

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

<b>TC Ravenswood, LLC,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>Docket No. EL12-9-000</b>
	)	
<b>New York Independent System</b>	)	
<b>Operator, Inc. and New York</b>	)	
<b>State Reliability Council, L.L.C.,</b>	)	
	)	
<b>Respondents.</b>	)	

**ANSWER OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.  
AND CONDITIONAL REQUEST FOR WAIVERS**

Pursuant to Rules 206(f) and 213 of the Rules of Practice and Procedures of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. §§ 385.206(f) and 385.213, and the Commission’s November 25 *Notice of Extension of Time*, the New York Independent System Operator, Inc. (“NYISO”) hereby submits this answer to the complaint filed by TC Ravenswood, LLC (“TC Ravenswood”) on November 7, 2011, in the above-captioned proceeding (“Complaint”).<sup>1</sup> The Commission should dismiss the Complaint as it pertains to the NYISO. As described below, the NYISO has acted appropriately in taking action consistent with the September 28, 2011, order of the New York State Public Service Commission (“PSC”). Although directed at the NYISO, TC Ravenswood’s Complaint is in substance a collateral attack on the PSC’s authority to require that a generator obtain its consent prior to ceasing to provide black start service.

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<sup>1</sup> Terms with initial capitalization that are not otherwise defined herein shall have the meaning set forth in the NYISO Market Administration and Control Area Services Tariff, and if not defined therein, in the NYISO Open Access Transmission Tariff.

The NYISO does not take a position on the scope of the PSC's authority in this matter, and is not the appropriate party to respond to TC Ravenswood's concerns.

## **I. SUMMARY**

The NYISO is responsible for maintaining the statewide program for the timely restoration of the bulk electric system in New York following an unplanned outage ("New York Restoration Program") pursuant to the black start reliability requirements in Section G of the New York State Reliability Council's ("NYSRC") reliability standards ("NYSRC Reliability Rules") and the black start tariff requirements of Rate Schedule 5 of the NYISO Market Administration and Control Area Services Tariff ("Services Tariff"). The NYSRC Reliability Rules and the Services Tariff establish similar, but independent, requirements for the NYISO and generators regarding the provision of black start service in New York.

The Commission's September 27, 2011, Order in Docket No. ER11-4200-000 ("FERC Order") and the PSC's September 28, 2011, Order in Case No. 11-E-0423 ("PSC Order") each address requirements for the provision of black start service in New York. The FERC Order affirms TC Ravenswood's right to withdraw from the black start program established in the Services Tariff,<sup>2</sup> and the PSC Order requires that a generator in New York must first obtain the PSC's consent to discontinue providing black start service.<sup>3</sup> The FERC Order and the PSC Order are each presumptively valid orders that are legally binding on the NYISO unless they are modified or vacated.

The NYISO has carried out its black start responsibilities under its tariffs and agreements in a manner that seeks to reconcile and give effect to both the FERC Order and

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<sup>2</sup> *TC Ravenswood, LLC*, 136 FERC ¶ 61,213 (September 27, 2011) ("FERC Black Start Order").

<sup>3</sup> N.Y.P.S.C., Case No. 11-E-0423, Petition of Consolidated Edison Company of New York, Inc. for a Declaratory Ruling Concerning the Discontinuance of Black Start Service, *Declaratory Ruling Regarding Black Start Service* (September 28, 2011) ("PSC Black Start Order").

the PSC Order. TC Ravenswood has satisfied the tariff requirements to withdraw from the black start program established in the Services Tariff. However, TC Ravenswood has not sought the PSC's consent, as required by the PSC Order, to discontinue providing black start service in New York. The NYISO, therefore, continues to treat TC Ravenswood as a black start provider that is subject to the requirements of the NYSRC Reliability Rules, which are independent of the black start requirements in the NYISO tariffs.<sup>4</sup> For this reason, the NYISO notified TC Ravenswood, by letter dated October 28, 2011, that it must continue to fulfill its black start responsibilities under the NYSRC Reliability Rules.<sup>5</sup> In response, TC Ravenswood initiated this Complaint in which it asks the Commission to enjoin the NYISO from requiring it, in light of the PSC Order, to continue to provide black start service and to find that the PSC Order is preempted by federal law.<sup>6</sup>

The Commission should dismiss TC Ravenswood's Complaint. The NYISO has acted appropriately in recognizing and seeking to reconcile and give effect to both the FERC Order and the PSC Order. In doing so, the NYISO continues to treat TC Ravenswood as a black start provider that must fulfill the black start requirements of the NYSRC Reliability Rules, which are independent of the black start requirements in the Services Tariff, unless and until it obtains PSC consent to discontinue providing black start service or the PSC Order is modified or vacated. Neither TC Ravenswood nor any other party has sought a stay or rehearing of the PSC Order or appealed it in court.

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<sup>4</sup> The PSC has adopted the New York State Reliability Council Rules as state regulations. N.Y.P.S.C. Case No. 05-E-1180, Proceeding on Motion of the Commission as to the Reliability Rules of the New York State Reliability Council and Criteria of the Northeast Power Coordinating Council, *Order Adopting New York State Reliability Rules* (February 9, 2006); *see id.*, *Order Adopting Second Modifications to New York State Reliability Rules* (July 23, 2007) ("PSC NYSRC Orders").

<sup>5</sup> Complaint Exhibit No. TCR-2.

<sup>6</sup> Complaint at pp. 3, 36-37.

TC Ravenswood's Complaint is really a collateral attack on the PSC's authority to issue the PSC Order and is directed at the PSC, which is not a respondent to this proceeding, rather than the NYISO. For this reason, TC Ravenswood's Complaint against the NYISO is misplaced and will not resolve the real issues in dispute. The NYISO does not take a position as to the scope of the PSC's authority with regard to this issue or TC Ravenswood's arguments disputing that authority. The NYISO notes, however, that if the Commission were to issue an order in this case that conflicts with the PSC Order, the NYISO could find itself in an untenable position, potentially unable to reconcile its obligations under federal and state law.

One area where the NYISO cannot reconcile the FERC Order and the PSC Order pertains to compensation for black start service. It is the NYISO's position that TC Ravenswood should continue to receive compensation as long as it provides this service. The only mechanism by which the NYISO can provide compensation is through Rate Schedule 5 of the Services Tariff. If TC Ravenswood must continue to provide black start service until it obtains the PSC's permission to stop doing so, the NYISO respectfully requests that the Commission grant any tariff waivers that may be necessary for it to continue to make payments to TC Ravenswood for providing this service.

## **II. COMMUNICATIONS**

Copies of correspondence concerning this filing should be served on:

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## **III. BACKGROUND**

### **A. The New York Restoration Program**

The NYISO is responsible for maintaining the New York Restoration Program.<sup>8</sup>

The program is composed of two separate, coordinated programs: (i) the NYISO system restoration program, which provides for the restoration of electric service to New York by means of the 345 kV transmission backbone of New York that is energized by large hydropower units located in northern and western New York, and (ii) the Con Edison Company of New York, Inc.'s ("Con Edison's") local system restoration program, which provides for the restoration of electric service to its service territory by means of gas and

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<sup>7</sup> The NYISO respectfully requests waiver of 18 C.F.R. § 385.203(b)(3) (2011) to permit service on counsel for the NYISO in both Washington, D.C. and Richmond, VA.

<sup>8</sup> NYSRC Reliability Rules G-R1, Measurement G-M1. The term "New York Restoration Program" as used in this answer is the same as "NYCA System Restoration Plan" in the NYSRC Reliability Rules.

steam turbine generators located there.<sup>9</sup> Requirements for the NYISO, Con Edison, and generators in connection with the New York Restoration Program are established in both the NYSRC Reliability Rules and Rate Schedule 5 of the Services Tariff.

## **B. NYSRC Reliability Requirements Regarding Black Start**

The NYISO is required to comply with, and to monitor and take reasonable actions to secure market participants' compliance with,<sup>10</sup> the NYSRC Reliability Rules.<sup>11</sup> Market participants are also independently required to comply with applicable NYSRC requirements.<sup>12</sup> In addition, the PSC has adopted the NYSRC Reliability Rules as PSC regulations, which carry the force of New York law.<sup>13</sup>

Pursuant to Measurement G-M1 of the NYSRC Reliability Rules, the NYISO is responsible for maintaining the New York Restoration Program. The NYISO's responsibilities include establishing the procedures and protocols to implement the statewide 345 kV plan, including identifying required black start generators and

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<sup>9</sup> *Id.*; see also NYISO System Restoration Manual at §§ 1.2, 2 (July 2010). Although the NYISO is not taking a position regarding the scope of the PSC's authority, Section 215(i)(3) of the Federal Power Act states 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." The black start service requirements set forth in the NYISO tariffs and the NYSRC Reliability Rules are more stringent than the black start requirements set by the North American Electric Reliability Corporation and the Northeast Power Coordinating Council, Inc.

<sup>10</sup> See Compliance Templates for the NYSRC Reliability Rules, Measurement G-M3 (Version 23, November 11, 2011), available at: <http://www.nysrc.org/pdf/Compliance%20Template%20Manuals/CT%20Manual%20Version%2023%20%201-10-11%20final.pdf> ("NYSRC Compliance Requirements").

<sup>11</sup> Section 12.02 of the Independent System Operator Agreement ("The ISO shall implement the Reliability Rules . . . . The ISO shall maintain the safety and short-term reliability of the NYS Power System in accordance with the Reliability Rules . . . ."); see also Sections 3.1 and 3.2 of the Agreement Between the New York Independent System Operator and the New York State Reliability Council ("The ISO shall comply with all Reliability Rules, including the Local Reliability Rules. The ISO shall maintain the safety and short-term reliability of the NYS Power System and administer the ISO OATT and the ISO Services Tariff in accordance with the Reliability Rules . . . .").

<sup>12</sup> Section 5.1.1.1 of the Services Tariff ("In 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.").

<sup>13</sup> See PSC NYSRC Orders.

determining black start test requirements, and monitoring and coordinating with Con Edison regarding its local restoration plan. Con Edison is similarly responsible pursuant to Measurement G-M2 for establishing the procedures to implement its local restoration plan, including identifying required black start generators and determining black start test requirements.

A black start provider is required under Measurement G-M3 to complete an annual test of its black start facility in accordance with the testing requirements established by the NYISO and Con Edison.<sup>14</sup> In addition, the black start provider must perform operator training, conduct annual tests, and provide certifications regarding certain equipment and critical components related to its black start capability.<sup>15</sup>

The NYISO is responsible for monitoring and taking reasonable actions to secure a black start provider's compliance with Measurement G-M3.<sup>16</sup> The black start provider must certify to the NYISO annually that it has met the requirements in Measurement G-M3. The NYISO must then report to NYSRC whether the black start provider is in compliance with this measurement. Based upon this certification, NYSRC determines whether the NYISO is itself in compliance with the NYSRC Reliability Rules. If the black start provider cannot certify its compliance with the NYSRC Reliability Rules, the NYISO must verify to the NYSRC that it has taken all reasonable actions to secure the black start provider's compliance with the NYSRC Reliability Rules, or the NYISO may be found out of compliance.<sup>17</sup>

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<sup>14</sup> The test criteria for generators participating in the Con Edison portion of the New York Restoration Program have been incorporated in Appendix I of Rate Schedule 5 of the Services Tariff.

<sup>15</sup> See Measurements G-M3 and G-M4.

<sup>16</sup> See NYSRC Compliance Requirements.

<sup>17</sup> NYSRC Policy 4-5: Procedure for Monitoring Compliance with the NYSRC Reliability Rules, at pp. 6-7 (November 10, 2011), available at: <http://www.nysrc.org/pdf/Policies/NYSRC%20Policy%204-5%20Final%2011-10-11.pdf>.

### **C. NYISO Tariff Requirements Regarding Black Start**

Rate Schedule 5 of the Services Tariff also establishes requirements regarding the provision of black start service in New York. Rate Schedule 5 establishes requirements similar to the black start reliability requirements in the NYSRC Reliability Rules. Historically, the Rate Schedule 5 requirements and the NYSRC Reliability Rules have been designed and implemented to be carried out in tandem. In fact, there is a significant overlap in the requirements established by the two sources of authority regarding black start service. In particular, Rate Schedule 5 establishes that the NYISO is responsible for maintaining the New York Restoration Program and establishing procedures for acquiring black start resources and testing those resources. Rate Schedule 5 also establishes that there will be a separate local restoration program maintained by Con Edison. A generator participating in the Con Edison portion of the New York Restoration Program is responsible for conducting an annual black start capability test in accordance with test criteria set forth in Appendix I of Rate Schedule 5 of the Services Tariff, which incorporates Con Edison's black start testing criteria. A participating generator is also responsible for performing operator training and for conducting annual tests and certification of certain equipment and critical components related to its black start capabilities.

Rate Schedule 5 also establishes certain additional requirements that are not part of the NYSRC Reliability Rules. Section 15.5.3.1 of Rate Schedule 5 establishes that a generator located in Con Edison's service territory must commit to participate in the Con Edison portion of the New York Restoration Program for a term of three years. A participating generator may withdraw from the program by providing one year's advance

notice at the end of the second year of its three-year commitment period. If the generator does not provide this notice, it commits to participate in the program for a subsequent three-year commitment period.

Rate Schedule 5 also establishes a payment structure for compensating generators that participate in the Con Edison portion of the New York Restoration Program. So long as it complies with its tariff obligations, including required testing, a participating generator is paid a set annual amount for its participation based upon the voltage level at which it is interconnected – \$350,000 for 345 kV and \$300,000 for 138 kV. A generator may also recover additional verifiable costs associated with performing operator training and conducting annual black start capability tests.

**D. Withdrawal of Ravenswood Units from the New York Restoration Program Under NYISO Tariffs**

TC Ravenswood's steam turbine units 10, 20, and 30 ("Ravenswood Units") have participated in the Con Edison portion of the New York Restoration Program, both historically and since it was organized in its current form.<sup>18</sup> In September 2010, TC Ravenswood notified the NYISO and Con Edison pursuant to Rate Schedule 5 of the Services Tariff that it intended to withdraw the Ravenswood Units from participation in the Con Edison portion of the New York Restoration Program at the end of the three-year commitment period on September 30, 2011. After receiving this notice, the NYISO had

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<sup>18</sup> In the FERC Black Start Order, the Commission stated that the Ravenswood Units are not in the New York Restoration Program based on its review of the NYISO's plan in the NYISO Emergency Operations Manual. FERC Black Start Order at P 42. Note that, as described above, the NYISO is responsible for maintaining the statewide New York Restoration Plan that includes both a statewide and a local component. The NYISO clarifies that the plan in the Emergency Operations Manual only includes those black start units required for restoring the bulk electric system of New York using the 345 kV transmission backbone. The Ravenswood Units are not included in this plan, but are included in Con Edison's local restoration plan. *See* NYSRC Measurement G-M1 ("The NYISO shall develop and maintain a NYCA System Restoration Plan (NYCA SRP). . . The NYCA SRP shall define that system restoration take place at two integrated levels: restoration of

numerous discussions with Con Edison and TC Ravenswood for purposes of developing enhancements to the New York Restoration Program with the goal of retaining the Ravenswood Units in the program. The NYISO and Con Edison are able to satisfy the applicable black start reliability requirements without the Ravenswood Units. Nevertheless, due to their size (collectively, 1,827 MW) and location, the Ravenswood Units' inclusion in the Con Edison portion of the New York Restoration Program provides significant benefits to New York City by enhancing the robustness of the Con Edison portion of New York Restoration Program under certain restoration scenarios.

On August 2, 2011, TC Ravenswood requested that FERC waive certain black start requirements in the NYISO tariffs to temporarily extend the Ravenswood Units' participation in the New York Restoration Program, so that the NYISO, Con Edison, and generators could develop and implement program enhancements.<sup>19</sup> On August 26, 2011, TC Ravenswood filed an amendment to its motion seeking to withdraw this waiver request and to specify that it would withdraw the Ravenswood Units from the black start program on September 30, 2011.<sup>20</sup> On September 27, FERC issued the FERC Order permitting TC Ravenswood to withdraw its waiver request and withdraw from the black start program.<sup>21</sup>

**E. The PSC Order Requires Consent Before a Generator Can Discontinue Providing Black Start Service**

On September 28, 2011, in response to a request for a declaratory ruling by Con Edison, the PSC issued the PSC Order stating that a generator in New York must obtain

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NYCA backbone system in accordance with a *NYISO System Restoration Plan* and restoration of local areas in accordance with transmission owner system restoration plans . . . .") (emphasis in original).

<sup>19</sup> TC Ravenswood, LLC, *Motion of TC Ravenswood, LLC for Waiver of New York Independent System Operator, Inc.'s Tariff Provisions Regarding Black Start and System Restoration Procedures; and Request for Expedited Treatment*, Docket No. ER11-4200-000 (August 2, 2011).

<sup>20</sup> TC Ravenswood, LLC, *Amendment to Motion of TC Ravenswood, LLC*, Docket No. ER11-4200-000 (August 26, 2011).

<sup>21</sup> FERC Black Start Order at PP 44 and 46.

the PSC's consent before it may discontinue providing black start service.<sup>22</sup> The PSC stated that this requirement is pursuant to its mandate under the New York State Public Service Law ("Public Service Law") to ensure safe and adequate service and pursuant to its authority under Section 70 of the Public Service Law.<sup>23</sup> The PSC previously interpreted Section 70, which concerns the transfer of utility property, to provide it with the authority to require that a generator seeking to discontinue or abandon its service first obtain the PSC's consent.<sup>24</sup>

The PSC did not specifically address TC Ravenswood's intention to cease providing black start service or indicate whether it would be permitted to do so at this time.<sup>25</sup> Rather, the PSC indicated that it would evaluate a generator's request to discontinue service based on the specific circumstances presented.<sup>26</sup> TC Ravenswood has neither requested the PSC's consent to discontinue providing black start service, nor sought a stay or rehearing of the PSC's order or appealed it in court.

#### **F. The NYISO's Effort to Secure TC Ravenswood's Compliance with NYSRC Reliability Rules**

The FERC Order affirmed that TC Ravenswood has satisfied the tariff requirements to withdraw from the black start program on September 30, 2011.<sup>27</sup> However, the PSC Order states that TC Ravenswood must obtain the PSC's consent before it can discontinue providing black start service in New York.<sup>28</sup> TC Ravenswood has not done so. Therefore, the NYISO continues to treat it as a black start provider that must satisfy the relevant NYSRC Reliability Rules, which are independent of the black start

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<sup>22</sup> PSC Black Start Order at pp. 4, 13.

<sup>23</sup> *Id.* at pp. 4, 13-15.

<sup>24</sup> *Id.* at pp. 4, 14-15.

<sup>25</sup> *Id.* at pp. 15-16.

<sup>26</sup> *Id.* at p. 16.

requirements in the Services Tariff. As described above, the NYISO is required under the NYSRC compliance requirements to monitor and take reasonable action to secure a black start provider's compliance with the NYSRC Reliability Rules. Otherwise, the NYISO could be found by the NYSRC to be out of compliance with the NYSRC Reliability Rules. For this reason, the NYISO notified TC Ravenswood by letter, dated October 28, 2011, that TC Ravenswood must schedule and perform its annual black start tests for the Ravenswood Units for the 2012/2013 Capability Year and remains obligated to provide black start service in the event of a blackout.<sup>29</sup>

#### **IV. ANSWER**

##### **A. The NYISO Has Acted Appropriately Pursuant to FERC and PSC Orders**

The Commission should dismiss this Complaint as it pertains to the NYISO. In its Complaint, TC Ravenswood asks that the Commission enjoin the NYISO from taking actions, in recognition of the PSC Order, to require that TC Ravenswood continue to fulfill its obligations to provide black start service.<sup>30</sup> However, the NYISO has acted appropriately in recognizing and seeking to reconcile and give effect to both the FERC Order and the PSC Orders. The NYISO cannot disregard a presumptively valid PSC order, and neither TC Ravenswood nor any other party has sought a stay or rehearing of the PSC Order or appealed it in court.

TC Ravenswood has satisfied the tariff requirements to withdraw from the black start program. However, TC Ravenswood has not sought the PSC's consent, as required by the PSC Order, to discontinue providing black start service. The NYISO, therefore,

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<sup>27</sup> See FERC Black Start Order at P 46.

<sup>28</sup> PSC Black Start Order at pp. 4, 13.

<sup>29</sup> Complaint Exhibit No. TCR-2.

<sup>30</sup> Complaint at 3.

continues to treat TC Ravenswood as a black start provider that must fulfill the black start reliability requirements established in the NYSRC Reliability Rules. These requirements are independent of those in the NYISO tariffs. For this reason, and in fulfillment of its own obligations to make reasonable efforts to secure market participants' compliance with the NYSRC Reliability Rules, the NYISO notified TC Ravenswood, by letter dated October 28, 2011, that it must continue to fulfill its black start responsibilities under the NYSRC Reliability Rules.

**B. TC Ravenswood's Complaint is a Collateral Attack on the PSC Order**

TC Ravenswood's Complaint is styled as a complaint against the NYISO and NYSRC. However, as is clear from the arguments in its Complaint, TC Ravenswood is in substance undertaking a collateral attack on the PSC's authority to issue the PSC Order. Specifically, TC Ravenswood's Complaint requests that the Commission find that the PSC Order is preempted by federal law and dedicates the vast majority of its argument to disputing the legal reasoning underlying the PSC Order. As TC Ravenswood states on page 1 of its Complaint: "The urgent issue that the Commission needs to resolve is *whether its orders mean what they say, or whether NYPSC orders trump the Commission's orders* such that the NYISO or NYSRC may use a [PSC] order to force TC Ravenswood to provide a wholesale electric service."<sup>31</sup>

TC Ravenswood's arguments are not properly directed at the NYISO, and the NYISO is not the appropriate party to respond to TC Ravenswood's arguments regarding the PSC's authority in this matter. The NYISO has not previously,<sup>32</sup> and does not now,

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<sup>31</sup> Emphasis added.

<sup>32</sup> N.Y.P.S.C., Case No. 11-E-0423, In the Matter of Consolidated Edison Company of New York, Inc.'s Request for a Declaratory Order Regarding Discontinuance of Blackstart Service, *Comments of the New York Independent System Operator, Inc.* at p. 1 (September 2, 2011).

take a position regarding the PSC's authority to issue the PSC Order or TC Ravenswood's challenge to such authority.<sup>33</sup> TC Ravenswood errs when it suggests that it is the NYISO, rather than the PSC, that has imposed the requirements set forth in the PSC Order, with which the NYISO and TC Ravenswood must comply. For example, TC Ravenswood conflates the role of the NYISO and the PSC when it argues:

In purporting to impose the need for state consent, and thereby purporting to prevent a participating generator from withdrawing from the voluntary wholesale Black Start Program under the terms set forth in the NYISO Services Tariff that was approved by the Commission, the NYISO and NYSRC ignore that the Commission has occupied the field regarding the rates, terms, and conditions under which generators provide and receive compensation for wholesale Black Start Service to the exclusion of any state regulation.<sup>34</sup>

The NYISO has neither imposed restrictions on TC Ravenswood's ability to discontinue to provide black start service pursuant to the Services Tariff nor ignored the FERC Order. Rather, the NYISO has carried out its black start responsibilities in a manner that seeks to reconcile and give effect to both the FERC Order and the PSC Order.

TC Ravenswood's Complaint is not appropriately directed at the NYISO, and the relief that it seeks will not resolve the real issues in dispute regarding the PSC's authority. For this reason, the Commission should dismiss TC Ravenswood's Complaint as it pertains to the NYISO. If the Commission were to issue an order that grants TC Ravenswood the relief that it seeks in this proceeding, the NYISO would find itself in an untenable position, potentially unable to reconcile its obligations under federal and state law.

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<sup>33</sup> Consequently, the NYISO respectfully requests waiver, to the extent the Commission deems necessary, of the portions of Commission Procedural Rule 213(d) that are applicable to answers that affirmatively dispute the arguments in a complaint.

<sup>34</sup> Complaint at p. 6.

**C. Conditional Request for Waivers Regarding Compensation for Black Start Service**

Since September 30, 2011, the NYISO has continued to make black start payments to TC Ravenswood for Ravenswood Units 10 and 20. Ravenswood Unit 30 failed its most recent black start test and is not eligible for payment until it completes a successful test. As described above, TC Ravenswood has satisfied the tariff requirements for exiting the black start program set forth in the Services Tariff. However, until it obtains the consent of the PSC, TC Ravenswood remains committed to provide black start service in accordance with the PSC Order and the black start reliability requirements in the NYSRC Reliability Rules.

The precise terms under which TC Ravenswood remains committed to provide black start service are similar, but not identical, to the terms of the black start program established in the NYISO tariffs. In light of the PSC Order, it is difficult in certain respects to reconcile the requirements of the two regulatory regimes, most notably with regard to the requirements for exiting the program and the compensation to be provided for black start service. For example, under the NYISO tariffs, a black start provider commits to a three-year term, and may discontinue providing the service upon a one-year notice at the end of that term. The PSC Order, on the other hand, states that a black start provider must obtain the PSC's consent to discontinue providing the service. Similarly, while the NYSRC Reliability Rules independently establish various obligations for black start providers, they do not establish a payment mechanism independent of the NYISO tariffs.

It is the NYISO's position that TC Ravenswood should be compensated for so long as it is providing black start service. The only compensation mechanism currently available to the NYISO is that established in Rate Schedule 5 of the Services Tariff. The

PSC Order clearly contemplates that the black start provider will continue to be paid consistent with this compensation structure.<sup>35</sup> If the Commission determines that the NYISO's payments to TC Ravenswood are improper, the NYISO will cease making these payments and will reverse the payment amounts that have been made since September 30, 2011 through its normal billing adjustment process. If, however, the Commission determines that continued payments may be made, the NYISO requests any tariff waivers required to permit the NYISO to provide compensation to TC Ravenswood.

The Commission has previously granted tariff waivers where: (i) a concrete problem needs to be remedied, (ii) the entity seeking the waiver acted in good faith, (iii) the waiver is of a limited scope, and (iv) the waiver will not have undesirable consequences, such as harming third parties.<sup>36</sup> The NYISO's waiver request satisfies these factors. The NYISO seeks to provide compensation to TC Ravenswood for its meeting the black start reliability requirements set forth in the NYSRC Reliability Rules, with which the NYISO and TC Ravenswood are required to comply. The NYISO is acting in good faith in providing for a mechanism to compensate TC Ravenswood for meeting the black start reliability requirements. The waiver request is limited to providing compensation to one market participant, TC Ravenswood, and will only apply until TC Ravenswood obtains the PSC's consent to discontinue providing black start service or, if permitted, identifies with the PSC an alternative compensation mechanism. The waiver will also not have undesirable consequences. Rather, it will enable the NYISO to provide compensation to TC Ravenswood to ensure that it is compensated for fulfilling the black start reliability requirements in the PSC Order and the NYSRC Reliability Rules.

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<sup>35</sup> See PSC Black Start Order at pp. 24-25.

<sup>36</sup> See, e.g., *ISO New England, Inc.*, 117 FERC ¶ 61,171 at P 21 (2006).

**V. CONCLUSION**

**WHEREFORE**, for the foregoing reasons, the New York Independent System Operator, Inc., respectfully requests that the Commission dismiss the Complaint of TC Ravenswood, LLC as it pertains to the NYISO and grant the waivers requested to continue compensating TC Ravenswood, LLC for black start service.

Respectfully submitted,

/s/ Ted J. Murphy  
Ted J. Murphy  
Counsel for the  
New York Independent System Operator, Inc.

December 6, 2011