

150 FERC ¶ 61,141
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
Norman C. Bay, and Colette D. Honorable.

TC Ravenswood, LLC

Docket No. EL12-9-000

v.

New York Independent System Operator, Inc.

New York State Reliability Council, L.L.C.

ORDER DISMISSING COMPLAINT AS MOOT

(Issued February 26, 2015)

1. On November 8, 2011, TC Ravenswood, LLC (Ravenswood) filed a complaint (Complaint) against the New York Independent System Operator, Inc. (NYISO) and the New York State Reliability Council, LLC (NYSRC) (collectively, Respondents) under sections 206 and 306 of the Federal Power Act (FPA),¹ alleging that Respondents' continued treatment of Ravenswood's Units 10, 20, and 30 (collectively, Ravenswood Units) as Black Start generation facilities² under the Black Start and System Restoration Services (Black Start Services) provisions of NYISO's Market Administration and

¹ 16 USC 824e, 825e (2006).

² According to NYISO, "[b]lack start capability represents the key Generators that, following a system-wide blackout, can start without the availability of an outside electric supply and are available to participate in system restoration activities that are under the control of the NYISO or, in some cases, under local Transmission Owner Control. If a partial or system-wide blackout occurs, these units assist in the restoration of the New York Control Area (NYCA)." NYISO Ancillary Services Manual at 7-1, Version 3.20, revised 5/16/2011, *available at* <http://www.nyiso.com/public/webdocs/documents/manuals/operations/ancserv.pdf>.

Control Area Services Tariff (NYISO Services Tariff) is in direct contravention of a September 27, 2011 Commission order.³ Ravenswood requests that the Commission confirm that the Ravenswood Units are not required to provide Black Start Services and enjoin Respondents from requiring such services. In this order we dismiss the Complaint as moot.

I. Background and Complaint

2. At the time Ravenswood's Complaint was filed, section 15.5.3 of the NYISO Services Tariff included provisions applicable to generators selected for Consolidated Edison Company of New York, Inc.'s (Con Edison) local Black Start and System Restoration Plan under which the generators received compensation from NYISO based on the unit type and the level of interconnection to the Con Edison system. Under the terms of section 15.5.3.1, these generators were eligible for Black Start Service payments only if, on an annual basis, they successfully tested all necessary equipment in compliance with the Con Edison testing criteria set forth in Appendix I of NYISO's Rate Schedule 5. Section 15.5.3.1 also required them to commit to providing Black Start Service for a minimum period of three years, but, at the end of the second year, generators could give notice of their intent to withdraw at the end of the initial three-year period. After the initial period, they could provide one year's advance notice of withdrawal at the end of every subsequent two-year period, so that a rolling three-year commitment was maintained.

3. The Ravenswood Units at issue, Units 10, 20, and 30, are large steam units that provided Black Start Service under the terms of section 15.5.3 of the NYISO Services Tariff for several years. However, on September 8, 2010, Ravenswood gave notice to both NYISO and Con Edison, under section 15.5.3.1 of the NYISO Services Tariff, of its intent to terminate its Black Start Service effective September 30, 2011, at the conclusion of its three-year term of service.

4. In the September 27, 2011 Order, the Commission denied a request from Ravenswood for waiver of the Black Start testing requirement and a request from NYISO for waivers of the commitment period and withdrawal provisions to temporarily suspend the effective date of Ravenswood's withdrawal from September 30, 2011, until April 30, 2012.⁴ By denying both requested waivers, the Commission, in effect, allowed Ravenswood to withdraw as a Black Start Service provider, effective September 30, 2011, pursuant to the terms of the NYISO Services Tariff. On September 28, 2011, the

³ *TC Ravenswood, LLC*, 136 FERC ¶ 61,213 (2011) (September 27, 2011 Order).

⁴ September 27, 2011 Order, 136 FERC ¶ 61,213 at PP 45-46.

New York Public Service Commission (New York PSC), in response to a request from Con Edison, issued a declaratory ruling requiring the New York PSC's consent before an electric corporation currently providing Black Start Service can discontinue that service.⁵ On October 28, 2011, NYISO sent Ravenswood a letter asserting that the NYSRC continued to treat Ravenswood's Units as Black Start facilities that must successfully conduct an annual Black Start test, that NYISO expected Ravenswood to schedule such tests for the subject Units,⁶ and that, in the event of an actual blackout, the Units remained fully obligated to provide Black Start Services.⁷

5. On November 8, 2011, Ravenswood filed the instant Complaint, asserting that there are no factual disputes to be resolved and that the only issue is whether NYISO and the NYSRC may rely on the New York PSC Ruling to require Ravenswood to provide Black Start Service under the NYISO Services Tariff. Ravenswood asserts that the Commission has exclusive jurisdiction over the rates, terms and conditions of Black Start Service and the Commission has comprehensively regulated the terms and conditions of Black Start Services under the NYISO Services Tariff. Ravenswood requests that the Commission: (1) confirm that the Ravenswood Units, after September 30, 2011, were no longer required to furnish Black Start Service under the NYISO Services Tariff; (2) enjoin NYISO and NYSRC from requiring the Ravenswood Units to perform the Black Start testing requirements of the NYISO Services Tariff, or requiring Ravenswood to furnish Black Start Service under the NYISO Services Tariff; (3) find that, to the extent the New York PSC's Ruling intended to require the Ravenswood Units to continue to provide Black Start Service under the NYISO Services Tariff, it is preempted by the Commission's exclusive jurisdiction over the rates, terms, and conditions of the sale of electric energy at wholesale in interstate commerce.

6. Subsequent to filing its Complaint, on April 2, 2012, as amended on April 5, 2012, Ravenswood also filed in Docket No. ER12-1418-000, its own stand-alone Spot Black Start Rate Schedule pursuant to which it proposed to provide Black Start service from its Units 10, 20, and 30. In a May 24, 2012 order,⁸ the Commission stated that its preliminary analysis indicated that Ravenswood's proposed Spot Black Start Rate Schedule had not been shown to be just and reasonable and may be unjust, unreasonable,

⁵ *Declaratory Ruling Regarding Blackstart Service*, Docket No. 11-E-0423 (State of New York Public Service Commission, September 28, 2011) (New York PSC Ruling).

⁶ Ravenswood November 14, 2011 Complaint, Exhibit No. 2 at 1.

⁷ *Id.*

⁸ *TC Ravenswood, LLC*, 139 FERC ¶ 61,151 (2012).

unduly discriminatory or preferential, or otherwise unlawful. The Commission also noted, however, 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 were pursued. The Commission agreed and accepted and suspended the filing as an interim solution, subject to further order of the Commission and established settlement judge procedures, to allow the parties an opportunity to work in the stakeholder process toward a “mutually agreeable resolution under the NYISO Services Tariff.”⁹

7. On December 5, 2013, Ravenswood submitted an informational filing in Docket No. ER12-1418-000 (Informational Filing), notifying the Commission of the failure of certain equipment that Ravenswood, under its Spot Black Start Service Rate Schedule, was obligated to operate, maintain, and test for Black Start capability.¹⁰ In the Informational Filing, Ravenswood states that “NYISO is no longer procuring Spot Black Start Services from Units 10, 20 or 30,” the units at issue here. The Informational Filing further states that NYISO informed Ravenswood that it likely would not procure Black Start service from Ravenswood Units 10, 20, or 30 beginning with October 2013.¹¹

II. Notice of Filings and Responsive Pleadings

8. Notice of Ravenswood’s Complaint was published in the *Federal Register*, 76 Fed. Reg. 71,966 (2011), with interventions and protests due on or before November 29, 2011. On November 25, 2011, in response to a motion for extension of time by the New York PSC, the due date for responses was extended to December 6, 2011.

⁹ *Id.* P 38.

¹⁰ Ravenswood, Informational Filing and Notice of Retirement, Docket No. ER12-1418-000, at 2 (filed Dec. 5, 2013). Ravenswood has redacted Critical Energy Infrastructure Information from its filing. In the public version of its informational filing, Ravenswood indicates that it is not able to provide Black Start service from one of the three units designated for service under its Spot Black Start Rate Schedule. Therefore, Ravenswood is not able to provide the full service required to be provided under its Spot Black Start Rate Schedule.

¹¹ *Id.* Further, according to Ravenswood, Con Edison indicated, in response to an inquiry from Ravenswood, that “it did not want to purchase the service in the Winter.” *Id.*

9. The New York PSC filed a notice of intervention. Con Edison, Cogen Technologies Linden Venture, L.P.; Hess Corporation; GenOn Parties;¹² Astoria Generating Company, L.P. (Astoria); Public Service Electric and Gas Company;¹³ NRG Companies;¹⁴ Sithe/Independence Power Partners, L.P. and Dynegy Power Marketing, LLC; the Calpine Corporation; Electric Power Supply Association (EPSA); Constellation Energy;¹⁵ Entergy Nuclear Power Marketing, LLC; and the New York Transmission Owners¹⁶ filed timely motions to intervene.

10. On December 6, 2011, the New York PSC, Con Edison, and NYISO each filed answers to the Complaint arguing, for different reasons, for dismissal of the Complaint. NYISO argues that the complaint should be dismissed as it pertains to NYISO and that it has acted appropriately in taking action consistent with the New York PSC Ruling. NYSRC filed a motion to intervene, comments and a request for dismissal of NYSRC as a party. The City of New York (NYC) filed a motion to intervene and protest. On December 6, 2011, EPSA and the Independent Power Producers of New York, Inc. (IPPNY) filed comments in support of the Complaint.

11. On December 14, 2011, IPPNY filed an out-of-time motion to intervene.

¹² For purposes of this filing, the GenOn parties are GenOn Energy Management, LLC (GEM), and GenOn Bowline, LLC (GenOn Bowline), (collectively, GenOn Parties).

¹³ For purposes of this filing, the Public Service Electric and Gas Company is PSEG Power LLC, PSEG Energy Resources & Trade LLC and PSEG Power New York LLC.

¹⁴ For purposes of this filing, 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.

¹⁵ For purposes of this filing, Constellation Energy is Constellation Energy Commodities Group, Inc., Constellation Energy Nuclear Group, LLC, and Constellation NewEnergy, Inc.

¹⁶ For purposes of this filing, the New York Transmission Owners are Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Power Authority, New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

12. On December 20, 2011, Con Edison filed an answer to NYISO's December 6, 2011 answer. On December 21, 2011, Ravenswood filed an answer to the answers filed by NYISO, NYSRC, New York PSC, Con Edison, and NYC. Astoria filed an answer in support of Ravenswood's December 21, 2011 answer. Con Edison and NYISO each filed an answer to Ravenswood's December 21, 2011 answer.

III. Commission Determination

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), 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 Procedures, 18 C.F.R. § 385.214(d) (2014), the Commission will grant IPPNY'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.

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will not accept the answers to answers filed in the instant proceeding.

15. We dismiss, as moot, Ravenswood's Complaint. As noted above, Ravenswood complains that even after the Commission issued the September 27, 2011 Order, NYISO sought to compel Ravenswood to provide Black Start service under NYISO's tariff. However, subsequent to September 30, 2011, when Ravenswood withdrew from NYISO's Black Start program, Ravenswood in fact provided no such service under NYISO's tariff. Although Ravenswood offered Spot Black Start Service under its own rate schedule, the Informational Filing states that NYISO is no longer procuring Spot Black Start Services from Units 10, 20, or 30. Moreover, the Informational Filing indicates that certain equipment necessary to provide Black Start service from one of the Ravenswood units is inoperable due to damage caused by fire.¹⁷

16. Based upon the foregoing developments, we find that there is no longer a live controversy requiring resolution of the issues raised in the Complaint. Ravenswood was not compelled to provide the disputed service, it is not being compelled to provide the service now, and based upon the recent developments noted above, we have no

¹⁷ Ravenswood, Informational Filing and Notice of Retirement, Docket No. ER12-1418-000, at 2 (filed Dec. 5, 2013).

expectation it will be compelled to provide the service in the future.¹⁸ We will, therefore, dismiss the Complaint as moot.

The Commission orders:

Ravenswood's Complaint is hereby dismissed as moot, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁸ *El Paso Natural Gas Co.*, 44 FERC ¶ 61,065, at 61,181-82 (1988) (refusing to resolve “abstract controversy” when its factual underpinnings “dissolve so as to have no cognizable remaining legal effects”).