

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

**New York Independent System Operator, Inc. )**

**Docket No. ER15-563-000**

**REQUEST FOR LEAVE TO ANSWER AND ANSWER OF  
THE NEW YORK STATE RELIABILITY COUNCIL, L.L.C.**

Pursuant to Rule 213 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure, 18 C.F.R. § 385.213, the New York State Reliability Council, L.L.C. (“NYSRC”) files this Answer in response to the Protest of Independent Power Producers of New York, Inc. (“IPPNY”), which IPPNY filed on December 24, 2014<sup>1</sup> in protest of the New York Independent System Operator, Inc.’s (“NYISO”) filing<sup>2</sup> in the above-captioned docket. As shown below, the Commission should reject IPPNY’s protest and accept the NYISO’s filing as proposed.

**I. REQUEST FOR LEAVE TO ANSWER**

The NYSRC requests leave to file this Answer because it will help to clarify the issues before the Commission, provide additional information that will assist the Commission, and will otherwise be helpful in the development of a more complete and accurate record in this proceeding.<sup>3</sup>

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<sup>1</sup> *New York Independent System Operator, Inc.*, Protest of Independent Power Producers of New York, Inc., Docket No. ER15-563-000 (filed Dec. 24, 2014) (“IPPNY Protest”).

<sup>2</sup> *New York Independent System Operator, Inc.*, Proposed Tariff Revisions Regarding Black Start and System Restoration Service, Docket No. ER15-563-000 (filed Dec. 3, 2014) (“NYISO Filing”).

<sup>3</sup> *See, e.g., N.Y. Indep. Sys. Operator, Inc.*, 99 FERC ¶ 61,246, at 62,040 (2002) (accepting answers to protests that helped to clarify issues and did not disrupt the proceeding); *Morgan Stanley Capital Group, Inc. v. N.Y. Indep. Sys. Operator, Inc.*, 93 FERC ¶ 61,017, at 61,036 (2000) (accepting an answer that was “helpful in the development of the record”); *N.Y. Indep. Sys. Operator, Inc.*, 91 FERC ¶ 61,218, at 61,797 (2000) (allowing an answer deemed “useful in addressing the issues arising in these proceedings”); *Cent. Hudson Gas & Elec. Corp.*, 88 FERC ¶ 61,138, at 61,381 (1999) (accepting otherwise prohibited pleadings because they helped to clarify complex issues).

## II. BACKGROUND

On December 3, 2014, the NYISO submitted proposed revisions to the black start and system restoration service (“Restoration Services”) provisions in its Market Administration and Control Area Services Tariff (“Services Tariff”) in order to comply with the NYSRC’s recently adopted reliability rule regarding the provision of Restoration Services.<sup>4</sup> The NYISO’s proposed revisions require that certain generators located within the service territory of Consolidated Edison Company of New York, Inc. (“Con Edison”) with the capability to provide Restoration Services must participate in Con Edison’s local plan for Restoration Services.<sup>5</sup> The NYISO maintained that the NYSRC’s new reliability rule and its proposed implementing provisions will improve Con Edison’s plan by ensuring the availability of crucial Restoration Services resources.<sup>6</sup>

On December 23, 2014, the NYSRC filed comments in support of the NYISO’s filing.<sup>7</sup> The NYSRC noted that it developed its new reliability rule in order to ensure that sufficient black start resources are available to restore the bulk power system as promptly as reasonably possible.<sup>8</sup> The NYSRC stated that the NYISO’s proposed tariff revisions will address this important reliability concern in a reasonable and balanced manner and asked that the Commission approve the NYISO’s filing.<sup>9</sup>

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<sup>4</sup> NYISO Filing at 1.

<sup>5</sup> *Id.* at 1.

<sup>6</sup> *Id.* at 3.

<sup>7</sup> *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 (filed Dec. 23, 2014).

<sup>8</sup> *Id.* at 5-6.

<sup>9</sup> *Id.* at 8.

On December 24, 2014, IPPNY filed a protest of the NYISO's filing and maintained that the Commission should reject the NYISO's proposed tariff revisions, which would require a generator to provide black start service, because the Commission, the NYISO, and the NYSRC do not have the authority to compel a generator to provide a wholesale service.<sup>10</sup> IPPNY maintained that the NYISO and the NYSRC have not made any showing that a more narrowly tailored rule that relies on the voluntary participation of black start service providers could not meet the levels of black start service required by the NYSRC.<sup>11</sup> Furthermore, IPPNY asserted that even if the NYISO had the authority to require a generator to provide this service, the proposed revisions are arbitrary and capricious.<sup>12</sup>

### **III. ANSWER**

#### **A. IPPNY's Contention that Neither the NYISO, the Commission nor the NYSRC have the Authority to Compel a Generator to Provide a Wholesale Service Is Without Merit**

The Commission has authorized the NYISO to control the bulk power system in the New York Control Area ("NYCA") and to administer a wholesale electricity market. Fundamental to the assumption of those responsibilities is the NYISO's ability to maintain the reliability of the NYCA bulk power system. In order to maintain system reliability, the NYISO must rely on the active cooperation and assistance of all of its market participants, including transmission owners, generators and load serving entities.

In agreeing to turn over operational control of their bulk power transmission facilities to the NYISO, the New York transmission owners did so on the express condition that the NYISO

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<sup>10</sup> IPPNY Protest at 2.

<sup>11</sup> *Id.* at 3.

<sup>12</sup> *Id.* at 2-3.

operate the bulk power system in accordance with the NYSRC's Reliability Rules.<sup>13</sup> Further, the NYISO/NYSRC Agreement, which established the relative responsibilities of the NYISO and the NYSRC, provides that the NYSRC Reliability Rules will be complied with by the NYISO and all entities engaged in transactions on the NYS Power System.<sup>14</sup> The NYSRC relies on the NYISO to secure compliance with the Reliability Rules by its market participants through the NYISO's tariffs, procedures, and service agreements.<sup>15</sup>

Participation in the NYISO's markets is voluntary. Importantly, however, entities that choose to participate in the NYISO's market are required to comply with certain requirements. For example, all entities that seek to participate in the NYISO's governance must sign the ISO Agreement. The ISO Agreement provides that the NYISO will enter into a service agreement with all Customers, Market Participants, and Transmission Customers, and that the NYISO Open Access Transmission Tariff ("OATT") and Services Tariffs will require all entities having a Service Agreement with the NYISO to comply with all Reliability Rules and NYISO Procedures regarding the reliability of the NYS Power System.<sup>16</sup>

Thus, as a condition of its participation in the NYISO's market, all market participants, including generators, must agree to comply with all NYSRC Reliability Rules and the NYISO Tariffs and procedures in order to assist the NYISO in protecting the reliability of the NYCA bulk power system. Requiring such a commitment from the NYISO's market participants is essential to the NYISO's ability to fulfill its responsibility to maintain system reliability.

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<sup>13</sup> NYISO/TO Agreement, Sections 3.01 and 3.02.

<sup>14</sup> NYISO/NYSRC Agreement, Section 2.1.

<sup>15</sup> NYSRC Reliability Rules, Introduction, Paragraph 8; NYSRC Policy 4-6, Paragraph 2.

<sup>16</sup> ISO Agreement, Sections 6.02 and 11.01.

In its protest, IPPNY sets up a false premise in order to attack the NYISO's proposed black start tariff provisions. The Commission's authority to order or compel a generator to provide a wholesale service is not an issue in this proceeding. Rather, the NYISO's proposed tariff provisions must be considered in light of the fact that all NYISO market participants, including IPPNY's members, have voluntarily sought permission to participate in the NYISO's wholesale market and, as a condition of their participation, they have agreed to comply with all NYSRC Reliability Rules and the NYISO's tariffs and procedures that implement those Reliability Rules. The NYISO does not own or have physical control of the facilities that comprise the NYCA bulk power system. Therefore, it must rely on the cooperation of its market participants to maintain reliability and to administer efficient wholesale markets. If its market participants were free to ignore reliability standards and to refuse to comply with NYISO orders when necessary to maintain reliability, on the grounds that the Commission could not order them to take such actions, both system reliability and the administration of the wholesale markets would be seriously compromised.

There are many circumstances in which market participants are currently required to take specific actions to protect reliability. For example, all load serving entities are required to purchase a prescribed amount of installed capacity in order to meet the NYSRC's installed capacity requirement. If load serving entities refused to follow the NYISO's instructions on the grounds that the Commission cannot compel them to purchase a specific amount of installed capacity, the reliability standard for resource adequacy could not be met. Similarly, transmission owners and generators are required to take specific actions when ordered to do so by the NYISO when necessary to protect system reliability. If a transmission owner or generator could refuse to follow such instructions on the grounds that the Commission does not have the authority to direct

the operation of their facilities, neither system reliability nor competitive wholesale markets could be maintained.

There is no contention in the IPPNY Protest that a black start resource that participates in the NYCA system restoration plan would not be fully compensated for the cost of providing that service. The compensation for the provision of black start service is extensively addressed in the NYISO's Services Tariff.<sup>17</sup>

IPPNY further contends that:

- The NYSRC Reliability Rule with which the NYISO seeks to comply permits the NYSRC to control the NYISO and wholesale generators without seeking Commission approval;<sup>18</sup>
- The NYSRC may pass any Reliability Rule, regardless of how arbitrary, capricious or ill advised, and the NYISO has no choice under its tariff but to comply and ask the Commission to enforce the rule;<sup>19</sup> and
- The ability of the NYSRC to establish Reliability Rules with which the NYISO must comply puts the NYSRC in a position co-equal to the Commission and permits it to act without being subject to either legislative or executive check, and its authority thereby exceeds even that of the U.S. Congress.<sup>20</sup>

Despite the overblown rhetoric in its protest, IPPNY's contentions regarding the excessive authority of the NYSRC have no merit.

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<sup>17</sup> NYISO Services Tariff, Rate Schedule 5.

<sup>18</sup> IPPNY Protest at 7.

<sup>19</sup> *Id.* at 6-7.

<sup>20</sup> *Id.* at 7.

The authority of the NYSRC is limited and very narrowly defined. Its sole responsibility is to establish Reliability Rules that are consistent with NERC and NPCC reliability standards, but may be more specific or stringent in order to address the particular reliability needs of the NYCA bulk power system. As IPPNY notes, the NYSRC has no enforcement authority. It relies on the NYISO to implement its Reliability Rules through its tariffs, procedures and service agreements, which is the purpose of the NYISO's tariff filing. Further, the NYISO/NYSRC Agreement permits either the NYISO or the NYSRC to appeal any dispute regarding the need for a Reliability Rule, the need to modify a Reliability Rule, or compliance with a Reliability Rule to the New York Public Service Commission ("NYPSC") or the Commission, depending on the subject matter of the dispute. While the dispute is pending, the NYISO Board may suspend the implementation of a Reliability Rule until the outcome of the dispute resolution process, unless the NYPSC issues a finding that suspension of the Reliability Rule could put the NYS Power system at risk.<sup>21</sup> If a market participant is in violation of a Reliability Rule, the NYSRC's only recourse is to bring the violation to the attention of the Commission and the NYPSC. As noted, the creation of the NYSRC and the related agreements were all approved by the Commission.<sup>22</sup> Therefore, it can hardly be seriously contended that the NYSRC has authority co-equal to that of the Commission and exceeding that of the U.S. Congress, or is excessive in any way.

**B. IPPNY's Contention that the NYISO's Proposed Black Start Tariff Provisions are Arbitrary and Capricious Is Without Merit**

IPPNY contends that the NYISO's proposed tariff revisions and the Reliability Rule the NYISO seeks to comply with are arbitrary and capricious for the following reasons:

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<sup>21</sup> NYISO/NYSRC Agreement, Sections 5.2 and 5.3.

<sup>22</sup> *Cent. Hudson Gas & Elec. Corp.*, 83 FERC ¶ 61,352 (1998), *order on reh'g*, 87 FERC ¶ 61,135 (1999); *Cent. Hudson Gas & Elec. Corp.*, 86 FERC ¶ 61,062 (1999); *Cent. Hudson Gas & Elec. Corp.*, 88 FERC ¶ 61,138 (1999).

- They would empower Con Edison to require an existing generating unit to participate in its system restoration plan if it would provide a material benefit;<sup>23</sup>
- The term “material benefit” lacks any meaningful specificity and provides a private entity with the ability to unduly discriminate against market participants;<sup>24</sup>
- In making its determination as to whether to grant an exemption, the NYISO is entirely dependent on studies and other documentation provided by Con Edison;<sup>25</sup>
- The NYISO cannot choose a plant for participation in the black start program unless it has been recommended by Con Edison;<sup>26</sup> and
- While developers planning to build a new generating resource that is required by the NYISO tariff to have black start capability have the opportunity to withdraw their investment “if the regulatory environment becomes prohibitively undesirable,” existing generators operating in the NYISO’s markets do not have the same option to simply withdraw.<sup>27</sup>

Under the proposed tariff provisions, Con Edison could not require a generator to participate in its system restoration plan. The proposed tariff provisions would come into play only if a participating black start resource that was providing a material benefit to the Con Edison system restoration plan gave notice of withdrawal, or if Con Edison identified a non-participating black start resource that it contends would provide a material benefit to its plan. In that case, Con Edison would be required to support its conclusion that the black start unit would provide a material benefit with studies or other documentation. This documentation would be

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<sup>23</sup> IPPNY Protest at 8.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 9-10.

<sup>26</sup> *Id.* at 10.

<sup>27</sup> *Id.* at 11.

provided to the NYISO and the black start resource. The NYISO could require Con Edison to provide additional documentation to support its conclusion. If the designated black start resource informs the NYISO that it does not want to participate in the Con Edison system restoration plan, it must seek an exemption from the NYISO for good cause. The grounds for an exemption are extremely broad and include: “engineering, technical, financial, environmental, and/or other reasons that provision or continued provision of Restoration Services by the designated generating unit would be unduly burdensome or unreasonable.”<sup>28</sup> The NYISO would seek documentation from the black start resource to support its contention that it has good cause for an exemption. The NYISO may request additional documentation from the black start resource and Con Edison. After reviewing the documentation provided by both Con Edison and the black start resource, the NYISO would determine if an exemption should be granted. Thus, contrary to IPPNY’s contention, it is the NYISO, and not Con Edison, that would make the determination as to whether the black start resource should be required to provide restoration service.

Also, contrary to IPPNY’s contention, the term “material benefit” is clearly defined in the proposed tariff language and is an appropriate standard for the NYISO’s determination. The NYISO’s proposed tariff provides that “[t]he 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 Consolidated Edison Plan for restoring electric service in Zone J in a safe, orderly, and prompt manner following a major system disturbance.”<sup>29</sup> The definition includes the specific types of benefits to be provided (i.e., speed, adequacy or flexibility). It also includes the objective sought to be achieved (i.e., the restoration of electric service in Zone J in a safe, orderly and prompt manner). Dictionary

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<sup>28</sup> Proposed Services Tariff, Section 15.5.4, Paragraph 4.

<sup>29</sup> *Id.* Section 15.5.4, Paragraph 2.

definitions of the word “material” include “substantial” and “important,” and the term “immaterial” is defined as “of no importance or relevance, inconsequential” and “unimportant.”<sup>30</sup> The NYISO, therefore, must determine, after reviewing all of the documentation submitted to it, if the black start resource would provide a substantial and important, rather than an inconsequential or unimportant, benefit to the speed, adequacy or flexibility of Con Edison’s system restoration plan. This is a reasonable standard that can be clearly understood by all interested parties and effectively applied by the NYISO.

IPPNY’s contention that in making its determination on whether to grant an exemption “is entirely dependent on ‘studies and other documentation provided by Consolidated Edison’” is clearly incorrect. The proposed tariff provides that the NYISO must seek documentation from the black start resource as well as from Con Edison and may request additional documentation from both parties. The proposed tariff language provides that “[i]n making its determination, the ISO may rely on the supporting documentation provided by the Generator and Consolidated Edison, along with any information developed by the ISO.”<sup>31</sup>

IPPNY complains that the NYISO can only choose a plant designated by Con Edison. However, a pre-existing and long-standing Reliability Rule requires the transmission owners, including Con Edison, to identify the black start resources necessary for implementing their system restoration plans.<sup>32</sup> This requirement is necessary because only the transmission owner has sufficient knowledge and understanding of its transmission system for its operators to be in a position to identify the specific black start resources needed to safely and promptly restore its system. Also, the NYISO’s proposed tariff provides that the Con Edison documentation must

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<sup>30</sup> Webster’s II New College Dictionary (1996); Webster’s New World Dictionary of American Language (2d College ed. 1979).

<sup>31</sup> Proposed Services Tariff, Section 15.5.4, Paragraph 4.

<sup>32</sup> Reliability Rule G-R1, Measurement G-M2, TO Responsibilities.

summarize alternative solutions evaluated, if applicable, and indicate whether other generating units would provide the particular material benefit identified.<sup>33</sup>

Finally, IPPNY suggests that the NYISO's proposed tariff revisions are more onerous on generators than the tariff provisions previously approved by the Commission which require a planned generating unit in the Con Edison service territory to include black start capability if that would provide a material benefit to the Con Edison system restoration plan, unless the developer can demonstrate a good cause basis for not making the investment.<sup>34</sup> Actually, the opposite is true. The NYISO's proposed tariff provisions in this proceeding address only generators that have already made an investment in black start capability, and no additional investment would be required. Further, IPPNY's statement that existing generators would not be permitted to withdraw from the NYISO markets "if the regulatory environment becomes prohibitively undesirable" requires clarification. There is nothing in the NYSRC Reliability Rule or the NYISO's proposed tariff provisions that would prevent a generator from withdrawing from the NYISO's market for any reason. The tariff provisions would apply only to a generator that is participating in the NYISO market, has black start capability, could provide a material benefit to the Con Edison system restoration plan, and does not have a good cause basis for refusing to assist in system restoration after a major system disturbance or black out.

### **C. There Is a Compelling Need for the Reliability Rule Adopted by the NYSRC**

The NYSRC developed its Reliability Rule regarding participation by black start resources in the Con Edison system restoration plan over a two year period, and after close consultation with the NYISO and the solicitation and careful consideration of all comments submitted by interested parties. Over that period, the scope and application of the Reliability

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<sup>33</sup> Proposed Services Tariff, Section 15.5.4, Paragraph 3.

<sup>34</sup> NYISO OATT, Attachment X, Section 30.2.5.

Rule were narrowed to ensure that it would apply only to situations in which system restoration in the Con Edison service territory could be materially enhanced, and without imposing an undue or unreasonable burden on a black start resource.

The NYSRC considers its Reliability Rules related to system restoration after a major system disturbance or blackout to be among its most important responsibilities. As the Commission knows, prompt and effective system restoration is important to the public health and safety. And, prompt system restoration in the New York City Metropolitan Area is particularly critical, given its extremely dense population, its reliance on mass transit systems that rely on electricity, the large number of high rise buildings, including hospitals, that rely on elevators for entry and exit, and the city's importance as a financial and communications center. The NYSRC is well aware of the serious consequences that have accompanied extended system disruptions in the New York City area in the past. In considering the IPPNY protest to the NYISO's filing, the NYSRC requests that the Commission accord substantial weight to the NYSRC's responsibility to establish Reliability Rules that, to the greatest extent possible, will result in the prompt system restoration of electricity service in the New York City area following a major system disturbance or blackout, and the balanced and reasonable way it has exercised that responsibility.

#### **IV. CONCLUSION**

WHEREFORE, in view of the foregoing, the NYSRC respectfully requests that the Commission accept this Answer and approve the tariff revisions filed by the NYISO in this proceeding.

Respectfully submitted,

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Dated: January 8, 2015

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list in this proceeding in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Washington, D.C. this 8th day of January, 2015.

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