

150 FERC ¶ 61,057
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

New York Independent System Operator, Inc.

Docket No. ER15-563-000

ORDER ACCEPTING TARIFF REVISIONS AND GRANTING WAIVER

(Issued January 30, 2015)

1. On December 3, 2014, the New York Independent System Operator, Inc. (NYISO) filed proposed revisions to the black start and system restoration services (Restoration Services)¹ provisions in its Market Administration and Control Area Services Tariff (Services Tariff). NYISO proposes to require certain generators located within Consolidated Edison Company of New York, Inc. (Con Edison)'s service territory that have the capability to provide Restoration Services to participate in Con Edison's 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 February 1, 2015. Additionally, NYISO requests that the Commission waive the filing requirements of section 385.203(b)(3) of the Commission's regulations.² In this order, we grant NYISO's request for waiver, and accept NYISO's proposed tariff revisions, to become effective February 1, 2015, as requested.

I. Background

2. The New York State Reliability Council (NYSRC) is the local reliability organization charged with promoting and preserving the reliability of the New York State bulk-power system consistent with reliability rules established by the North American

¹ Rate Schedule 5 of NYISO's Services Tariff collectively defines black start service and system restoration services as Restoration Services provided by generating units that are capable of starting without an outside electric supply or are otherwise integral to the restoration of the New York State Transmission System after an outage. Section 15.5 of Rate Schedule 5.

² 18 C.F.R. § 385.203(b)(3) (2014). This provision limits filing parties to naming not more than two persons to whom communications are to be addressed in the proceeding. NYISO states that waiver is necessary because its counsel are located in Washington, D.C. and Richmond, Virginia.

Electric Reliability Corporation (NERC) and the regional regulatory body, the Northeast Power Coordinating Council, Inc. (NPCC). Pursuant to Reliability Rule G-R1 issued by the NYSRC, NYISO is responsible for maintaining a plan for restoring electric service to New York State in a safe, orderly, and prompt manner following a major system disturbance (NYISO Restoration Plan). Further, under a Commission-approved NERC reliability standard, registered transmission owners also must have a system restoration plan that includes the use of black start-capable generators.³ Thus, the NYISO Restoration Plan provides for system restoration at two integrated levels: (1) NYISO is responsible for restoring electric service through the New York State transmission backbone; and (2) New York transmission owners are responsible for restoring electric service to their local areas.⁴

3. Under the first level of the NYISO Restoration Plan, NYISO maintains and administers the statewide plan for restoring electric service to New York State following a major system disturbance by procuring Restoration Services from hydroelectric units in the central, northern, and western parts of New York State, and uses these resources to energize the 345 kV transmission backbone, which is then used by transmission owners to restore service in their local areas.

4. Pursuant to the second, local level of the NYISO Restoration Plan, Con Edison maintains and administers the local Con Edison Plan to provide for the accelerated restoration of electric service to New York City by means of black start capable generating units located within New York City. NYISO states that the Con Edison Plan enables Con Edison to begin local restoration efforts immediately following the occurrence of a major system disturbance, rather than waiting for the state's transmission backbone to be energized, significantly reducing the time necessary to fully restore electric service to Zone J (New York City). In furtherance of that effort, and due to the significance of New York City as a financial center, the dependence of its mass transit system on electricity, and its many high-rise buildings dependent on functioning elevators, NYISO notes that the New York Public Service Commission (New York PSC) has traditionally mandated special procedures for New York City that minimize restoration time.⁵

³ 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>.

⁴ Section 215 of the Federal Power Act (FPA) authorizes the Commission to approve and enforce reliability standards applicable to all regional entities, users, owners and operators of the bulk-power system. Section 215(i)(3) of the FPA provides that the State of New York “may establish rules that result in greater reliability within that State, as long as such action does not result in lesser reliability outside the State.”

⁵ *Order Amending Reliability Criteria for Bulk Power Supply Systems*, Proceeding on motion of the Commission concerning the reliability of the power supply in the

5. Recently, in Docket No. ER12-2568-000, *et al.*, the Commission approved amendments to the black start service provisions in Rate Schedule 5 of NYISO's Services Tariff, as well as various changes to the generator interconnection provisions of Attachment X to NYISO's Open Access Transmission Tariff (OATT).⁶ Among the changes to Attachment X was section 30.2.5, which was revised to require new or modified generation units proposing to interconnect to Zone J to install black start capability and to provide such Restoration Services under the Con Edison Plan if NYISO determines that the relevant generation unit would materially benefit⁷ system restoration in Zone J. In the event a developer believes there is good cause for the generation unit not to provide black start service under the Con Edison Plan, section 30.2.5 requires the developer to furnish a study – at the developer's expense – to NYISO and Con Edison that supports that claim.

6. Following NYISO's adoption of the revisions to section 30.2.5, NYSRC examined the Con Edison Plan to determine whether there was a need to extend the same requirement to existing generating units. After an extensive development, review and comment process, NYSRC presented Proposed Reliability Rule 116 A (NYSRC Rule 116A), which proposed to extend the obligation to provide Restoration Services under the Con Edison Plan under certain circumstances to existing generating units that currently have black start capability. On April 10, 2014, NYSRC approved Rule 116A, which directed NYISO to pursue the tariff amendments necessary to grant Con Edison the authority to designate an existing, black start-capable generating unit to participate in the Con Edison Plan if the inclusion of that unit would provide a material benefit and either: (1) the unit is not currently providing Restoration Services; or (2) the unit is currently providing Restoration Services under the Con Edison Plan, but has provided notice of intent to withdraw from the Plan.

II. The Proposed Tariff Revisions

7. NYISO states that the proposed tariff revisions are necessary to comply with the requirements in NYSRC Rule 116A. NYISO proposes to establish a process for Con Edison to designate an existing generation unit as a Restoration Services provider under

service territory of Consolidated Edison Company of New York, Inc., Case No. 27302 at 4 (New York PSC October 24, 1984).

⁶ *New York Independent System Operator, Inc.*, 141 FERC ¶ 61,081 (2012) (October 31, 2012 Order).

⁷ Section 30.2.5 provides that a generation unit would provide a "material benefit" to system restoration if, among other things, it would improve the speed, adequacy, or flexibility of the Con Edison Plan. In support of NYISO's determination concerning material benefit, that section also provides that Con Edison will perform the studies necessary to determine whether a generation unit would provide a material benefit to system restoration as a black start resource.

the Con Edison Plan, consistent with NYSRC Rule 116A, in section 15.5.4 of Rate Schedule 5 to NYISO's Services Tariff.⁸

8. Under proposed section 15.5.4, if Con Edison determines that additional Restoration Services are needed, Con Edison may designate for inclusion in the Con Edison Plan: (i) an existing generating unit that is capable of providing Restoration Services, but is not currently doing so; or (ii) a generating unit for which the generator has provided notice to withdraw from the Con Edison Plan pursuant to existing section 15.5.4.1.1. However, Con Edison may only designate such a generating unit if it would provide a "material benefit" to system restoration in Zone J.

9. Accordingly, proposed section 15.5.4 further states that Con Edison shall provide NYISO with a study and/or other documentation, performed at Con Edison's expense, to support Con Edison's conclusion that a designated generating unit would provide a material benefit for system restoration in Zone J. A generating unit's provision of Restoration Services will be deemed to provide a material benefit to system restoration in Zone J if, among other things, it would materially improve the speed, adequacy, or flexibility of the Con Edison Plan for restoring electric service in Zone J in a safe, orderly, and prompt manner following a major system disturbance. Toward demonstrating a material benefit, Con Edison's documentation must: (1) include an assessment of the adequacy of resources already committed to provide Restoration Services under the Con Edison Plan and the need for additional resources; (2) describe the manner in which the designated unit would provide a material benefit for system restoration in Zone J; and (3) summarize alternative solutions evaluated, if applicable, and indicate whether other generating units would provide the particular material benefit identified. Con Edison must provide its documentation to NYISO and the identified generator, as well as to other requesting parties that have a direct interest in the matter, subject to confidentiality protections.

10. NYISO's proposal also establishes a process for a generator identified by Con Edison for inclusion in the Con Edison Plan to demonstrate that good cause exists for not requiring its generating unit to participate in the Plan by seeking an exemption from NYISO. Proposed section 15.5.4 states that such a generator must provide a study or other documentation demonstrating the engineering, technical, financial, environmental, and/or other reasons that provision or continued provision of Restoration Services by the generating unit would be unduly burdensome or unreasonable. The generator must provide its documentation to NYISO and Con Edison, but it can elect to provide its documentation to other requesting parties that have a direct interest in the matter, subject to confidentiality protections.⁹ Proposed section 15.5.4 also provides that,

⁸ NYISO's proposed revisions also include a number of minor ministerial changes to the provisions governing generators providing Restoration Services under the NYISO Plan or individual transmission owner plans other than the Con Edison Plan. These revisions only involve grammatical corrections, and some re-numbering of sections and cross-references to coincide with the substantive revisions proposed here.

in making its determination on the generator's exemption request, NYISO may rely on the supporting documentation provided by the generator and Con Edison, along with any additional information developed by NYISO. If NYISO determines that good cause exists to grant an exemption request, the designated generating unit will not be required to participate in the Con Edison Plan. Proposed section 15.5.4 further provides that if NYISO determines that good cause does not exist for the exemption, the designated generating unit will be required to participate in the Con Edison Plan.

11. Proposed section 15.5.4 further provides that a unit designated by Con Edison to participate in the Con Edison Plan that is not granted an exemption by NYISO will provide, and be paid for providing, Restoration Services under the terms set forth in proposed section 15.5.4.1 (existing section 15.5.4.2) and Appendices I and II to Rate Schedule 5.

12. With respect to cost allocation, proposed section 15.5.4 provides that NYISO will recover the costs of the payments established in proposed section 15.5.4.1 (existing section 15.5.4.2) from Customers in the Consolidated Edison Transmission District, under the terms set forth in proposed section 15.5.4.2 (existing section 15.5.4.3).

13. Proposed section 15.5.4.1.1 (existing section 15.5.4.2.1) provides that a generating unit previously designated under section 15.5.4 will be required to begin a new commitment period if: (1) Con Edison provides NYISO and the generator with notice at least one year prior to the conclusion of the previous commitment period that the unit continues to be required to provide a material benefit to system restoration in Zone J; and (2) NYISO determines that the generating unit should continue to provide service in accordance with section 15.5.4, including the opportunity for the generator to request an exemption.

14. NYISO states that, after several stakeholder meetings and review by NYISO's Business Issues Committee and Management Committee, the proposed tariff revisions were approved by the NYISO Management Committee at its August 27, 2014 meeting by 63.14 percent affirmative vote, and subsequently by the NYISO Board of Directors at its October 21, 2014 meeting.

III. Notice of Filings and Responsive Pleadings

15. Notice of NYISO's December 3, 2014 Filing was published in the Federal Register, 79 Fed Reg. 73,288 (2014), with interventions and protests due on or before December 24, 2014.

16. The New York PSC filed a notice of intervention and comments in support of the filing. Exelon Corporation and the NRG Companies (NRG)¹⁰ filed timely motions to

⁹ As described above, this provision differs from section 15.5.4's directive that Con Edison must provide the documentation used to support its finding that a generating unit provides a material benefit to system restoration in Zone J.

intervene. The City of New York (NYC), the New York Transmission Owners (NYTOs), and NYSRC filed timely motions to intervene and comments in support of the filing. The Independent Power Producers of New York, Inc. (IPPNY) filed a timely motion to intervene and protest. On January 8, 2015, NYSRC, NYISO and the NYTOs filed answers to IPPNY's protest.

A. Comments and Protests

17. NYTOs state that they strongly support the tariff amendments described in NYISO's filing. NYTOs assert that NYSRC Rule 116A is a critical step toward ensuring system reliability in the event of a system-wide outage, which is particularly important given the large-scale safety and welfare consequences of such an outage in New York City, and the consequential impacts on the nation's financial system.¹¹ NYTOs further argue that NYISO's filing avoids imposing an undue burden on generators for three reasons: (1) only existing units with the capability to provide Restoration Services are eligible to be designated by Con Edison; (2) a generator identified by Con Edison may request an exemption from NYISO if it would be unduly burdensome or unreasonable; and (3) generators designated for participation in the Con Edison Plan may seek to recover additional costs through the unit-specific compensation under proposed section 15.5.4.1.3.2 (existing section 15.5.4.2.3.2).¹²

18. The New York PSC supports NYISO's proposed amendments as an improvement to the ability of NYISO and Con Edison to ensure the adequate restoration of Zone J under the Con Edison Plan. The New York PSC states that, under New York State Public Service Law, the New York PSC is responsible for overseeing the reliability of the New York State -power system, and that the proposed revisions complement its ability to review generator proposals to withdraw from the Con Edison Plan.¹³ The New York PSC asserts that the capability of the power system for service restoration following a system disruption is an important component of system reliability and has significant impacts on public health, safety and welfare, meaning the New York PSC has the responsibility of ensuring market participants have made appropriate preparations for safe and expeditious service restoration. The New York PSC further argues it is empowered to determine if sufficient generators have made the commitments necessary to support Restoration Services. Therefore, the New York PSC contends, and as stated in its Declaratory

¹⁰ For purposes of this filing, the NRG Companies are NRG Power Marketing LLC, and GenOn Energy Management, LLC.

¹¹ NYTOs December 22, 2014 Comments, at 5-6.

¹² NYTOs December 22, 2014 Comments, at 6-7.

¹³ New York PSC December 23, 2014 Comments, at 5 (citing New York State Public Service Law §§ 2(13) and 65).

Ruling,¹⁴ generators currently providing Restoration Services may only terminate that service with New York PSC consent.¹⁵

19. The New York PSC further asserts that recent events, including Hurricane Sandy, have underscored the importance of Restoration Services, and the necessity of remedying any insufficiency in those services.¹⁶

20. The NYSRC states that NYISO's governing documents and tariffs, all approved by the Commission, require NYISO and its market participants to comply with all NYSRC Reliability Rules. Similar to the New York PSC, the NYSRC states that system restoration, particularly in the New York City area, is among its most important responsibilities. The NYSRC further asserts that the ability of a resource with black start capability to withdraw from the Con Edison Plan or refuse to participate in the Plan without any justification for doing so, when its participation would provide a material benefit to system restoration, presented an unacceptable risk to system reliability. The NYSRC further states that it determined that reliability risk had to be addressed in its reliability rules to ensure that the reliability of the New York State bulk-power system will be maintained.¹⁷

21. Similar to the NYTOs and NYC, the NYSRC asserts that NYSRC Rule 116A, which NYISO seeks to implement through its proposed tariff revisions, will address the identified reliability concerns in a reasonable and balanced manner, embodied by the documentation Con Edison must submit to demonstrate the potential for material benefit, along with a designated generator's ability to seek an exemption or to petition the Commission for additional compensation.¹⁸

22. The NYSRC further argues that, although Restoration Services are generally provided on a voluntary basis, that does not deprive the NYSRC and NYISO from requiring a black start-capable resource, which relies on the reliability of the bulk-power system to conduct its business like all other market participants, to participate in system restoration if that resource cannot provide a good reason for its refusal to participate. The NYSRC further notes that special reliability requirements in New York were recognized by the Energy Policy Act of 2005, which provides that New York State may establish

¹⁴ *Declaratory Ruling Regarding Blackstart Service*, Consolidated Edison Company of New York, Inc. – Petition for Declaratory Ruling, CASE 11-E-0423 (New York PSC – September 28, 2011) (Declaratory Ruling).

¹⁵ New York PSC December 23, 2014 Comments, at 5.

¹⁶ New York PSC December 23, 2014 Comments, at 6.

¹⁷ NYSRC December 23, 2014 Comments, at 8.

¹⁸ NYSRC December 23, 2014 Comments, at 8-9.

rules that result in greater reliability within the state as long as it does not result in lesser reliability outside the State.¹⁹

23. Similar to the NYTOs and the New York PSC, NYC asserts that the risks involved with an extended system outage in a densely populated area like New York City magnify the importance of having generators with black start capability. NYC further asserts that it relies heavily on electricity to operate its transportation and health care systems, and to service the thousands of commercial and residential buildings that depend on functioning elevators, posing significant risks to public health and safety. NYC further states that an extended outage could result in billions of dollars in lost productivity and financial transactions, because the financial sector is incapable of operating without electricity.²⁰

24. Like the New York PSC, NYC asserts that the increasing number of severe weather events in recent years, including Hurricane Sandy, demonstrates the critical need for a resilient electric system.²¹ Although Hurricane Sandy only resulted in a partial system outage that did not necessitate Restoration Services, the thousands of elderly nursing and hospital patients and flooded subway stations and traffic tunnels demonstrate the importance of a resilient and reliable system, as well as the potentially severe and widespread consequences of a large-scale outage, for which black start units would be needed.

25. In protesting NYISO's proposal, IPPNY asserts that NYISO's proposal does not provide any evidence demonstrating a shortcoming in the established, voluntary Restoration Services program, or that an existing change of circumstances warrants a re-evaluation of the program. IPPNY contends that, rather than requiring existing generators to provide black start service, the NYSRC could have adopted a reliability standard and allowed NYISO to develop the most cost-effective and efficient means to meet that standard.

26. IPPNY further argues that the Commission, NYISO and NYSRC are without jurisdiction to require a generator to provide black start service. IPPNY asserts that this Commission's jurisdiction is limited to the rates, terms, and conditions of wholesale services, and does not include the authority to order a utility to provide Restoration Services. IPPNY asserts that the only Federal Power Act (FPA) provisions that arguably grant the Commission authority to require a generator to provide a service either require the existence of an emergency (under section 202(c) of the FPA), or a complaint filed by a state commission demonstrating that interstate service is inadequate or insufficient (under section 207 of the FPA), neither of which, IPPNY contends, apply with respect to this filing.

¹⁹ NYSRC December 23, 2014 Comments, at 9 (citing 16 U.S.C. § 824o(i)(3)).

²⁰ NYC December 24, 2014 Comments, at 2.

²¹ NYC December 24, 2014 Comments, at 2-3.

27. IPPNY further contends that a fundamental rule of statutory construction dictates that express mention of one thing implies the exclusion of another, which as applied here, means that Congress's explicit grant of authority in sections 202(c) and 207 to order a utility to provide service implies that Congress did not intend to grant the Commission that authority more generally in other sections of the FPA.²² Accordingly, IPPNY contends, the Commission lacks authority to order a generator to provide Restoration Services and cannot accept NYISO's proposal.

28. IPPNY further argues that the NYSRC cannot directly require a generator to provide black start service, and it should be not allowed to use NYISO Services Tariff, specifically section 5.2 therein,²³ as an end-run around the limits of its authority to enforce such a rule. In any case, IPPNY asserts that although section 5.2 of NYISO's Services Tariff requires NYISO to implement NYSRC rules, those rules must be within the bounds of NYSRC's authority in the first place.

29. IPPNY next argues that NYISO's proposal is arbitrarily vague. IPPNY argues that the "material benefits" standard in section 15.5.4 lacks any meaningful specificity and provides Con Edison, a private entity, with the ability to unduly discriminate against market participants. IPPNY argues that NYISO's proposal makes no attempt to objectively quantify, even within a range of metrics, what might constitute materiality.²⁴ IPPNY contends that lack of foreseeability makes it impossible for market participants to accurately assess the various factors that weigh for and against participation in the Con Edison Plan.²⁵

30. IPPNY further contends that NYISO's proposal improperly limits NYISO's selection of participating generators to those designated by Con Edison by rendering NYISO entirely dependent on studies and other documentation provided by Con Edison. IPPNY argues that there is an inherent conflict involved with NYISO forcing generators to deal with a counterparty that both tests facilities and designates its preferred generator.²⁶

31. Lastly, IPPNY argues that its election not to protest NYISO's Restoration Services amendments filed in Docket No. ER12-2568-000 does not contradict its protest in the instant proceeding. IPPNY asserts that, because none of its members anticipated developing new (or modifying existing) generation projects in New York City, they chose not to protest that filing, whereas this filing applies to existing generators.

²² 513 U.S. at 568; *see also ErieNet, Inc. v. Velocity Net, Inc.* 156 F.3d 513, 516 (3rd Cir. 1998).

²³ IPPNY Protest at 6 (citing NYISO Filing at 2).

²⁴ IPPNY Protest at 8.

²⁵ IPPNY Protest at 9.

²⁶ IPPNY Protest at 9-10.

B. Answers**1. NYISO**

32. NYISO argues that its proposed tariff amendments do not establish or expand the authority of the Commission, NYSRC, or NYISO to compel generators to provide wholesale services as a general matter, because generators are obligated to comply with NYSRC rules, which include Rule 116A, as a condition of their taking service under the terms and conditions of the NYISO's tariffs and agreements. Like NYSRC, NYISO further argues that all entities electing to participate in NYISO's markets execute a Services Agreement under which the market participant agrees "to satisfy all obligations under the terms and conditions of the [NYISO Services Tariff], as may be amended from time to time..."²⁷ NYISO asserts that, under the terms of its governing documents and agreements, both NYISO and all of its market participants are required to comply with NYSRC reliability rules.

33. NYISO states that article 2.1 of the Agreement Between the New York Independent System Operator and the New York State Reliability Council (NYISO/NYSRC Agreement),²⁸ which is on file with and approved by the Commission, establishes that "the NYSRC shall develop Reliability Rules which shall be complied with by the ISO and all entities engaged in transactions on the NYS [P]ower [S]ystem." NYISO further states that article 3.2 of the NYISO/NYSRC Agreement provides that "[t]he ISO shall maintain the safety and short-term reliability of the New York State bulk-power system and administer the ISO OATT and the ISO Services Tariff in accordance with the reliability rules..." NYISO also states that article 12.02 of the Independent System Operator Agreement (ISO Agreement),²⁹ which is on file with and approved by the Commission, provides that "[NYISO] shall implement the Reliability Rules and shall cooperate with the Transmission Owners with respect to those Reliability Rules implemented by the Transmission Owners." Lastly, NYISO notes that section 5.2 of the Services Tariff establishes that "[i]n acting as the Control Area operator, the ISO will be responsible for maintaining the safety and the short-term reliability of the N[ew] Y[ork] C[ontrol]A[rea] (NYCA)³⁰ and for the implementation of reliability

²⁷ NYISO Answer at 3 (citing Services Tariff, section 16 § 2.0).

²⁸ The NYISO/NYSRC Agreement governs the relationship between NYISO and NYSRC.

²⁹ NYISO's ISO Agreement establishes the organizational structure of NYISO's stakeholder processes, NYISO's governance, as well as many of the fundamental duties of NYISO regarding its operation of the NYCA.

³⁰ NYISO Services Tariff section 2.14 defines the New York Control Area as the area "that is under the control of the ISO which includes transmission facilities listed in the ISO/TO Agreement Appendices A-1 and A-2, as amended from time-to-time,

standards promulgated by [NERC] and [the NPCC] and for the Reliability Rules promulgated by the NYSRC.”

34. NYISO further states that market participants are obligated to abide by the terms and conditions of NYISO’s tariffs, which include requirements NYISO adopts to implement the reliability rules promulgated by the NYSRC. NYISO notes section 5.1.1.1 of the Services Tariff, which provides that “[i]n accordance with applicable requirements in this Tariff and the ISO Procedures, all Customers shall conform to all applicable reliability criteria, policies, standards, rules, regulations and other requirements of NERC, NPCC, [and] NYSRC...” NYISO further notes that section 4.1.7 of the Services Tariff states that “[a]ll Customers shall comply with all applicable federal, state and local laws, regulations and orders, including orders from the ISO.”

35. NYISO contends that IPPNY’s protest ignores that compliance with NYSRC reliability rules and related provisions in NYISO’s tariffs is a well-established condition of participating in NYISO’s markets.³¹ NYISO lastly contends that, by agreeing to provide services under the terms of NYISO’s agreements and tariffs, generators assume the obligation to comply with NYSRC reliability rules, and that compliance with NYSRC Rule 116A and the tariff revisions implementing that rule is no different.³²

36. NYISO next contends that it is well within the Commission’s authority under section 205 to condition generators’ participation in NYISO’s markets on their compliance with reasonable reliability requirements, and therefore to accept tariff provisions implementing those rules, so long as they are just and reasonable. NYISO further notes that the Commission previously accepted tariff revisions under its section 205 authority that require both new generators entering the market, as well as existing generators that are either increasing their capacity, or otherwise making material modifications to install restoration services capability if deemed necessary by NYISO.³³ NYISO contends that NYSRC Rule 116A and the instant tariff revisions extend similar obligations to existing generators that already have restoration services capability, which, NYISO argues, are more stringent than the instant tariff revisions, because they allow NYISO to require a new or modified generator to install restoration services capability at its facility.³⁴

and generation located outside the NYS Power System that is subject to protocols (e.g., telemetry signal biasing) which allow the ISO and other Control Area operator(s) to treat some or all of that generation as though it were part of the New York State Power System.”

³¹ NYISO Answer at 4.

³² NYISO Answer at 4-5.

³³ See *supra* note 7.

37. NYISO further argues that NYSRC Rule 116A is not an attempt by NYSRC to expand its authority or that of NYISO, but is well within the scope of NYSRC's authority to promulgate rules that maintain reliability in New York State, and NYISO's authority to implement NYSRC reliability rules.³⁵ NYISO further argues that its proposed tariff revisions were vetted thoroughly in the NYISO stakeholder process and approved by the stakeholder Management Committee and NYISO's Board of Directors. NYISO also notes that the Commission's authority to approve the instant tariff revisions is reinforced by section 215 of the FPA,³⁶ which explicitly authorizes the State of New York to establish reliability rules that are more stringent than those promulgated by NERC or the NPCC to promote greater reliability within the state,³⁷ and, in particular, for New York City.³⁸

38. NYISO next argues that its proposed tariff revisions establish a clear and transparent process for determining whether a generator is needed to provide Restoration Services. Moreover, NYISO argues that NYISO's proposed process and "material benefit" criteria are consistent with existing Commission-approved requirements for new and modified generating units. NYISO notes that it will only direct a generating unit designated by Con Edison to provide Restoration Services if it concurs that the unit will provide a material benefit, and that the generator has not shown good cause that it would be unreasonable or unduly burdensome for the unit to do so. NYISO further notes that Con Edison is required to provide both NYISO and the generator with studies and documentation supporting the need for the unit to participate in the Con Edison Plan. NYISO also argues that the generator has the opportunity to submit its own studies and documentation demonstrating there is good cause not to require the generator to participate in the Con Edison Plan.³⁹

39. NYISO states that, under existing NYSRC Reliability Rule G-R1, it is responsible for ensuring that the statewide system restoration plan, which includes the Con Edison Plan, can restore the NYCA to a normal operating state in a safe and orderly manner and as promptly as reasonably possible following a major or total blackout. NYISO contends that, given the numerous factors that NYISO and Con Edison must consider in determining whether the Con Edison Plan remains effective, it would not be practical or

³⁴ NYISO Answer at 5, n. 10.

³⁵ NYISO Answer at 6 (citing NYSRC Agreement at article 3.01).

³⁶ 16 U.S.C. § 824o (2014).

³⁷ NYISO Answer at 6 (citing 16 U.S.C. § 824o(i)(3)).

³⁸ NYISO Answer at 7, n. 16 (citing 151 Cong. Rec. H6949-01 (daily ed. July 28, 2005), 2005 WL 1788535 (statement of Rep. Eliot Engel)).

³⁹ NYISO Answer at 8.

beneficial to try to establish an overly prescriptive standard for determining whether additional resources are required to restore electric service in a safe and orderly manner and as promptly as possible.⁴⁰ For this reason, NYISO argues, it proposed a detailed process that includes technical input from Con Edison and the impacted generator(s), procedural safeguards, and permits NYISO to use its independent engineering judgment in reviewing the adequacy of the Con Edison Plan and the benefits of including the designated generator.

40. NYISO further argues that the Commission previously accepted a material benefit standard nearly identical to that proposed here with respect to section 30.2.5 of Attachment X of NYISO's OATT. NYISO states that, under the revisions to section 30.2.5 as referenced above, a developer is required to include Restoration Services capability at its generation facility if NYISO determines such capability would provide a material benefit to system restoration in Zone J and the developer has not shown good cause for not including black start capability.⁴¹ NYISO asserts that the only substantive difference between the previously accepted material benefit standard and the instant tariff revisions is the inclusion of the word "materially" within the definition of material benefit, such that a material benefit only exists if a generating unit "would materially improve the speed, adequacy, or flexibility of the [Con Edison Plan]..."⁴² NYISO contends that the addition of the word materially prevents the potential for the concept of materiality to be inadvertently defined out of the standard, but further states that the material benefit standard as previously accepted by the Commission is clear without the addition of materially.⁴³

41. NYISO further contends that its proposed process for designation into the Con Edison Plan will be open and transparent, and establishes numerous procedural safeguards that protect a generator from an arbitrary determination that it is required to provide Restoration Services. NYISO argues that the impacted generator will have the opportunity to review and challenge Con Edison's analysis and supporting materials, and may submit its own supporting materials. NYISO further argues that a generator that disagrees with NYISO's final determination may always bring its concerns before the Commission for review.⁴⁴ NYISO lastly contends that Con Edison's involvement in the proposed designation process is consistent with the responsibilities of the local New York Transmission Owners throughout NYISO's tariffs.⁴⁵

⁴⁰ NYISO Answer at 8-9.

⁴¹ NYISO Answer at 9-10.

⁴² NYISO Answer at 10.

⁴³ NYISO Answer at 10-11.

⁴⁴ NYISO Answer at 11.

42. Finally, NYISO asserts that its proposed tariff revisions are necessary to address NYISO and Con Edison's concerns regarding the ability to procure adequate replacement restoration services for New York City in the future, due to the Con Edison Plan's significant reliance on aging generators that may be mothballed, retire, or withdraw from the Con Edison Plan altogether. NYISO contends that its proposed tariff revisions create a necessary framework to ensure that sufficient restoration services will be available going forward, such that NYISO and Con Edison can identify future needs as they arise, as well as for identifying potential solutions to address those needs to maintain reliable electric service within New York City.

2. NYSRC

43. NYSRC argues that NYISO's ability to maintain the reliability of the bulk-power system, as authorized by the Commission, requires NYISO to rely on the active cooperation and assistance of all its market participants. NYSRC asserts that, in order to ensure that cooperation, NYISO's ISO Agreement requires NYISO to operate the bulk-power system in accordance with NYSRC's reliability rules.⁴⁶ NYSRC further asserts that the NYISO/NYSRC Agreement, which established the relative responsibilities of the two entities, provides that NYISO and all entities engaged in transactions on the bulk-power system will comply with NYSRC reliability rules.⁴⁷

44. NYSRC further argues that all entities choosing to participate in NYISO's voluntary markets are required to comply with certain requirements, including signing the ISO Agreement. NYSRC asserts that the ISO Agreement provides that all entities having a Service Agreement with NYISO must comply with all NYSRC reliability rules and NYISO procedures regarding the reliability of the bulk-power system.⁴⁸ NYSRC further contends that, given NYISO's reliance on the cooperation of its market participants to ensure reliability on the bulk-power system, NYISO must have the authority to order market participants to take actions necessary to maintain reliability. NYSRC argues that if market participants were free to ignore reliability standards and to refuse to comply with corresponding NYISO orders, both system reliability and the administration of the wholesale markets would be seriously compromised.⁴⁹

⁴⁵ NYISO Answer at 12 (noting each transmission owners' responsibility for developing a Local Transmission Plan for its Transmission District in NYISO OATT Attachment Y, section 31.2.1).

⁴⁶ ISO Agreement, sections 3.01 and 3.02.

⁴⁷ NYSRC January 8, 2015 Answer at 4 (citing NYISO/NYSRC Agreement, section 2.1).

⁴⁸ ISO Agreement, sections 6.02 and 11.01.

⁴⁹ NYSRC Answer at 5.

45. NYSRC asserts that there are already many circumstances in which market participants are required to take specific actions to protect reliability. NYSRC cites the requirement that all load serving entities in NYISO purchase a prescribed amount of installed capacity in order to meet NYSRC's installed capacity requirement. NYSRC contends that, if load serving entities could refuse to follow NYISO's directives with respect to purchasing a certain level of installed capacity, the reliability standard for resource adequacy could not be met. Moreover, NYSRC asserts, transmission owners and generators are required to take specific actions when ordered to do so by NYISO when necessary to protect system reliability. NYSRC argues that if a transmission owner or generator could refuse such instructions on the grounds that the Commission does not have authority to direct the operation of their facilities, neither system reliability nor competitive wholesale markets could be maintained.⁵⁰

46. NYSRC further argues that there are multiple procedural steps following the development of NYSRC reliability rules, including their implementation and enforcement by NYISO, and any necessary review by the Commission or the New York PSC, which appropriately reflect the NYSRC's authority. NYSRC contends that the ability of NYISO to suspend a NYSRC reliability rule, as well as the New York PSC and the Commission's authority to remedy any violations of a NYSRC rule, are inconsistent with equating NYSRC authority with that of the Commission and exceeding that of the U.S. Congress.⁵¹

47. NYSRC further contends that NYISO's proposal does not allow Con Edison to unilaterally make the determination as to whether a black start resource should be required to provide restoration services. NYSRC argues that NYISO's proposal requires Con Edison to support its designation determination with documentation, provides any designated generator with extremely broad grounds for potential exemption, and provides for a thorough review by NYISO, which ultimately makes the designation determination.⁵²

48. NYSRC further contends that NYISO's proposal provides an appropriate definition of material benefit, including the specific types of benefits to be provided, i.e. speed, adequacy, flexibility, and the objective to be achieved by the generator's participation in the Con Edison Plan, i.e. restoration of electric service in Zone J in a safe, orderly and prompt manner.⁵³ NYSRC further argues that NYISO's proposal allows NYISO to develop any information necessary to adequately review a Con Edison designation determination, and therefore does not limit NYISO only to the information provided by Con Edison. NYSRC argues that it is necessary to limit NYISO to selecting

⁵⁰ NYSRC Answer at 5-6.

⁵¹ NYSRC Answer at 7.

⁵² NYSRC Answer at 8-9.

⁵³ NYSRC Answer at 9.

only generators identified by Con Edison for participation in the Con Edison Plan, because only Con Edison has sufficient knowledge of its transmission system necessary to determine which black start resources will further the prompt and safe restoration of its system.⁵⁴ NYSRC further argues that NYISO's proposal is less onerous than the Restoration Services provisions approved by the Commission in the October 31, 2012 Order, because they do not require the installation of black start equipment. NYSRC further contends that NYISO's proposed tariff revisions would not prevent a generator from withdrawing from NYISO's markets, but only addresses the generator's election not to provide Restoration Services.⁵⁵

49. Lastly, NYSRC contends that NYSRC Rule 116A properly balances NYSRC's responsibility over New York State power system reliability, which is heightened with respect to system restoration in New York City, with the interests of black start resources by ensuring it does not impose an undue burden on black start-capable generators.⁵⁶

3. NYTOs

50. NYTOs reiterate many of the arguments raised by NYISO and NYSRC, contending that IPPNY's members, along with all other market participants, are obligated to comply with NYSRC Rule 116A and NYISO's proposed tariff revisions through their voluntary decision to participate in NYISO's markets. NYTOs argue that IPPNY's members are already committed to comply with NYSRC reliability rules, by virtue of voluntarily signing a service agreement with NYISO.⁵⁷ NYTOs contend that NYISO is not asking for new authority to compel a generator to provide restoration services, but is instead only asking the Commission to accept new tariff language that better achieves the goal of preserving reliability in New York, over which the Commission's authority is well established.

51. NYTOs further contend that section 205 of the FPA provides the Commission with the authority to condition participation in wholesale markets on compliance with market rules that promote reliability. NYTOs note that the Commission has required generators to provide necessary services in similar contexts, such as the requirement that generators must offer to provide operating reserves when they are able to do so.⁵⁸ NYTOs further argue that Con Edison's role in the instant NYISO filing is limited only to determining which generators are necessary under the Con Edison Plan, and NYISO

⁵⁴ NYSRC Answer at 10.

⁵⁵ NYSRC Answer at 11.

⁵⁶ NYSRC Answer at 12.

⁵⁷ NYTOs Answer at 7-8 (citing NYISO Agreement Articles 1 and 6.01).

⁵⁸ NYTOs Answer at 10 (citing *New York Independent System Operator Inc.*, 133 FERC ¶ 61,030 (2010)).

determines whether a generator will be required to provide service under that Plan, subject to a generator exercising its rights under FPA section 206.⁵⁹

52. Similar to NYISO and NYSRC, NYTOs argue that NYISO's proposal provides four procedural safeguards that require dismissal of IPPNY's objections. First, NYTOs assert that NYSRC Rule 116A provides for a written record to support Con Edison's decision to designate a generator in the Plan. Second, NYTOs argue that NYISO's proposal allows the owner of a generating unit to contest the Con Edison designation by preparing its own studies and documentation to show that compliance would be unduly burdensome or otherwise unreasonable. Third, NYTOs contend that NYISO reviews Con Edison's designation of a generating unit, and NYISO can consider the generator's study to determine if inclusion is appropriate, meaning that a generator cannot simply be compelled to provide Restoration Services under the Con Edison Plan.⁶⁰ Lastly, NYTOs argue that the Commission retains ultimate authority to review and approve generating unit designations, in the event a generator files a complaint with the Commission under FPA section 206.⁶¹

53. NYTOs lastly argue that the appropriate time to evaluate the burden on individual generation owners is when Con Edison designates a generating unit for inclusion in the Con Edison Plan, not merely on the basis of NYISO's proposed implementation of NYSRC Rule 116A.⁶²

IV. Commission Determination

A. Procedural Matters

54. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §385.214 (2014), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

55. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014) 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

⁵⁹ NYTOs Answer at 9.

⁶⁰ NYTOs Answer at 11.

⁶¹ NYTOs Answer at 11-12.

⁶² NYTOs Answer at 12.

B. Substantive Matters

56. We will accept NYISO's proposed tariff revisions to become effective February 1, 2015, as requested, finding that the proposed revisions are just and reasonable and not unduly discriminatory or preferential. The Commission finds that NYISO's proposed revisions are a reasonable step to improve the ability of Con Edison and NYISO to ensure that there are sufficient black start resources to promptly and effectively restore the transmission system under the Con Edison Plan in the future.

57. As noted by several of the commenters, the Commission-approved NYISO tariff contains provisions that require the NYISO and its market participants to comply with NYSRC reliability rules of which Rule 116A is one. As such, NYISO's proposal to now incorporate requirements for certain existing units, consistent with NYSRC reliability rules, is not remarkable. However, of importance is the role of the NYISO as independent transmission operator and control area operator. NYISO has on file rates for the services and, as NYISO notes, has proposed a detailed process that permits NYISO to use its independent engineering judgment in reviewing the adequacy of the Con Edison Plan and the benefits of including the designated generator. As such, while the requirements for the service may stem from the NYSRC reliability rules, those requirements, as discussed below are part of the structure of the NYISO tariff to which market participants voluntarily signed on. The rates, terms and conditions of FERC-jurisdictional services under the NYISO tariff are subject to this Commission's review.

58. With regard to arguments that the Commission, NYISO and NYSRC are without jurisdiction to require a generator to provide black start service, our action today in accepting the NYISO proposal is pursuant to Commission-accepted provisions that participants in the NYISO market voluntarily signed on to that confer both rights and responsibilities upon NYISO participants. Among those responsibilities is an obligation to abide by NYSRC rules and NYISO tariff requirements implementing such rules. For example, the NYISO/NYSRC Agreement provides that NYSRC reliability rules will be complied with by NYISO and "all entities engaged in transactions on the NYS Power System."⁶³ The ISO Agreement further provides that all entities having a Service Agreement with NYISO must comply with all NYSRC reliability rules and NYISO procedures regarding the reliability of the bulk-power system.⁶⁴ Additionally, NYISO's Services Tariff, applicable to NYISO participants, establishes that "[i]n accordance with applicable requirements in this Tariff and the ISO Procedures, all Customers⁶⁵ shall

⁶³ NYISO/NYSRC Agreement, Article 2.1.

⁶⁴ ISO Agreement, sections 6.02 and 11.01.

⁶⁵ Services Tariff, section 2.3 defines Customer as "[a]n entity which has complied with the requirements contained in the [NYISO] Services Tariff, including having signed a Service Agreement, and is qualified to utilize the Market Services and the Control Area

conform to all applicable reliability criteria, policies, standards, rules, regulations and other requirements of NERC, NPCC, NYSRC, any applicable regional council, or their successors, the ISO's specific reliability requirements and ISO Procedures, and applicable operating guidelines and all applicable requirements of federal and state regulatory authorities."⁶⁶

59. Thus, NYISO market participants have voluntarily undertaken to abide by NYSRC rules and its tariff, and the Commission's acceptance of the relevant agreements and NYISO's Service Tariff which reflect that obligation, denotes that such an undertaking is just and reasonable. In accepting the tariff revisions proposed here, the Commission finds that they reasonably implement a NYSRC rule and by the same token, reasonably implement an obligation previously agreed to by NYISO market participants, including IPPNY members;⁶⁷ the Commission is not compelling any generator to provide the black start service at issue.⁶⁸

60. Turning to IPPNY's substantive challenges to the proposed tariff revisions, IPPNY contends that the use of the word "material" in NYISO's proposed definition of material benefit, even with the addition of the word "materially," lacks any meaningful

Services provided by [NYISO] under the [NYISO] Services Tariff; provided, however, that a party taking services under the Tariff pursuant to an unsigned Service Agreement filed with the Commission by [NYISO] shall be deemed a Customer."

⁶⁶ Services Tariff, section 5.1.1.1.

⁶⁷ As stated in P 11 above, NYISO's tariff provisions expressly provide that a generator designated for participation in the Con Edison Plan under proposed section 15.5.4 of Rate Schedule 5 will be paid for providing Restoration Services under the terms set forth in proposed section 15.5.4.1. In addition, a generator designated for black start service may seek to recover any additional costs for providing such service, if necessary, through a unit-specific compensation process set forth in proposed section 15.5.4.1.3.2.

⁶⁸ The Commission has approved must-offer requirements applicable to generators selling energy and/or capacity in RTO and ISO markets, under which such generators are obligated to bid any uncommitted capacity as Operating Reserve or an analogous service. *See New York Independent System Operator, Inc.*, 106 FERC ¶ 61,111, at P 54 (2004) (approving must-offer requirements for capacity suppliers to bid any uncommitted capacity in the day-ahead capacity market); NYISO Installed Capacity Manual, section 4.8 (requiring capacity suppliers to offer unforced capacity into the day-ahead capacity market); *see also* ISO-New England Market Rule 1, Standard Market Design, section III.13.6.1.1.1; *San Diego Gas & Electric Co., et al.*, 95 FERC ¶ 61,115, at 61,356 (2001) (establishing a mitigation and monitoring plan for the California wholesale electric markets, including a must-offer obligation); *Southwest Power Pool, Inc.*, 141 FERC 61,048, at P 50 (2012); MISO Tariff, section 39.1.1(A)(a).

specificity. We disagree. NYISO proposes to add the word “materially” to the definition of material benefit, such that section 15.5.4 now defines material benefit as something that “materially improves speed, adequacy or flexibility of the Con Edison Plan.”

Notwithstanding the Commission’s acceptance of an almost identical definition of the phrase “material benefit” in the October 31, 2012 Order, the Commission finds that NYISO’s proposal to add the word materially to the definition of what constitutes a material benefit will provide greater clarity than the existing definition in the Restoration Services provisions in the Services Tariff. Given the complexity of analyzing the benefit a given generator will provide in system restoration processes, and the many ways in which that generator will improve restoration, it is reasonable for NYISO to maintain a flexible definition for what will constitute a material benefit to system restoration under the Con Edison Plan.

61. We further reject IPPNY’s contention that NYISO’s proposed tariff revisions limit NYISO’s selection of participating generators to those generators designated by Con Edison. NYISO’s proposal provides a transparent process under which NYISO reviews Con Edison’s analysis with respect to the designated generating unit using the studies performed by Con Edison, any studies or documentation provided by the generator, and any other information NYISO deems appropriate in its review. Nothing in NYISO’s proposal limits the review of a Con Edison designation determination.⁶⁹ Moreover, NYISO’s proposal is reasonable because it places the burden of the initial review on Con Edison, the entity most knowledgeable about its transmission system to effectively identify the specific Restoration Services resources needed to safely and promptly restore its system. Lastly, and as noted by NYSRC, proposed section 15.5.4 states that Con Edison’s documentation supporting its designation determination must summarize alternative solutions evaluated, if applicable, and must indicate whether other generating units would provide the particular material benefit identified.⁷⁰ Accordingly, we reject IPPNY’s contention that NYISO’s proposed tariff revisions improperly limit NYISO’s consideration of potential black start resources.

62. Finally, we note that NYISO requests that the Commission waive the filing requirements of section 385.203(b)(3) of the Commission’s regulations,⁷¹ and we grant its requested waiver.

⁶⁹ In addition, under section 15.4.4 of the proposed tariff revisions, a generator may seek an exemption from NYISO. Nothing in the proposed tariff revisions limits a generator’s ability to challenge NYISO’s determination by filing a complaint under section 206 of the FPA at the Commission.

⁷⁰ NYSRC Answer at 10-11.

⁷¹ 18 C.F.R. § 385.203(b)(3) (2014). This provision limits filing parties to naming not more than two persons to whom communications are to be addressed in the proceeding. NYISO states that waiver is necessary because its counsel are located in Washington, D.C. and Richmond, Virginia.

The Commission orders:

NYISO's proposed tariff revisions are hereby accepted for filing, to become effective February 1, 2015, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.