

140 FERC ¶ 61,065
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

New York Independent System Operator, Inc.

Docket No. ER12-2133-000

ORDER ON WAIVER REQUEST

(Issued July 20, 2012)

1. On June 28, 2012, the New York Independent System Operator, Inc. (NYISO) submitted a request for waivers of certain provisions of Rate Schedule 5 of its Market Administration and Control Area Services Tariff (Services Tariff) to permit it to procure black start service on an interim basis from TC Ravenswood, LLC (Ravenswood) through Ravenswood's stand-alone Spot Black Start Service Rate Schedule and to recover all associated costs. The Commission dismisses, in part, and grants, in part, the waiver request for the reasons discussed below.

Background

2. Black start generators have the capability to start up following a system-wide blackout without the availability of an outside electric supply and are, therefore, used to restore the transmission system in the event of such a blackout. Rate Schedule 5 (section 15.5) of NYISO's Services Tariff provides for the payment by NYISO to black start generators for the Black Start services they provide pursuant to the terms and conditions of that rate schedule.

3. On April 2, 2012, as amended on April 5, 2012, Ravenswood filed pursuant to section 205 of the Federal Power Act to establish its own, stand-alone "Spot Black Start Service Rate Schedule." Ravenswood proposed to provide a Spot Black Start Service, on a month-to-month basis, which consists of operating, maintaining, and testing certain critical equipment that is capable of starting its Steam Generating Units 10, 20, and 30 without the availability of an outside electric supply in order to assist in system restoration after a system-wide blackout. Under the rate schedule, the contracting entity is required to contract for the entire block of service in the applicable month, is responsible for paying all costs associated with provision of the service for that month,

including uninsured equipment damage associated with and caused by testing, and is billed by and submits payment to Ravenswood. The proposed Rate Schedule at non-public Appendix No. 2 sets forth the list of equipment that will be operated, maintained and tested as well as the parameters of the tests that Ravenswood will conduct. In its filing, Ravenswood stated that its rates parallel those set forth in the NYISO Services Tariff.¹ The filing was protested by a number of parties, including NYISO.

4. In an order issued May 24, 2012,² the Commission accepted Ravenswood's proposed Spot Black Start Service Rate Schedule, suspended its effectiveness for a nominal period, to become effective May 1, 2012, subject to refund and further order of the Commission, and established settlement judge procedures. The Commission noted the parties' agreement that the Ravenswood units are important to transmission system restoration in the event of a blackout in New York City and that, although some parties raised procedural and substantive issues with the filing, they generally agreed that Ravenswood's proposed Spot Black Start Rate Schedule provisions should be accepted as an interim solution while long-term solutions are pursued. While the Commission encouraged the parties to make every effort to resolve their dispute through the NYISO stakeholder proceedings or through alternative dispute resolution, it directed the appointment of a settlement judge. Accordingly the Commission accepted the filing as an interim solution subject to further order of the Commission to allow the parties an opportunity to work in the stakeholder process toward a mutually agreeable resolution under the NYISO Services Tariff. The Commission stated that it would not address at this time the protests raising concerns that Ravenswood's stand-alone tariff was filed outside of the NYISO ISO Agreement and Service Tariff's stakeholder procedures and duplicates Black Start Services of Rate Schedule 5 of NYISO's Services Tariff.

NYISO's Waiver Request

5. On June 28, 2012, NYISO filed a request for limited waivers, to the extent the Commission determines necessary, of sections 15.5.3.1 and 15.5.3.2 of its Services Tariff and any additional waivers that the Commission deems necessary, to ensure that NYISO can procure black start service from Ravenswood and recover all associated costs.

¹ Ravenswood, Filing, Docket No. ER12-1418-000, at 19 (filed Apr. 2, 2012).

² *TC Ravenswood, LLC*, 139 FERC ¶ 61,151 (2012), *reh'g pending* (May 24, 2012 Order).

6. NYISO states that its tariffs and agreements provide it with general authority to procure black start service from generators and to recover associated costs.³ NYISO also states that it is required under its tariffs to make payments directly to generators in a transmission owner's local plan that provide black start service, and it is required to recover the costs associated with these payments from the load serving entities located in the applicable transmission owner's service territory.⁴

7. According to NYISO, Rate Schedule 5 of its Services Tariff establishes additional requirements for procuring black start service and recovering associated costs in the Con Edison service territory. Section 15.5.3.1 of the Services Tariff (Rate Schedule 5) provides that NYISO will make black start payments to a generator that makes a three-year commitment to provide black start service in the Con Edison portion of the New York Restoration Program and that successfully performs an annual performance test. Section 15.5.3.1 establishes that a generator may be compensated for legitimate, verifiable, and adequately documented variable costs associated with operator training and unit testing, and may be reimbursed for certain equipment damage resulting from the provision of black start service. Section 15.5.3.2 provides that NYISO will recover the costs associated with payments it makes to generators pursuant to section 15.5.3.1 from load serving entities located in the Con Edison service territory based on their share of the total load.

8. NYISO states that the status of the Ravenswood units is uncertain; that their inclusion in the Con Edison portion of the New York Restoration Program provides an important service. NYISO further states that pursuant to the Ravenswood Rate Schedule, Ravenswood will provide "as a block" the entirety of its black start service from its steam turbine units to a customer on a month-to-month basis, beginning on the first day of the month that follows the execution of the Ravenswood Rate Schedule and will stop providing this service on the last day of that month, unless the parties mutually agree to extend the term. NYISO adds that Ravenswood will conduct certain tests of its critical black start facilities, but will not perform the full black start capability tests set forth in the Services Tariff. According to NYISO, Ravenswood asserts that the only material differences from the black start provisions in NYISO's Services Tariff (Rate Schedule 5)

³ NYISO June 28, 2012 Waiver Request at P 6 (citing section 6.02 of the ISO Agreement; Services Tariff section 15.5.1; and Open Access Transmission Tariff (OATT) section 6.6.1).

⁴ *Id.* (citing Services Tariff section 15.5.1; OATT section 6.6.1).

are with respect to testing and term of service.⁵ NYISO states that pursuant to the Ravenswood Rate Schedule, the customer would be responsible for making a set monthly payment of \$79,299.67 per month, which NYISO states is consistent with the payment amount that would be due to Ravenswood if it were providing black start service under the terms of the Services Tariff. In addition, according to NYISO, the Ravenswood Rate Schedule contains provisions for the recovery of variable costs and the reimbursement for equipment damage that include similar, but not identical, terms to the corresponding provisions in the NYISO tariffs.

9. NYISO states that it will contract with Ravenswood on an interim basis to procure black start service under the Ravenswood Rate Schedule, pursuant to NYISO's general authority to procure black start service and recover associated costs. NYISO requests a limited waiver of sections 15.5.3.1 and 15.5.3.2 of the Services Tariff because the terms differ somewhat from those set forth in the Ravenswood Rate Schedule. Specifically, NYISO requests that the Commission waive the black start compensation, commitment, and testing requirements in section 15.5.3.1 of the Services Tariff to permit NYISO to procure black start service from, and make payments to, Ravenswood without Ravenswood having to meet the commitment and testing requirements set forth in section 15.5.3.1. NYISO also requests waiver of the compensation requirements in section 15.5.3.1 of the Services Tariff to permit it to pay Ravenswood the amounts set forth in the Ravenswood Rate Schedule. Finally NYISO requests waiver of the cost recovery requirements in section 15.5.3.2 to permit NYISO to recover the amounts that it pays to Ravenswood under the Ravenswood Rate Schedule, including all variable costs and any reimbursement costs for equipment damage, from load serving entities in the Con Edison service territory on the basis of their share of the total load there.

10. NYISO argues that its waiver requests satisfy the factors that the Commission has previously considered in granting waiver requests, i.e., a concrete problem exists, NYISO has acted in good faith, the scope of the waiver request is limited; and the grant of the requested waivers will not have undesirable consequences or harm third parties. NYISO requests that the Commission grant the requested limited waivers by July 20, 2012, to "enable NYISO to execute the [Ravenswood Spot Black Start Service contract] in time to procure black start service from Ravenswood beginning on August 1, 2012."⁶

⁵ *Id.* (citing Ravenswood April 2, 2012 Spot Black Start Service Rate Schedule Filing, Docket Nos. ER12-1418-000 and ER12-1418-001, at 17).

⁶ NYISO June 28 2012 Waiver Request at 15.

Notice of Filings and Responsive Pleadings

11. Notice of NYISO's waiver request was published in the *Federal Register*, 77 Fed. Reg. 40,874 (2012), with interventions and protests due on or before July 6, 2012. Entergy Nuclear Power Marketing, LLC, the NRG Companies,⁷ Independent Power Producers of New York, Inc. (IPPNY) and the City of New York filed timely motions to intervene. Con Edison Company of New York, Inc. (Con Edison) filed a motion to intervene and comments. Ravenswood filed a motion to intervene, motion to lodge, and comments. On July 13, 2012, the New York Public Service Commission (NYPSC) filed a motion to intervene out-of-time.

Comments

12. Con Edison states that it supports NYISO's request and adds that Commission approval will enable NYISO to purchase the service authorized by the May 24, 2012 Order and thereby maintain reliability in New York City while interested NYISO stakeholders work to reach an acceptable resolution to the black start issues.

13. In its comments, Ravenswood states that it continues to disagree with NYISO's interpretations of the ISO Agreement and Services Tariff as well as other issues, but its comments only address the specific waivers NYISO requests. On that matter, Ravenswood asserts that NYISO requires no waiver to purchase Spot Black Start Service, but that NYISO may need a waiver to enable it to resell Spot Black Start Service and recover the associated costs. Ravenswood contends that, pursuant to sections 201 and 205 of the Federal Power Act (FPA), a public utility subject to the Commission's jurisdiction must seek Commission approval of the rates, and terms and conditions, under which it will sell electric energy at wholesale, but nothing in the FPA requires a public utility or any other entity to seek Commission approval *to purchase* electric energy from a seller, regardless of the terms of such purchase, and regardless of whether such terms differ from the terms of the entity's purchases of electric energy from other sellers.⁸ Thus, according to Ravenswood, NYISO does not need the waivers it has requested to

⁷ 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.

⁸ Ravenswood July 6, 2012 Comments at 4-5 (citing *e.g.*, *Prior Notice and Filing Requirements under Part II of the Federal Power Act*, 65 FERC ¶ 61,081, at 61,507 (1993) ("the FPA regulates sales public utilities make, not their purchases")).

procure wholesale Spot Black Start Service from Ravenswood. Ravenswood adds that it is also unclear under what grant of authority the Commission would issue such waivers.

14. With respect to NYISO recovering the costs of Ravenswood's Spot Black Start Service, Ravenswood states that NYISO is essentially seeking a waiver from the Commission to allow it to resell a service at wholesale at an approved rate.⁹ Ravenswood asserts that because every public utility, including NYISO and Ravenswood, must obtain Commission approval to sell jurisdictional services for resale, NYISO may not sell or resell a jurisdictional service without Commission approval. Since NYISO will resell Spot Black Start Service to the market, Ravenswood asserts that the waiver providing NYISO the opportunity to recover its costs may very well be required if the Services Tariff does not currently allow NYISO to resell Spot Black Start Service in a manner that provides it the opportunity to recover all its costs.

15. Ravenswood also included a motion to lodge the April 30, 2012 and June 8, 2012 results from tests it states it conducted of its black start units pursuant to the test procedures of its Spot Black Start Service Rate Schedule. Ravenswood states that these tests were performed successfully and should alleviate any concern with respect to the capability of its units to respond in the event of a blackout in New York City.¹⁰

Commission Determination

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2012), the Commission will grant the NYPSC's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

17. We dismiss NYISO's request for waiver of the provisions of sections 15.5.3.1 and 15.5.3.2 of the NYISO Services Tariff as inapplicable. In the May 24, 2012 Order, we conditionally accepted the Ravenswood Spot Black Start Service Rate Schedule as a stand-alone tariff.¹¹ Accordingly, NYISO's purchase of this service from Ravenswood

⁹ Ravenswood's July 6, 2012 Comments at 5.

¹⁰ We decline to act on this motion as it is irrelevant to the matter of the requested waiver of NYISO's Services Tariff.

¹¹ May 24, 2012 Order, 139 FERC ¶ 61,151 at P 37.

will solely be pursuant to the terms and conditions of the Ravenswood Spot Black Start Service Rate Schedule. Therefore, sections 15.5.3.1 and 15.5.3.2 of NYISO's Services Tariff, do not apply to these services or to this proposed transaction. Thus, NYISO does not need a waiver of those tariff provisions.

18. However, we recognize there is uncertainty raised over NYISO's authority to pass through the costs of this Ravenswood service to NYISO's customers in the event NYISO enters into a service agreement with Ravenswood for this service. Accordingly, for good cause shown, we waive NYISO's OATT and Services Tariff to the extent necessary to permit NYISO to pass through the costs of Ravenswood Spot Black Start Service that NYISO incurs under a service agreement with Ravenswood in the same manner that NYISO passes through costs incurred under Rate Schedule 5 of its Services Tariff, subject to the same conditions under which we accepted the Ravenswood Spot Black Start Service Rate Schedule. In so doing, we again take no position at this time on the arguments of the parties on issues related to the acceptance of the Ravenswood Spot Black Start Service Rate Schedule.

The Commission orders:

NYISO's request for waiver is hereby dismissed in part and granted in part as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.