asserts that by stipulating in section 15.5.4.2.3.2 that neither NYISO nor its stakeholders would oppose or argue against a finding by the Commission that the NYISO proxy rate was unjust and unreasonable it acknowledged generators' concerns regarding the higher section 206 burden. NYISO contends that including that language was not, as NRG argues, an attempt to establish a separate, hybrid standard of review for the Commission or modify existing section 205 or section 206 filing rights.<sup>38</sup> NYISO further argues that NRG's Protest mischaracterizes the 15.5.4.2.3.2 language as an attempt to eliminate a generator's section 205 filing rights, while NYISO's proposed revisions will only apply to a generator providing Restoration Services under the terms of the NYISO tariffs. NYISO contends, therefore, that its proposed revisions do not impact any other rights that a generator may have unrelated to providing Restoration Services.

31. In its October 17, 2012 answer, NRG argues that NYISO's reasoning is circular in that NYISO states that a generator's section 205 rights are not at issue here, but asks the Commission to accept the proposed tariff's section 206 provision based on an argument that assumes generators do not have section 205 rights to have their own rate schedules on file with the Commission. NRG reiterates the arguments made in its September 21, 2012 protest that generators are guaranteed section 205 rights under *Atlantic City* and they have not voluntarily waived these rights.<sup>39</sup> NRG states that NYISO asserts that because the proposed Restoration Services provision will only apply to a generator providing Restoration Services under the terms of NYISO's tariffs, the proposed tariff does not impact any other rights a generator may have. NRG argues that this argument fails because the Restoration Services is mandatory under the proposed tariff revisions. According to NRG, acceptance of the section 206 provision would in effect allow NYISO to forcibly waive a generator's section 205 rights.

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<sup>38</sup> NYISO October 9, 2012 Answer at 5 (citing NRG September 21, 2012 Protest at 5).

<sup>39</sup> See *supra* P 27.

### **III. Commission Determination**

#### **A. Procedural Matters**

32. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §385.214 (2012), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

33. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012) prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept the answers filed in this proceeding because they have provided information that assisted us in our decision-making process.

#### **B. Substantive Matters**

34. We find that NYISO's proposed tariff revisions, which are protested in only one limited respect addressed below, appear to be a reasonable step in meeting concerns over the adequacy of black start service to support a local system restoration in New York City. The filing had near unanimous approval of NYISO stakeholders and the commenters in the instant proceeding are in agreement, or do not contest, that NYISO's proposed revisions are important to help ensure the timely and efficient restoration of electric service to New York City in the event of a significant system disturbance.<sup>40</sup> Therefore, we accept NYISO's proposed tariff revisions for filing, subject to the conditions explained below.

35. NRG filed the only protest in this proceeding, limited to proposed section 15.5.4.2.3.2 which provides that, if a generator providing Restoration Services determines that its actual incremental costs of providing those services exceed the payment determined under section 15.5.4.2.3.1, the "[g]enerator shall have the right to file a proposed rate for the recovery of its actual, incremental costs of providing Restoration Services with FERC, pursuant to Section 206 of the [FPA]." NRG asks the Commission both to confirm the right of a public utility to file its own rate schedule under section 205 to provide services in the NYISO market and to reject NYISO's proposal here to require a generator to file a special, unit-specific rate with the Commission under section 206. We find that the language proposed in section 15.5.4.2.3.2 referring to FPA section 206 is not consistent with section 206(a) of the FPA,<sup>41</sup>

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<sup>40</sup> Because we agree with NYISO that this is not a traditional cost-of-service rate filing necessitating the data and information required by section 35.13 of our regulations, we grant NYISO's requested waiver of section 35.13.

<sup>41</sup> Section 206(a) of the FPA only authorizes action "upon [the Commission's] own motion or upon complaint." Hence, a generator cannot make a section 206 tariff filing. Under section 206(a), the generator would be required to file a complaint

and it is confusing because other language in the proposed provision does not purport to impose a section 206 burden on the filing generator to show that the existing tariff rate in section 15.5.4.2.3.1 is unjust and unreasonable. Section 15.5.4.2.3.2 provides that, if the Commission makes the findings requisite to approval of the generator's proposed unit-specific rate, then the "parties to this ISO Services Tariff agree that the rates in section 15.5.4.2.3.1 would be unjust and unreasonable for those units." Thus, the proposed provision on its face only provides that the generator's burden is to meet the cost showing required by this provision. Accordingly, for these reasons, we grant NRG's request to the extent it seeks rejection of the proposed language referencing section 206 and the just and reasonable standard. However, we deny NRG's request for a declaration of a general right to file its own rate schedule under section 205 of the FPA, as that issue goes beyond the scope of the instant filing.<sup>42</sup>

36. Because section 15.5.4.2.3.2 is intended simply to provide a tariff procedure by which an individual generator may apply for and get Commission approval of a special, unit-specific rate, *i.e.*, by showing that it meets certain cost requirements specified in the tariff, there is no need to include tariff language that characterizes this filing as a section 206 filing challenging the justness and reasonableness of the filed tariff. Rather than challenging the justness and reasonableness of the filed tariff, under the proposed tariff procedures we approve here, an individual generator's special unit-specific rate would actually be developed to meet the cost showing requirements of those tariff procedures (which at that time would be the filed tariff) and would be placed on file with the Commission as a part of the NYISO tariff. Thus, because NYISO must make the eTariff filing to implement the new unit-specific rate, it is more properly filed by NYISO. To avoid future confusion, we direct NYISO to revise section 15.5.4.2.3.2 to remove the reference to section 206 and the reference to the agreement among the parties to the NYISO Services Tariff that the section 15.5.4.2.3.1 rates would be unjust and unreasonable. NYISO should only set forth the procedure and cost showing required to obtain such a special, unit-specific rate. In particular, in regard to filing requirements, because the proposed tariff provision provides for a generator's proposed special, unit-specific rate for Restoration Services to be reviewed by the Commission and, if approved, inserted in an Attachment to NYISO's Rate Schedule 5 in the NYISO Services Tariff, NYISO should revise this section to provide that NYISO will file the eTariff record change reflecting the generator's requested special, unit-specific rate on behalf of the

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requesting that the Commission find the existing tariff rate is unjust and unreasonable and that the complainant's proposed replacement rate is just and reasonable. Upon making such findings, the Commission then would direct the utility (here, NYISO) to file a compliance filing to revise its tariff to reflect the approved rate.

<sup>42</sup> We note that the issue raised by NRG was also raised in the Ravenswood proceeding in Docket No. ER12-1418-000. *See* Ravenswood May 24, 2012 Order, 139 FERC ¶ 61,151 at 15, 40.

generator in a joint filing made with the generator. The generator will retain the burden to show in the application to the Commission that its proposed special, unit-specific rate meets the requirements of section 15.5.4.2.3.2, and the Commission will review the application on this basis; the generator will not have any additional burden to show that the existing tariff is unjust and unreasonable, since the proposed tariff we approve here (which at that time will be the existing tariff) in fact provides for this procedure. Thus, we direct NYISO to make a compliance filing containing a revised section 15.5.4.2.3.2 to provide for the foregoing revisions, including the NYISO eTariff filing requirement.

37. Further, because the proposed tariff provides the terms and conditions under which generators provide Restoration Services in the Con Edison Plan and in certain respects requires the modification of the Con Edison Plan, we also direct NYISO to revise section 15.5.4 of Rate Schedule 5 to provide that, upon receipt from Con Edison, NYISO will file the revised Con Edison Plan with the Commission as an informational filing.<sup>43</sup>

38. As a final matter, we clarify the implications of the conditional approval of NYISO's August 31, 2012 Filing on the settlement proceedings established by the Commission's order in Docket Nos. ER12-1418-000 and 001.<sup>44</sup> As noted earlier herein, in the Ravenswood May 24, 2012 Order, the Commission accepted Ravenswood's Spot Black Start Rate Schedule Filing, subject to refund and conditions, and established settlement judge procedures to allow the parties to the proceeding an opportunity to work in the stakeholder process toward a mutually agreeable resolution under the NYISO Services Tariff. The Ravenswood May 24, 2012 Order further directed that any proposals resulting from the NYISO stakeholder process be considered in the settlement judge procedures.<sup>45</sup> NYISO's August 31, 2012 Filing in the instant proceeding constitutes a relevant proposal resulting from that stakeholder process and, therefore, it should be considered in the settlement judge proceeding, pursuant to the May 24, 2012 Order.

The Commission orders:

(A) NYISO's proposed Restoration Services Rate Schedule is hereby accepted, to be effective November 1, 2012, subject to the conditions set forth in the body of this order.

<sup>43</sup> This informational filing is for informational purposes only, and the Commission would not intend to notice or take formal action on such a filing. NYISO may choose to file the Con Edison Plan as non-public Critical Energy Infrastructure Information (CEII) if it or Con Edison believes it necessary. *See* 18 C.F.R. § 388.113(c) (2012).

<sup>44</sup> *See supra* note 6.

<sup>45</sup> 139 FERC ¶ 61,151 at P 39.

(B) NYISO is hereby directed to submit a compliance filing within 30 days of the date of this order, as directed in the body of the order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.