

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

New York Independent System Operator, Inc.) Docket No. ER12-2568-000

**MOTION FOR LEAVE TO ANSWER AND ANSWER OF THE NEW YORK
INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. (“NYISO”) respectfully requests leave to answer, and answers, the NRG Companies’ (“NRG’s”) limited protest² of the NYISO’s proposed revisions to the black start and system restoration service (“Restoration Services”) provisions of its Market Administration and Control Area Services Tariff (“Services Tariff”) and its Open Access Transmission Tariff (“OATT”).³ The proposed revisions will revise the terms under which generators provide Restoration Services in the Consolidated Edison Company of New York, Inc. local plan to restore electric service to New York City in the event of a major system disturbance (“Consolidated Edison Plan”).

Under the NYISO’s proposed revisions, if a generator’s actual cost of providing Restoration Services under Rate Schedule 5 of the Services Tariff exceeds the proposed standard rate, the generator may file with the Commission to amend this rate under Section 206 of the Federal Power Act.⁴ The amended rate will be included in the NYISO tariffs and used by the NYISO to make payments to the generator and to recover related costs from load serving

¹ 18 C.F.R. §§ 385.212 and 385.213.

² New York Independent System Operator, Inc., Motion to Intervene and Limited Protest of the NRG Companies, Docket ER12-2568-000 (September 21, 2012) (“NRG Limited Protest”). The NRG Companies are NRG Power Marketing LLC, Arthur Kill Power LLC, Astoria Gas Turbine Power LLC, Dunkirk Power LLC, Huntley Power LLC, and Oswego Harbor Power LLC. *Id.* at p. 1 fn. 2.

³ Capitalized terms that are not otherwise defined herein shall have the meaning specified in Article 1 of the OATT and Article 2 of the Services Tariff.

⁴ Proposed Services Tariff, Rate Schedule 5 § 15.5.4.2.3.2.

entities. NRG objects to having to file the amended, unit-specific rate under Section 206.⁵ NRG asserts that this requirement is an “attempt to limit a generator’s Federal Power Act Section 205 right to file its own rate schedule to provide Restoration Services with the Commission.”⁶

The NYISO’s proposed provision for a unit-specific rate will only apply to a generator that has committed to provide Restoration Services for the Consolidated Edison Plan under the terms of Rate Schedule 5 of the NYISO Services Tariff. Under the NYISO’s Independent System Operator Agreement (“ISO Agreement”), a NYISO market participant is only permitted to amend the terms of the NYISO’s tariffs unilaterally by filing with the Commission under Section 206.⁷ A generator may, therefore, only file with the Commission under Section 206 to amend the compensation provisions in Rate Schedule 5 for providing Restoration Services. A generator’s right, if any, to file with the Commission a separate, stand-alone rate schedule *outside* of the NYISO’s tariffs is not at issue here.⁸ The Commission should, therefore, deny NRG’s objection to the Section 206 requirement and approve the NYISO’s proposed revisions without modification.

I. Request for Leave to Answer

The NYISO recognizes that the Commission generally discourages answers to protests. However, the Commission has the discretion to accept answers to protests, and has done so, when those answers help to clarify complex issues, provide additional information, or are

⁵ NRG indicated in its limited protest that it supports the NYISO’s proposed revisions with the exception of this requirement. NRG Limited Protest at pp. 1-2.

⁶ NRG Limited Protest at p. 1.

⁷ ISO Agreement §§ 19.01 and 19.02.

⁸ The NYISO’s response to NRG’s comments should not be construed as accepting in any way generators’ assertion that they may have a separate, stand-alone rate schedule for providing services within the NYISO’s footprint that are or should be set forth in the NYISO’s tariffs. The NYISO has clearly detailed its objections to generators having these separate rate schedules in other proceedings before the Commission. *See, e.g.*, TC Ravenswood, LLC, Request for Rehearing of New York Independent System Operator, Inc., Docket No. ER12-1418-000 (June 25, 2012).

otherwise helpful in the development of the record in a proceeding.⁹ The NYISO's answer satisfies those standards as it responds only to specific arguments raised by NRG and provides additional information that the Commission needs to fairly evaluate the arguments. The NYISO, therefore, respectfully requests that the Commission accept this answer.

II. Answer

Rate Schedule 5 of the NYISO Services Tariff establishes the terms under which a generator commits to provide Restoration Services under the Consolidated Edison Plan. Pursuant to these provisions, a generator commits to provide Restoration Services for a period of not less than three years during which time it is subject to the commitment, testing, and compensation terms in Rate Schedule 5.¹⁰ The NYISO's proposed revisions to Rate Schedule 5 establish a standard annual payment amount for generators providing Restoration Services under the Consolidated Edison Plan.¹¹ This standard rate represents the incremental capital and operating and maintenance cost associated with installing and maintaining Restoration Services capability. The cost amount was determined based on the type of equipment required to black start a generic unit of a certain size.

The NYISO's proposed revisions provide that a generator may file with the Commission under Section 206 to amend the generic standard rate, as it applies to a specific unit owned by that generator, if it determines that its actual, incremental costs of providing Restoration Services

⁹ See e.g., *New York Independent System Operator, Inc.*, 108 FERC ¶ 61,188 at P 7 (2004) (accepting the NYISO's answer to protests because it provided information that aided the Commission in better understanding the matters at issue in the proceeding); *Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.*, 93 FERC ¶ 61,017 at 61,036 (2000) (accepting an answer that was "helpful in the development of the record.....").

¹⁰ Generators currently provide Restoration Services for successive three-year commitment periods. Services Tariff, Rate Schedule 5 § 15.5.3.1. Under the NYISO's proposed revisions, generators will initially provide Restoration Services for a commitment period of approximately three, four, or five years and may continue to provide Restoration Services thereafter for successive three-year terms. Proposed Services Tariff, Rate Schedule 5 § 15.5.4.2.1.

¹¹ Proposed Services Tariff, Rate Schedule 5 § 15.5.4.2.3.1.

under Rate Schedule 5 exceed the standard rate.¹² The amended rate will be included in the NYISO tariffs as an addendum to Rate Schedule 5.¹³ The NYISO will use the amended rate to make payments to the generator and to recover the related cost from load serving entities located in the Consolidated Edison transmission district in accordance with the allocation methodology in Rate Schedule 5.¹⁴

The ISO Agreement - which has been accepted by the Commission and executed by all NYISO market participants - establishes the method by which the NYISO and its market participants are permitted to amend the terms of the NYISO's tariffs. Sections 19.01 and 19.02 of the ISO Agreement establish that: (i) the NYISO may file amendments to its tariffs with the Commission under Section 205 of the Federal Power Act that have been jointly approved by the NYISO Board of Directors and the NYISO stakeholder Management Committee, or (ii) the NYISO or a market participant may unilaterally file amendments to the NYISO tariffs with the Commission under Section 206 of the Federal Power Act.¹⁵ Consistent with this requirement, a generator that has committed to provide Restoration Services under the terms of Rate Schedule 5 may only unilaterally file with the Commission under Section 206 to amend the terms under which it is compensated for providing Restoration Services. As described above, the amended tariff rate will be included as part of Rate Schedule 5 and used by the NYISO to make payments and recover the related costs from other market participants.

In developing the unit-specific rate requirement, the NYISO and stakeholders were aware that a generator filing under Section 206 to amend the standard rate would have to satisfy the

¹² Proposed Services Tariff, Rate Schedule 5 § 15.5.4.2.3.2.

¹³ *Id.*

¹⁴ Proposed Services Tariff, Rate Schedule 5 §§ 15.5.4.2.3.2 and 15.5.4.3.

¹⁵ Section 19.01 provides for a limited exception, not relevant here, under which the NYISO Board may file unilaterally under Section 205 under exigent circumstances.

burden of demonstrating that the standard rate is unjust and unreasonable for the generator. The NYISO does not believe that it will be difficult for a generator that can demonstrate that it is not recovering its actual costs to satisfy this standard. However, the NYISO and stakeholders sought by the terms of the proposed Section 15.5.4.2.3.2 to acknowledge generators' concerns by stipulating that the NYISO and its stakeholders would not oppose or argue against a finding by the Commission that the standard rate is unjust and unreasonable to the extent it limits a generator's ability to recover its actual, incremental costs reasonably and prudently incurred in providing Restoration Services under Rate Schedule 5.¹⁶ The inclusion of this language in Section 15.5.4.2.3.2 is intended to address generators' concerns and is not an attempt, as NRG asserts,¹⁷ to establish a separate, hybrid standard of review for the Commission or to modify existing Section 205 or Section 206 rights. Rather, the language simply demonstrates that the NYISO and stakeholders would not oppose a filing of an amended rate under the described circumstances.

In its protest, NRG characterizes the requirement that a generator file to amend the standard rate under Section 206 as "the NYISO's attempt to eliminate a generator's FPA Section 205 right to file its own rate schedule for Restoration Services with this Commission."¹⁸ However, the NYISO's proposed revisions, including its proposed provision to amend the standard rate, will only apply to a generator that is providing Restoration Services under the terms of the NYISO's tariffs. As described above, a generator may only amend the terms of the

¹⁶ Proposed Services Tariff, Rate Schedule 5 § 15.5.4.2.3.2 ("If FERC finds that the actual, incremental costs that are reasonably and prudently incurred for a Generator's particular unit(s) solely for the purpose of providing Restoration Services exceed the [standard payment amount], then the parties to this ISO Services Tariff agree that the [standard payment amount] would be unjust and unreasonable for those unit(s).")

¹⁷ NRG Limited Protest at p. 5.

¹⁸ *Id.* at p. 2.

NYISO's tariffs unilaterally by filing with the Commission under Section 206. In this regard, the NYISO's proposed tariff revisions do not impact any other rights that a generator may have.

Because a generator may only unilaterally amend the terms of the NYISO's tariffs under Section 206 of the Federal Power Act, the Commission should reject NRG's objection to the Section 206 filing requirement and should accept the NYISO's proposed revisions without modification.

III. Conclusion

For the foregoing reasons, the New York Independent System Operator, Inc. respectfully requests that the Commission grant its motion for leave to answer, accept this answer, deny NRG's protest, and accept the NYISO's proposed revisions without modification.

Respectfully submitted,

/s/ Michael J. Messonnier, Jr.

Michael J. Messonnier, Jr.

Counsel for

New York Independent System Operator, Inc.

Dated: October 9, 2012

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served 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 Commission Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2011).

Dated at Washington, D.C. this 9th day of October, 2012.

/s/ Catherine Karimi

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