

135 FERC ¶ 61,252
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

ISO New England Inc. and New England Power Pool Docket No. ER11-3385-000
Participants Committee

ORDER ACCEPTING PROPOSED TARIFF REVISIONS

(Issued June 17, 2011)

1. On April 19, 2011, ISO New England Inc. (ISO-NE) and the New England Power Pool (NEPOOL) Participants Committee (together, the Filing Parties) submitted proposed revisions to Schedule 16 of ISO-NE's Open Access Transmission Tariff (Tariff) in order to extend the Tariff-imposed deadline and defer the effective date of a new compensation rate for Black Start Generators for System Restoration and Planning Service (Black Start Service). In this order, we accept the Filing Parties' proposed Tariff revisions, effective June 20, 2011, as requested.

I. Background

A. Instant Filing

2. Schedule 16 of ISO-NE's Tariff sets forth the rates, terms, and conditions for Black Start Service.¹ Under that schedule,² ISO-NE is required to make a filing with the Commission by July 1, 2011 that either: (1) justifies the current compensation for Black

¹ A generator is designated as a Black Start Generator providing System Restoration (Black Start Service), and eligible for compensation under Schedule 16, if it meets the following two criteria: (1) the unit has the ability of being started without energy from other ISO-NE generating units in such a way that meets all of the requirements stated in Operating Procedure 11; and (2) the unit owner and ISO-NE agree that the unit should be designated Black Start Capable and accordingly is listed as a Black Start unit in Operating Procedure 11.

² See Schedule 16, section II.B.

Start Generators; or (2) proposes a new rate.³ Currently, Black Start Generators are compensated based on a formula as specified in section II.B of Schedule 16.⁴

3. The proposed Tariff revisions, submitted pursuant to section 205 of the Federal Power Act (FPA),⁵ would extend until December 30, 2011 the date on which ISO-NE would be required to make a filing that would either justify continuance of the current compensation for Black Start Generators or propose a new rate. The proposed effective date for a new Black Start rate would be January 1, 2013. ISO-NE states that an extension of time will allow stakeholders to more fully consider whether the existing compensation mechanism remains appropriate or whether and how that compensation mechanism should change. Further, ISO-NE notes that the requested extension is necessary due to the complexity of the issues involved and the need to adequately vet those issues with stakeholders.⁶

4. ISO-NE states that it has been working with New England stakeholders to revise the current Black Start plan and to develop a new compensation rate for Black Start Generators. In order to give stakeholders additional time to review and comment on the Black Start revisions currently under consideration, ISO-NE proposes to extend the current July 1, 2011 filing deadline until December 30, 2011, and to defer the effective date for any new Black Start rate until January 1, 2013. ISO-NE states that the NEPOOL Participants Committee voted unanimously to support this extension of time.⁷

B. Interventions and Protest

5. Notice of the filing was published in the *Federal Register*, with interventions and protests due on or before May 10, 2011.⁸ Constellation Energy Commodities Group,

³ The current compensation rate for Black Start Generators is \$4.58/kW-yr. Joint Filing at 2.

⁴ The formula for compensation is as follows: $(\$/\text{kW-yr}/12) \times (\text{Unit's Monthly Claimed Capability for that month})$, where 'Y' = \$4.50 for calendar year 2006, and \$4.58 for calendar years 2007 through 2011.

⁵ 16 U.S.C. § 824d (2006).

⁶ Joint Filing at 4.

⁷ In its Answer, ISO-NE states that the NEPOOL Participants Committee voted unanimously to support the Black Start Extension at its April 1, 2011 meeting with NRG abstaining from the vote. ISO-NE Answer at 1.

⁸ 76 Fed. Reg. 23,320 (2011).

Inc., Constellation NewEnergy, Inc., and Constellation Power Source Generation, Inc.; and Northeast Utilities Service Company filed timely motions to intervene. The NRG Companies (NRG)⁹ filed a motion to intervene and protest.

6. On May 25, 2011, ISO-NE filed an answer in response to NRG's protest.
7. On May 27, 2011, NRG filed an answer in response to ISO-NE's answer.

II. Discussion

A. Procedural Issues

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the timely-filed, unopposed motions to intervene serve to make the entities filing them parties to this proceeding.

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits answers to protests and answers to answers unless otherwise ordered by the decisional authority. We will accept the answers filed by ISO-NE and NRG because they have provided information that has assisted us in our decision-making process.

B. Analysis

10. As discussed below, the Commission finds that the Filing Parties' proposed Tariff revisions extending the dates are just and reasonable, and therefore, we will accept them for filing, effective June 20, 2011, as requested. In making this determination, we reject NRG's arguments for the reasons set forth below.

1. NRG Protest

11. NRG requests that the Commission reject the Filing Parties' proposal and direct ISO-NE to develop and implement an updated rate for Black Start Service, to be effective January 1, 2012. NRG argues that the Filing Parties are requesting a waiver of their obligation to reset Black Start Service rates, leaving the existing out-of-date Black Start Service rate in effect, without showing that the rate continues to be just and reasonable.¹⁰

⁹ The NRG Companies are NRG Power Marketing LLC, Connecticut Jet Power LLC, Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC, and Somerset Power LLC.

¹⁰ NRG Protest at 1-2.

12. NRG states that Schedule 16 of ISO-NE's Tariff has existed in its current form since 2003. NRG argues that the current compensation rate for Black Start Generators of \$4.58/kW-year requires updating.¹¹ NRG states that the costs of providing Black Start Service have increased significantly, citing the requirements of the Energy Policy Act of 2005¹² and "the subsequent establishment of mandatory reliability standards which have imposed significant new compliance costs on units providing Black Start Service."¹³ For example, NRG asserts that new cyber-security standards imposing significant incremental costs, inflation of other fixed Operations and Maintenance costs, and other costs associated with providing Black Start Service did not exist when the currently effective rates were set, and therefore, are not reflected in those rates.¹⁴

13. NRG argues that the Filing Parties have not provided sufficient justification for changing the Tariff-imposed requirement that they update Black Start Service costs starting in 2012. NRG states that it appears that the Filing Parties do not wish to modify rates until the process of substantially redesigning the System Restoration Plan has been completed, but that this is not fully described in the Filing Parties' proposal. NRG supports the efforts of ISO-NE and NEPOOL to improve system reliability by revamping the System Restoration Plan; however, NRG states that such redesign does not provide justification for deferring issues surrounding appropriate compensation for units that are currently providing Black Start Service.¹⁵ NRG argues that, if the rates are not adjusted, units facing increased costs may be forced to exit the program which, according to NRG, could harm the system's ability to recover from a blackout.

14. NRG states that, because of the aforementioned changes that have occurred in the past several years, it is appropriate to require ISO-NE to revisit the Black Start Service rate for 2012. NRG proposes that, at a minimum, the Black Start Service rate be updated, effective January 1, 2012, to reflect incremental costs identified through the ISO-NE's consultants' survey gathering information regarding anticipated costs of providing Black Start Service, including physical and cyber-security costs that are new requirements since the existing rate was instituted. In the alternative, NRG proposes that an inflation adjustment based on a commonly-available index, such as the Handy-Whitman index, be applied as a proxy to reflect increases in real costs and ensure that units currently in the

¹¹ *Id.* at 5.

¹² Pub. L. No. 109-58, 119 Stat. 594 (2005).

¹³ NRG Protest at 4.

¹⁴ *Id.*

¹⁵ *Id.* at 5.

program have adequate incentives to continue participation.¹⁶ NRG argues that failing to require the Filing Parties to update the compensation rate would be unjust and unreasonable.

2. ISO-NE Answer

15. In its answer, ISO-NE argues that NRG's Protest is both procedurally and substantively deficient and should therefore be rejected. First, ISO-NE argues that NRG is not protesting the justness and reasonableness of ISO-NE's filing; rather, NRG argues that ISO-NE must implement a new Black Start rate. ISO-NE asserts that NRG's arguments are improperly raised in a protest in this section 205 proceeding and instead must be filed as a complaint under section 206 of the FPA.¹⁷

16. Second, ISO-NE argues that, even if NRG had properly submitted its arguments in a section 206 complaint, NRG would not have met the requisite burden of proof.¹⁸ Specifically, ISO-NE asserts that Black Start compensation is designed to cover only the incremental costs of a generating unit and that NRG "fails to demonstrate how the advent of particular NERC [North American Electric Reliability Corporation] standards or alleged inflation in O&M [Operation and Maintenance] costs would create increases in Black Start-specific costs versus the costs of operating the plant for provisions of capacity and/or energy."¹⁹ Furthermore, ISO-NE opines that the cost levels of some elements of providing Black Start Service could have actually decreased over the past few years. Additionally, ISO-NE argues that the NRG Protest is deficient in that NRG does not explain why the Handy-Whitman Index is an appropriate tool to use to determine a new compensation scheme and fails to specify which Handy-Whitman cost categories and cost index numbers should be applied to specific Black Start costs.

17. Further, ISO-NE states that NRG offers no support for its allegation that deferring the effective date of a new Black Start rate could harm the system's ability to recover from a blackout. ISO-NE explains that existing owners of generating units participating in the Black Start program voted to support the Black Start program, which is inconsistent with NRG claims that these generators intend to exit the program due to compensation issues. ISO-NE also argues that, according to section II.C of Schedule 16 of the ISO-NE Tariff, Black Start Generators are committed to a three-year term and

¹⁶ *Id.* at 5-6.

¹⁷ 16 U.S.C. § 824e (2006).

¹⁸ ISO-NE Answer at 5.

¹⁹ *Id.*

must provide a one-year notice before leaving the program. ISO-NE states that, with the exception of one resource, all Black Start Generators are contractually obligated to remain in the program beyond January 1, 2013, by which time ISO-NE expects any new rate would be in effect.²⁰

18. Finally, ISO-NE states that NRG fully acknowledges ISO-NE's efforts to substantially redesign the System Restoration Plan and that ISO-NE does not wish to modify the Black Start rates until it has completed that redesign process. ISO-NE states that NRG supports the development of the revised plan.²¹ ISO-NE argues that to revise the Black Start rate first, without utilizing the data that is currently being gathered for use in the System Restoration Plan redesign, would result in inefficiency and an immediate readjustment of the Black Start rate based on the outcome of the plan revisions.

3. NRG's Answer

19. Responding to ISO-NE's answer, NRG argues that it bears no section 206 burden of proof in this matter because it is not seeking the imposition of a specific rate. NRG states that it is merely requesting that ISO-NE conduct the analysis specified in section II.B of Schedule 16. NRG contends that the plain language of the Tariff requires ISO-NE to perform an analysis of its existing Black Start Service compensation rates and to place the results of that analysis into effect on January 1, 2012.²²

20. Further, in response to ISO-NE's assertion that Black Start Service compensation is designed to cover only incremental costs, NRG acknowledges that Black Start Service rates "can go up or can go down as a result of the ISO's analysis. Given the imposition of new NERC requirements on Black Start units [designation of Black Start resources as 'critical facilities' and additional security requirements] we expect that costs have increased and thus the Black Start rates should increase."²³ Notwithstanding the above, NRG asserts that it is not requesting the Commission to "pre-judge" the outcome of ISO-NE's analysis, but rather that ISO-NE should establish an appropriate rate for 2012 at the same time it is continuing the major overhaul to the Black Start Service compensation mechanism.²⁴

²⁰ *Id.* at 7.

²¹ *Id.* at 6 (citing NRG Protest at 5).

²² NRG Answer at 2.

²³ *Id.* at 3.

²⁴ *Id.*

21. Finally, NRG maintains that its request that ISO-NE follow the Tariff requirements, i.e., conduct an analysis of existing Black Start Service rates and implement that analysis starting in 2012, is within the scope of this proceeding and is procedurally proper.²⁵

4. Commission Determination

22. We will accept the Filing Parties' proposed Tariff revisions extending the dates for a further filing and for the effectiveness of a new Black Start rate, effective June 20, 2011, as requested. We disagree with NRG's arguments that the postponement of revising the Black Start rate is unjust and unreasonable and could harm the reliability of the ISO-NE system, specifically the system's ability to recover from a blackout.

23. We find that the Filing Parties' proposal is just and reasonable; it is reasonable to address Black Start compensation as a part of ISO-NE's larger project to redesign the System Restoration Plan, and the extension of time will allow stakeholders to more fully consider whether the existing compensation mechanism remains appropriate or whether and how that compensation mechanism should change. Further, as noted in the filing, any modification to the Black Start compensation mechanism, even effective January 1, 2013, will become effective prior to the expiration of all but one existing contractual arrangement and thus, will not impair the adequacy of Black Start service for the ISO-NE system.

24. We disagree with NRG's argument that, due to various cost increases, failure to modify the existing compensation mechanism at the present time will provide disincentives for the continued participation of generators in the Black Start program. As ISO-NE notes in its answer, existing owners of Black Start generators voted in favor of the extension of time, contradicting NRG's claim that units would leave the program because of inadequate incentives. Additionally, as previously noted, only one Black Start program participant is contractually able to remove itself from the Black Start program between now and the new proposed effective date, which we accept in this order, of January 1, 2013.

25. To the extent NRG challenges the reasonableness of the current Black Start rate itself, rather than the extension of time for re-examination of that rate, NRG's arguments are beyond the scope of this proceeding. This proceeding involves a request to extend the time for filing and the date any resulting rate will be effective. Concerns as to the rate

²⁵ *Id.* at 4.

itself are appropriately raised in a complaint filed pursuant to section 206 of the FPA.²⁶ Moreover, the Tariff requires ISO-NE to re-examine the Black Start rate and submit a filing supporting its findings by a date certain; the Tariff does not require ISO-NE to change the rate. Contrary to NRG's argument, the proposed Tariff revisions do not represent the Filing Parties' efforts to justify continuation of the current compensation rate for Black Start Generators. At issue here are the dates by which review of the rate must be complete and a new rate, if any, will take effect. Allowing New England stakeholders additional time to undertake the appropriate analysis is reasonable.

The Commission orders:

ISO-NE and NEPOOL's proposed Tariff revisions are hereby accepted for filing, effective June 20, 2011, as requested.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁶ See, e.g., *Midwest Indep. Transmission System Operator, Inc.*, 108 FERC ¶ 61,248, at P 5 (2004) (noting that the Commission has consistently rejected efforts to combine complaints with other types of filings); *Consolidated Edison Co. of N.Y.*, 97 FERC ¶ 61,241, at 62,092 & n.14 (2001) (citing *Louisiana Power and Light Co.*, 50 FERC ¶ 61,040, at 61,062-63 (1990)); *Entergy Services, Inc.*, 52 FERC ¶ 61,317, at 62,270 (1990).