

I. REQUEST FOR LEAVE TO ANSWER

The Commission routinely accepts answers to protests where, as here, they help to clarify complex issues, provide additional information, are otherwise helpful in the development of the record in a proceeding, or assist in the decision-making process.⁵ The NYISO's Answer to IPPNY's protest satisfies those standards and should be accepted because it addresses inaccurate and misleading statements and provides additional information that will help the Commission to fully evaluate the arguments in this proceeding.

II. ANSWER

A. Generators' Compliance with Applicable Reliability Rules and Related Tariff Provisions Is a Condition of Their Participation in the NYISO-Administered Markets

IPPNY argues that the Commission, the NYSRC, and the NYISO lack authority to require generators to comply with PRR 116A.⁶ However, the proposed tariff amendments do not seek to establish or expand the authority of the Commission, the NYSRC, or the NYISO to "compel" generators to provide wholesale services as a general matter. Rather, as explained below, generators are obligated to comply with the requirements in PRR 116A, as implemented via the NYISO's proposed tariff revisions, as a condition of their taking service under the terms and conditions of the NYISO's tariffs and agreements.

Generators participating in the NYISO-administered markets do so in accordance with the terms of service established in the NYISO's tariffs and agreements, as they are amended

⁵ See, e.g., *Southern California Edison Co.*, 135 FERC ¶ 61,093 at P 16 (2011) (accepting answers to protests "because those answers provided information that assisted [the Commission] in [its] decision-making process"); *New York Independent System Operator, Inc.*, 134 FERC ¶ 61,058 at P 24 (2011) (accepting the answers to protests and answers because they provided information that aided the Commission in better understanding the matters at issue in the proceeding); *New York Independent System Operator, Inc.*, 140 FERC ¶ 61,160 at P 13 (2012) and *PJM Interconnection, LLC*, 132 FERC ¶ 61,217 at P 9 (2010) (accepting answers to answers and protests because they assisted in the Commission's decision-making process).

⁶ IPPNY Protest at pp 3-7.

from time-to-time. All entities that elect to participate in the NYISO-administered markets execute a Services Agreement pursuant to which the market participant agrees “to satisfy all obligations under the terms and conditions of the ISO [Market Administration and Control Area Services Tariff (“Services Tariff”)], as may be amended from time-to-time...”⁷ As described below, the NYISO’s tariffs establish that market participants must comply with the New York-specific reliability rules promulgated by the NYSRC (“Reliability Rules”) and include various provisions adopted by the NYISO to implement the Reliability Rules.

The NYISO’s formation was predicated upon the Commission’s approval of several organizing agreements, including the Independent System Operator Agreement (“ISO Agreement”), the New York State Reliability Council Agreement (“NYSRC Agreement”) and the Agreement Between the New York Independent System Operator and the New York State Reliability Council (“NYISO/NYSRC Agreement”).⁸ The NYISO is required under these FERC-approved agreements and its Services Tariff to implement the Reliability Rules adopted by the NYSRC. For example, Article 2.1 of the NYISO/NYSRC Agreement, 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 Power System.” Similarly, Article 3.2 of the NYISO/NYSRC Agreement states that “[t]he ISO shall maintain the safety and short-term reliability of the NYS Power System and administer the ISO [Open Access Transmission Tariff (“OATT”)] and the ISO Services Tariff in accordance with the Reliability Rules, this Agreement, the ISO Agreement and the ISO/TO Agreement.”

⁷ Services Tariff, Section 16 (Attachment A) § 2.0.

⁸ See *Cent. Hudson Gas & Elec. Corp., et al.*, 88 FERC ¶61,138 (1999) at 61,380 (approving the ISO Agreement, NYSRC Agreement, and NYISO/NYSRC Agreement). The creation of NYSRC and its role in establishing reliability standards for the New York State bulk power system was an essential component in the creation of the NYISO. *Cent. Hudson Gas & Elec. Corp., et al.*, 83 FERC ¶61,352 (1998) at 62,405 - 62,406.

These requirements are also reflected in the ISO Agreement, which is on file with and approved by the Commission. Article 12.02 of the ISO Agreement establishes that “The ISO *shall implement the Reliability Rules* and shall cooperate with the Transmission Owners with respect to those Reliability Rules implemented by the Transmission Owners.” (Emphasis supplied.) Finally, 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 NYCA and *for the implementation of* reliability standards promulgated by [North American Electric Reliability Corporation (“NERC”)] and [Northeast Power Coordinating Council, Inc. (“NPCC”)] and *for the Reliability Rules promulgated by the NYSRC.*” (Emphasis supplied.)

Market participants, including generators, are obligated to abide by the terms and conditions of the NYISO’s tariffs, which include requirements that the NYISO adopts to implement the Reliability Rules promulgated by the NYSRC. In addition, Section 5.1.1.1 of the Services Tariff establishes 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, 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.” Section 4.1.7 of the Services Tariff also states that “[a]ll Customers shall comply with all applicable federal, state and local laws, regulations and orders, including orders from the ISO.”

IPPNY’s objection to the NYISO’s filing ignores this context. Compliance with Reliability Rules and related provisions of the NYISO’s tariffs is a well-established condition of participating in the NYISO-administered markets. By agreeing to provide service under the

terms of the NYISO's agreements and tariffs, generators assume the obligation to comply with NYSRC Reliability Rules as a condition of selling energy, capacity, and ancillary services in the NYISO-administered markets.⁹ Compliance with PRR 116A and the related provisions of the NYISO's tariffs is no different.

B. The Commission Has Authority to Accept the NYISO's Proposed Tariff Revisions Implementing Reliability Requirements Adopted by the NYSRC

It is well within the Commission's authority under Section 205 of the Federal Power Act ("FPA") to condition generators' participation in the NYISO-administered markets on their compliance with reasonable reliability requirements. Moreover, Section 205 does not bar the Commission from accepting tariff provisions to implement New York's reliability rules so long as the rules are just and reasonable. The Commission may require generators to provide necessary services as a condition of their participation in ISO-administered markets. Notably, the Commission previously accepted under its Section 205 authority revisions to the NYISO's tariff that were the model for the tariff revisions proposed in this proceeding. Those tariff provisions require both new generators and existing generators that are increasing their capacity or making material modifications to install restoration services capability if deemed necessary by the NYISO. PRR 116A and the related tariff provisions filed by the NYISO in this docket extend similar obligations to existing generators that have the capability to provide restoration services.¹⁰

⁹ For example, certain generators that are designated pursuant to NYSRC Local Reliability Rules I-R3 and I-R5 are required to burn a minimum level of an alternative fuel other than gas (usually oil) when loads are forecast to reach certain levels to prevent the loss of electric load within the New York City or Long Island zones in the event of the loss of a gas facility. *See, e.g.*, Services Tariff, Section 4.1.9 (implementing compensation requirements for generators obligated to burn an alternative fuel in accordance with NYSRC Local Reliability Rules I-R3 or I-R5).

¹⁰ The restoration services rules for new and modified generators that the Commission has previously accepted are more stringent than the proposed tariff revisions as they can require a new or modified generator to install restoration services capability at its facility. Under the proposed tariff

The Commission approved the scope of NYSRC's responsibilities and its relationship with the NYISO more than 15 years ago.¹¹ Contrary to IPPNY's argument, the NYSRC is not attempting to expand its authority or that of the NYISO.¹² The NYSRC is authorized to promulgate Reliability Rules that maintain electric system reliability in New York State,¹³ and the NYISO is acting within the scope of its FERC-accepted tariffs and agreements in implementing the Reliability Rules. Moreover, the NYISO's proposed tariff revisions to implement PRR 116A were vetted thoroughly through the NYISO stakeholder process and approved by the stakeholder Management Committee and the NYISO Board of Directors.

The Commission's authority under Section 205 is reinforced by Section 215 of the FPA and the Commission's implementing regulations.¹⁴ FPA Section 215 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,¹⁵ and, in particular, for New

revisions, the NYISO may only require an existing generator to provide restoration services if it already has the capability to do so.

¹¹ See *Cent. Hudson Gas & Elec. Corp., et al.*, 88 FERC ¶61,138 (1999) at 61,380 (approving the NYSRC Agreement and NYISO/NYSRC Agreement). The Commission rejected over fifteen years ago arguments raised by IPPNY similar to those raised in this proceeding regarding the scope of NYSRC's responsibilities and its relationship with the NYISO. *Cent. Hudson Gas & Elec. Corp., et al.*, 87 FERC ¶61,135 (1999) at 61,543-61,545; *Cent. Hudson Gas & Elec. Corp., et al.*, 83 FERC ¶61,352 (1998) at 62,410-62,413.

¹² IPPNY Protest at pp 6-7.

¹³ NYSRC Agreement at Article 3.01.

¹⁴ 18 C.F.R. § 39.12(a).

¹⁵ 16 U.S.C. § 824o(i)(3) (establishing "[n]othing in this section shall be construed to preempt any authority of any State to take action to ensure the safety, adequacy, and reliability of electric service within that State, as long as such action is not inconsistent with any reliability standard, *except 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 than that provided by the reliability standards*") (emphasis added).

York City.¹⁶ NYSRC is the entity charged with the responsibility for developing reliability rules for New York, which are regularly filed with the New York Public Service Commission (“NYPSC”).¹⁷

C. The NYISO’s Proposed Tariff Revisions Establish a Clear and Transparent Process for Its Determining Whether a Generator Is Needed to Provide Restoration Services

The Commission should reject IPPNY’s challenge that the NYISO’s proposed tariff criteria are vague and somehow subordinate the NYISO’s powers and responsibilities to Consolidated Edison Company of New York, Inc. (“Consolidated Edison”).¹⁸ Contrary to IPPNY’s assertions, the proposed tariff revisions establish a clear and transparent process by which the NYISO will determine whether a generator designated by Consolidated Edison to provide restoration services in its local black start and system restoration plan (“Consolidated Edison Plan”) would provide a material benefit and is reasonably capable of providing this service. Through this process, the NYISO will make an independent determination on a case-by-case basis in accordance with input from all interested parties regarding both the need for additional restoration services and the impact on the relevant generator. The NYISO’s proposed

¹⁶ See 151 Cong. Rec. H6949-01 (daily ed. July 28, 2005), 2005 WL 1788535 (statement of Rep. Eliot Engel) (“We are also finally enacting electricity reliability standards and I was pleased to have worked with my colleagues Mr. TOWNS and Mr. FOSSELLA to preserve New York’s high reliability standards strengthening the underlying electricity title. New York has unique needs that necessitate this provision including having a high concentration of load in a small geographic area. Additionally, nearly 40 percent of the State population lives in NYC and close to three-fourths work there and 3 million New Yorkers use the underground subway system every day. Finally, New York is home to the NYSE and other critical financial institutions. Although, we should have done this years ago in response to the rolling blackouts of 2003, I am proud to be a part of the inclusion of such an important policy development.”).

¹⁷ The NYPSC formally adopts the Reliability Rules on file with it as state regulations from time-to-time. See, e.g., Order Adopting New York State Reliability Rules (February 9, 2006) and Order Adopting Modifications to the New York State Reliability Rules (June 26, 2006), NYPSC Case No. 05-E-1180 – in the Matter of the Reliability Rules of the New York State Reliability Council and the Criteria of the Northeast Power Coordinating Council (February 9, 2006).

¹⁸ IPPNY Protest at pp 8-10.

process and “material benefit” criteria are consistent with existing Commission approved requirements for new and modified generating units.

Under the NYISO’s proposed tariff revisions, Consolidated Edison may designate a generating unit that it believes would provide a material benefit to its local plan for restoration services. The NYISO will only direct the designated unit to provide restoration services, however, if it concurs that the unit will provide a material benefit and concludes that the generator has not shown good cause that it would be unreasonable or unduly burdensome for the unit to do so. The NYISO’s process requires Consolidated Edison to provide both the NYISO and the generator with studies and documentation supporting the need for the unit to participate in its local plan. The process also provides the generator with the opportunity to submit its own studies and documentation demonstrating that there is good cause not to require the generator to participate in the Consolidated Edison Plan.

The NYISO will make the required determinations on a case-by-case basis predicated on the adequacy of the existing Consolidated Edison Plan, the capability of the designated generating unit to provide necessary enhancements to or to address deficiencies in the plan, and the impact on the generator’s unit.

The NYISO is responsible for providing that the statewide system restoration plan, which includes the Consolidated Edison Plan, can “restore the NYCA system to a normal operating state in a safe and orderly manner and as promptly as reasonably possible following a major or total blackout.”¹⁹ There are numerous factors that the NYISO and Consolidated Edison must consider in determining whether the Consolidated Edison Plan remains adequate, including changing system conditions and participants, the location and capabilities of generating units in

¹⁹ NYSRC Reliability Rule G-R1.

Zone J, anticipated system restoration scenarios, and other case-specific information. The fact that Consolidated Edison may require additional and more flexible restoration service capability is driven by the uniquely challenging nature of providing and restoring electric service to New York City with its dense population of over nine million people and its exposed coastal location.

Given the complexity of the electric system in and around New York City, it would not be practicable or 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 reasonably possible.”²⁰ For this reason, the NYISO has proposed the detailed process described above that provides for technical input from both Consolidated Edison and the impacted generator(s), includes procedural safeguards, and permits the NYISO to use its independent engineering judgment in reviewing the adequacy of the Consolidated Edison Plan and the benefits of including the designated generator. For the NYISO to direct a designated generating unit to provide restoration services, it must first determine that the inclusion of the generator will provide a “material benefit” to system restoration in Zone J. A generator’s provision of restoration services will constitute a “material benefit” to system restoration in Zone J if, among other things, “it would materially improve the speed, adequacy, or flexibility of the Consolidated Edison Plan for restoring electric service in Zone J in a safe, orderly, and prompt manner following a major system disturbance.”²¹

IPPNY protests the use of the word “material” for defining the type of benefit to the Consolidated Edison Plan, arguing that the word “lacks any meaningful specificity.”²² The Commission has, however, accepted the NYISO’s use of a “materiality” standard in numerous

²⁰ *Id.*

²¹ Services Tariff, proposed Section 15.5.4.

²² IPPNY Protest at p 8.

provisions throughout the NYISO's tariffs, where, as in this instance, the NYISO is responsible for determining materiality based on its engineering judgment. Most significantly, the Commission has previously accepted a nearly identical "material benefit" standard in the NYISO's tariffs.

The Commission accepted revisions to Section 30.2.5 of Attachment X of the NYISO OATT that provide for the NYISO to make an independent case-by-case determination regarding whether a developer proposing to interconnect a new unit in Zone J or to modify certain existing units already interconnected to Zone J will be required to install restoration services capability for its unit.²³ As accepted by the Commission, the developer will be required to include restoration services capability at its Large Generating Facility if the NYISO determines that the inclusion of 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.²⁴

In developing the NYISO's proposed tariff revisions, the NYISO adopted the "material benefit" standard previously accepted by the Commission with the Attachment X revisions. The only substantive difference between the previously accepted "material benefit" standard and the proposed tariff language is the inclusion of the word "materially" within the definition of "material benefit." Specifically, a "material benefit" exists if "it would *materially* improve the speed, adequacy, or flexibility of the Consolidated Edison Plan for restoring electric service in Zone J" IPPNY criticizes what it characterizes as the circularity of "material benefit" being defined as something that "materially" improves speed, adequacy, or flexibility. This misses the point that the essence of the standard previously accepted by the Commission lies with an improvement the speed, adequacy or flexibility of the system restoration plan. The NYISO

²³ *New York Independent System Operator, Inc.*, 141 FERC ¶ 61,081 (October 31, 2012).

²⁴ NYISO OATT, Attachment X § 30.2.5.

inserted the word “materially” to address concerns that the concept of materiality could be inadvertently defined out of the standard. The NYISO believes, however, that the “material benefit” standard as previously accepted by the Commission is clear without the additional insert of “materially” within the definition and would not oppose removing “materially” from before “improve.”

IPPNY’s concerns about bias in favor of Consolidated Edison are also unfounded because the NYISO’s proposed process will be open and transparent among the NYISO, Consolidated Edison, and the impacted generator. As described above, the NYISO’s proposed process – consistent with PRR 116A – establishes numerous procedural safeguards that protect a generator from an arbitrary determination that it is required to provide restoration services. Consolidated Edison must provide studies adequately documenting the benefit of the generator providing restoration services. These studies must also indicate what alternative solutions have been evaluated and whether other generating units could provide the particular material benefit identified. The impacted generator will have the opportunity to review and challenge the analysis and supporting materials provided by Consolidated Edison and may submit its own supporting materials. The NYISO must review the input provided by Consolidated Edison and the generator and determine, using its own engineering judgment, whether the generator would provide a material benefit to system restoration in Zone J, and whether the generator’s inclusion in the plan is unduly burdensome. In addition, a generator that disagrees with the NYISO’s final determination may always address its concerns to the Commission.

Finally, IPPNY asserts that the proposed tariff requirements provide a private entity – *i.e.*, Consolidated Edison – “with the ability to unduly discriminate against market

participants.”²⁵ IPPNY is incorrect because, as explained above, it is the NYISO, and not Consolidated Edison, that is ultimately responsible for determining whether a generator is required to provide restoration services, based on its detailed review process. It is necessary for Consolidated Edison to play a role in this process as it is the local utility responsible for the adequacy of its local plan and is best situated to identify existing and future system restoration needs in Zone J. Consolidated Edison’s involvement in the process is consistent with the responsibilities of the local New York Transmission Owners throughout the NYISO’s tariffs.²⁶

D. NYISO Proposed Tariff Revisions Create a Necessary Framework for Addressing Restoration Services in Zone J

The Commission should reject IPPNY’s assertion that the NYISO’s proposed tariff revisions are unnecessary at this time. The NYISO has previously informed the Commission that the existing Consolidated Edison Plan is composed almost entirely of aging generators that were previously owned by Consolidated Edison and divested more than a decade ago.²⁷ For this reason, the NYISO and Consolidated Edison have had significant concerns regarding their ability to procure adequate replacement restoration services for New York City in the future as aging generators retire, are mothballed, or withdraw from the Consolidated Edison Plan. These concerns are shared by NYSRC, the NYPSC, and the City of New York.²⁸

²⁵ IPPNY Protest at pp 9-10.

²⁶ For example, each New York Transmission Owner is responsible for developing a Local Transmission Plan for its Transmission District. NYISO OATT, Attachment Y Section 31.2.1.

²⁷ *New York Independent System Operator, Inc.*, Proposed Tariff Revisions Regarding Black Start and System Restoration Service, Docket No. ER12-2568-000 (August 31, 2012) at p 15.

²⁸ *New York Independent System Operator, Inc.*, Motion to Intervene and Comments of the New York State Reliability Council, L.L.C. in Support of the New York Independent System Operator, Inc., Docket No. ER15-563-000 (December 23, 2014); *New York Independent System Operator, Inc.*, Notice of Intervention and Comments of the New York State Public Service Commission, Docket No. ER15-563-000 (December 23, 2014); *New York Independent System Operator, Inc.*, Comments of the City of New York, Docket No. ER15-563-000 (December 24, 2014); *see also* NYPSC Case No. 11-E-0423, Declaratory Ruling Regarding Blackstart Service, Petition of Consolidated Edison Company of New

The NYISO's proposed tariff revisions, in concert with the provisions in Attachment X of the NYISO OATT that were accepted by the Commission in 2012, create a necessary framework to provide that sufficient restoration services will be available going forward in Zone J – in particular for New York City. The NYISO's proposed tariffs revisions do not, and are not intended to, identify specific restoration services needs at this time. Rather, these proposed tariff revisions create a process for identifying needs in the future as they arise as well as for identifying potential solutions to address those needs to maintain the reliable provision of electric service within New York City.

III. CONCLUSION

WHEREFORE, the New York Independent System Operator, Inc. respectfully requests that the Commission accept this Answer and accept the tariff revisions in the above-referenced docket.

Respectfully submitted,

/s/ Kevin W. Jones

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January 8, 2015

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York, Inc., for a Declaratory Ruling Concerning the Discontinuance of Blackstart Service (September 28, 2011).

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. §385.2010.

Dated at Rensselaer, NY this 8th day of January, 2015.

/s/ Mohsana Akter

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