

161 FERC ¶ 61,030
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, and Robert F. Powelson.

New York Independent System Operator, Inc.

Docket No. ER17-2271-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued October 6, 2017)

1. On August 9, 2017, pursuant to section 205 of the Federal Power Act,¹ the New York Independent System Operator, Inc. (NYISO) submitted proposed revisions to the black start and system restoration services (Restoration Services) provisions of its Market Administration and Control Area Services Tariff (Services Tariff). NYISO proposes to require that generators participating in the Consolidated Edison Company of New York, Inc. (Con Edison) local system restoration plan (Con Edison Plan) comply with all applicable testing requirements imposed by mandatory reliability standards. As discussed below, we accept NYISO's proposed tariff revisions, effective October 8, 2017, 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 power system consistent with reliability rules established by the North American Electric Reliability Corporation (NERC) and the pertinent NERC region, the Northeast Power

¹ 16 U.S.C. § 824d (2012).

Coordinating Council, Inc. (NPCC). Pursuant to the agreement between NYISO and NYSRC (ISO/NYSRC Agreement), NYISO must comply with reliability rules promulgated by NYSRC.²

3. After a review and comment process, NYSRC developed Proposed Reliability Rule 133 (PRR 133), which imposes more stringent testing requirements for generators providing Restoration Services within the New York Control Area. On November 10, 2016, NYSRC approved the final PRR 133. Among other revisions, PRR 133 requires that all generators providing Restoration Services must annually test their ability to energize a dead bus without support from the transmission system.

4. In addition, on July 1, 2016, Con Edison became a NERC-registered Transmission Operator, which requires Con Edison to comply with NERC Reliability Standard EOP-005-2.³ This standard imposes obligations for units providing black start service in the Con Edison Plan.

II. NYISO Filing

5. NYISO states that the proposed tariff revisions require generators that provide Restoration Services under the Con Edison Plan to conduct annual tests in accordance with the requirements of all applicable Reliability Rules and Standards, as set forth in ISO Procedures.⁴

6. NYISO explains that the testing requirements currently described in Rate Schedule 5, Appendix I, of the NYISO Services Tariff for generators providing Restoration Service in the Con Edison Plan are less stringent than those now required by NERC Reliability Standard EOP-005-2 and PRR 133. NYISO proposes to remove the

² See ISO/NYSRC Agreement, section 2.1. (“Pursuant to the NYSRC Agreement, the NYSRC shall develop Reliability Rules which shall be complied with by the ISO and all entities engaged in transactions on the NYS Power System.”). The agreement is http://www.nyiso.com/public/webdocs/markets_operations/documents/Legal_and_Regulatory/Agreements/NYISO/iso_nysrc_agreement.pdf.

³ NERC Reliability Standard EOP-005-2 addresses the requirements of registered transmission operators as it pertains to black start plans. The standard is <http://www.nerc.com/files/EOP-005-2.pdf>.

⁴ Section 2.9 of the Services Tariff defines ISO Procedures as the “procedures adopted by the ISO in order to fulfill its responsibilities under the ISO OATT, the ISO Services Tariff and the ISO Related Agreements.”

less stringent testing requirements by deleting Appendix I in order to reflect Con Edison's obligation to comply with NERC Reliability Standard EOP-005-2.

7. NYISO asks that these tariff revisions be made effective 60 days after filing, October 8, 2017.

III. Notice and Responsive Pleadings

8. Notice of NYISO's August 9, 2017 filing was published in the *Federal Register*, 82 Fed. Reg. 39,116 (2017), with interventions and protests due on or before August 30, 2017.

9. The City of New York filed a timely motion to intervene. Con Edison and the New York Transmission Owners⁵ filed timely motions to intervene and comments in support of the filing. NRG Companies⁶ (NRG) filed a timely motion to intervene and protest (Protest). On September 1, 2017, the New York State Public Service Commission (Public Service Commission) filed a motion to intervene out-of-time. On September 14, 2017, NYISO filed an answer (Answer) to NRG's Protest.

A. Comments and Protest

10. Con Edison and New York Transmission Owners support NYISO's proposed Services Tariff revisions.⁷ Con Edison states that NYISO's proposal is essential for purposes of reliability when operation of units that provide Restoration Services is necessary without the assistance of the New York State power system.⁸ New York Transmission Owners state that NYISO's proposal is necessary to implement and comply with PRR 133.⁹

11. In its Protest, NRG objects to NYISO's removing the criteria for black start testing

⁵ New York Transmission Owners include: Central Hudson Gas & Electric Corp., Con Edison, Niagara Mohawk Power Corp. d/b/a National Grid, New York Power Authority, New York State Electric & Gas Corp., Orange and Rockland Utilities, Inc., Power Supply Long Island, and Rochester Gas and Electric Corp.

⁶ For purposes of this filing, NRG Companies are NRG Power Marketing LLC and GenOn Energy Management, LLC.

⁷ Con Edison Comments at 1-2; New York Transmission Owners Comments at 2.

⁸ Con Edison Comments at 3.

⁹ New York Transmission Owners Comments at 2.

from the Services Tariff and instead relying on the Con Edison Plan and ISO Procedures. NRG contends that this gives Con Edison the sole discretion to change black start testing rules at any time, without NYISO stakeholder or Commission review, or adequate notice to affected generators.¹⁰ NRG asks the Commission to require NYISO to include the specific procedures regarding black start testing in its Services Tariff. Alternatively, NRG asks the Commission to require Con Edison to propose any changes to its black start procedures, including any post-test procedures, through a stakeholder process because they are not currently outlined in the NYISO System Restoration Manual¹¹ or the Services Tariff.¹²

12. NRG states that its generating units are capable of meeting the applicable testing protocols in the Con Edison Plan.¹³ Its concern is that Con Edison could simply change aspects of the testing procedures in the future without any need to make a tariff change or to provide notice through the NYISO stakeholder process. NRG points out that change to procedures could impose new or different black start testing requirements, which could materially affect the cost of providing service.¹⁴ NRG cites the Commission's use of a rule of reason for when matters in manuals must be spelled out in a utility's tariff, and argues that this rule requires that when the provisions significantly affect rates and services and are reasonably susceptible of specification, the material provisions must be in the tariff.¹⁵ NRG supports its request for a stakeholder process to consider any changes that Con Edison proposes by stating that this would require Con Edison to explain its proposed changes so that NYISO and stakeholders can evaluate them and understand how resources could provide critical black start service with any proposed testing changes that would be made.¹⁶

B. Answer

13. NYISO answers that, since the Commission has previously approved NERC

¹⁰ Protest at 1-3.

¹¹ NYISO System Restoration Manual, revised April 2017, Manual 20 (System Restoration Manual), section 3.1.9, "Consolidated Edison Black Start Resource Testing Requirements."

¹² Protest at 3.

¹³ *Id.* at 1.

¹⁴ *Id.* at 4.

¹⁵ *Id.* at 3 (citations omitted).

¹⁶ *Id.* at 5.

Reliability Standard EOP-005-2, NERC Transmission Operators, including Con Edison, are obligated to develop appropriate testing requirements for their system restoration plans under the compliance monitoring oversight of NERC.¹⁷ As a result, NYISO states that it proposes to incorporate the applicable reliability standards by reference.

14. Further, NYISO explains that, because the “development and review of black start testing requirements is technical in nature and driven primarily by NERC and other mandatory reliability standards,” NYISO incorporates black start testing requirements by reference to manuals, operating procedures, or reliability standards and not to its Services Tariff.¹⁸ NYISO states that several RTOs/ISOs, including ISO New England, Inc., PJM Interconnection, L.L.C., Midcontinent Independent System Operator, Inc., and California Independent System Operator, Corp. follow the same practice.¹⁹

15. NYISO states that, pursuant to its manual review, revision, and approval process, any changes to the NYISO manuals, including the System Restoration Manual, are subject to review by stakeholders, posted for review at least 15 days prior to a scheduled committee approval, and must be approved by 58 percent of voting members of the applicable committee.²⁰ Therefore, NYISO contends, both adequate notice of any future proposed changes and an opportunity to provide input regarding such proposed changes are given to stakeholders, including NRG.

16. NYISO states that, in the event that Con Edison imposes a black start testing requirement or condition that increases a black start resource’s cost beyond NYISO’s filed rate for participation in the Con Edison Plan, the black start resource has an existing right under the Services Tariff to submit to the Commission a joint filing by the black start resource and NYISO to seek a unit-specific rate.²¹

IV. Discussion

A. Procedural Matters

17. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2017), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to

¹⁷ Answer at 3.

¹⁸ *Id.* at 5.

¹⁹ *Id.* at 5-6.

²⁰ *Id.* at 7.

²¹ *Id.* at 8 (citing Services Tariff, section 15.5.4.1.3.2).

Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2017), we will grant Public Service Commission's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

18. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2017) prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept NYISO's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

19. We will accept NYISO's proposed tariff revisions to become effective October 8, 2017, as requested, finding that the proposed revisions are just and reasonable and not unduly discriminatory or preferential. We find that NYISO's proposed revisions reflect NYISO's obligation to comply with the rules promulgated by NYSRC, specifically PRR 133. In addition, NYISO's proposed revisions reflect Con Edison's obligation as a NERC-registered Transmission Owner to comply with NERC Reliability Standard EOP-005-2.

20. We reject NRG's argument that NYISO must incorporate the black start criteria and procedures for the Con Edison Plan in the NYISO Services Tariff. Requirement R9 of NERC Reliability Standard EOP-005-2 describes testing information that NERC-registered Transmission Operators, including Con Edison, must verify to demonstrate that black start resources meet required expectations.²² Thus, we affirm that Con Edison is solely responsible for developing appropriate testing requirements for the Con Edison Plan under the compliance monitoring oversight of NERC. We are not persuaded that NYISO should incorporate in its Services Tariff such requirements with respect to black start testing for the Con Edison Plan. Rather, we find that NYISO's proposed revisions sufficiently recognize this obligation by referring to pertinent manuals, procedures, and standards.

21. We do not share NRG's concern that Con Edison could implement future changes to black start testing procedures without the need to make a tariff revision or present these changes through the NYISO stakeholder process. As NYISO notes in its Answer, stakeholders are given adequate notice of any future proposed changes to the NYISO manuals, including the System Restoration Manual in which the testing requirements for the Con Edison Plan are memorialized.²³ Future proposed changes to the NYISO

²² See *System Restoration Reliability Standards*, Order No. 749, 134 FERC ¶ 61,215 at P 13, *order on clarification*, 136 FERC ¶ 61,030 (2011).

²³ Answer at 7.

manuals are subject to stakeholder review and input. Of note, in this case, NYISO stakeholders have already reviewed and unanimously approved revisions to the System Restoration Manual that include specific black start testing requirements in the Con Edison Plan to reflect Con Edison's obligations under NERC Reliability Standard EOP-005-2.²⁴

22. Accordingly, we accept NYISO's proposed tariff revisions.

The Commission orders:

NYISO's proposed tariff revisions are hereby accepted, effective October 8, 2017, as requested, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²⁴ See *supra* n.4.