

139 FERC ¶ 61,151  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

TC Ravenswood, LLC

Docket Nos. ER12-1418-000  
ER12-1418-001

ORDER ACCEPTING AND SUSPENDING PROPOSED RATE  
SCHEDULE, SUBJECT TO CONDITIONS, AND ESTABLISHING  
SETTLEMENT JUDGE PROCEDURES

(Issued May 24, 2012)

1. On April 2, 2012, as amended on April 5, 2012, TC Ravenswood, LLC (Ravenswood) filed a proposed Spot Black Start Rate Schedule pursuant to which it proposes to provide black start service (Spot Black Start Service). Ravenswood proposes that its rate schedule be effective no later than May 1, 2012. In this order, we waive the 60-day notice requirement, accept Ravenswood's proposed rate schedule, suspend its effectiveness for a nominal period, to become effective May 1, 2012, as requested, subject to refund and further order of the Commission, and establish settlement judge procedures.

**I. Background**

2. Black Start generators have the capability to start up following a system-wide blackout without the availability of an outside electric supply. Such generators are used to restore the transmission system in the event of such a blackout. The Ravenswood Generating Station, located in Queens, New York, includes three large steam units (Units) with a combined capacity of 1800 megawatts that, prior to September 30, 2011, provided Black Start Service under the New York Independent System Operator, Inc. (NYISO) Market Administration and Control Area Services Tariff (Services Tariff) as part of the Consolidated Edison (Con Edison) System Restoration Plan (Con Edison Plan).

3. A system restoration plan that includes Black Start generators is a North American Electric Reliability Corporation (NERC) requirement for registered transmission operators.<sup>1</sup> NYISO is the registered transmission operator in New York and requirements applicable to Black Start and System Restoration Services (Black Start Services) are applicable to it; these requirements are addressed in NYISO's Services Tariff. In addition to the generators identified in the NYISO system plan, there are additional generators included in the Con Edison Plan.

4. Section 15.5 of the NYISO Services Tariff provides for payments to generators for Black Start Services, including payments to generators in the Con Edison plan. NYISO's Services Tariff provides that, under the Con Edison Plan, generators are eligible for Black Start payments only if, annually, they successfully test all necessary equipment in compliance with the Con Edison testing criteria.<sup>2</sup> NYISO's Services Tariff also provides that eligible generators must commit to providing Black Start Services for a minimum period of three years, but, at the end of the second year, they may give notice of their intent to withdraw at the end of the initial three year period.<sup>3</sup> For subsequent periods, they may provide one year's advance notice of withdrawal at the end of every subsequent two-year period, so that a rolling three-year commitment is maintained.

5. Ravenswood objected to the scheduling and testing requirements for Black Start Service, which it asserted caused excessive wear on its Units. Accordingly, Ravenswood submitted its one-year notice to withdraw from the NYISO Black Start program on September 8, 2010. On August 2, 2011, in Docket No. ER11-4200-000, Ravenswood filed a request for waiver of the NYISO testing requirement applicable to Black Start Service and stated that it would withdraw its Units from participation in the Black Start Program on September 30, 2011, pursuant to the withdrawal provision of the NYISO Services Tariff.<sup>4</sup> NYISO, in turn, requested a waiver of the commitment period and

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<sup>1</sup> NERC Reliability Standard EOP-005-2 addresses the requirements of registered Transmission Operators as it pertains to Black Start plans. The Standard is *available at*: <http://www.nerc.com/files/EOP-005-2.pdf>

<sup>2</sup> NYISO Services Tariff, § 15.5, Rate Schedule 5, Appendix 1.

<sup>3</sup> NYISO Services Tariff, § 15.5.3.1.

<sup>4</sup> Ravenswood amended its filing on August 26, 2011, in order to withdraw its initial request for waiver of the three-year commitment period and its request that a settlement conference be convened. On August 26, 2011, Ravenswood filed a second amendment to its August 2, 2011 pleading in order to replace a draft affidavit inadvertently included in that pleading with a final version of that affidavit.

withdrawal provisions in section 15.5.3.1 of its Services Tariff to temporarily suspend the effective date of Ravenswood's withdrawal. In an order issued September 27, 2011,<sup>5</sup> the Commission denied the waivers and thereby allowed Ravenswood to withdraw as a Black Start provider pursuant to the terms of the NYISO Services Tariff on September 30, 2011. The Commission found that "while the continuance of these additional units in NYISO's Black Start program may enhance that program, they are not relied on as part of NYISO's System Restoration Plan."<sup>6</sup> The Commission cited NYISO's statement that it is in compliance with NERC's requirements for both facilities and restoration time without the Ravenswood units and also noted that NYISO had received, at that point, a year's notice of Ravenswood's intent to leave the Black Start Service program, as required by the NYISO Services Tariff.

6. On September 28, 2011, the 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.<sup>7</sup> On November 8, 2011, Ravenswood filed a complaint with the Commission,<sup>8</sup> noting that there are no factual disputes to be resolved and asking that the Commission resolve whether NYISO and the New York State Reliability Council (NYSRC) may use the New York PSC Ruling to require Ravenswood provide Black Start Service under the NYISO Services Tariff.

7. On April 2, 2012, as amended on April 5, 2012, Ravenswood submitted, pursuant to section 205 of the Federal Power Act (FPA),<sup>9</sup> tariff sheets implementing a proposed rate schedule pursuant to which it proposes to sell a "Spot Black Start Service" (Spot Black Start Rate Schedule) to customers pursuant to the provisions of the proposed *pro forma* service agreement included in the filing.

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<sup>5</sup> *New York Indep. Sys. Operator, Inc.*, 136 FERC ¶ 61,213 (2011) (September 27, 2011 Order).

<sup>6</sup> *Id.* P 42.

<sup>7</sup> *Declaratory Ruling Regarding Blackstart Service*, Docket No. 11-E-0423 (State of New York Public Service Commission, September 28, 2011) (New York PSC Ruling).

<sup>8</sup> Ravenswood Complaint, Docket No. EL12-9-000. The Complaint is pending Commission action.

<sup>9</sup> 16 U.S.C. § 824d (2006).

## II. Ravenswood's Filing

8. The proposed Spot Black Start Service Rate Schedule provides that Spot Black Start Service is a service that Ravenswood provides by 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 for those generating facilities to assist in system restoration after a system-wide blackout. Ravenswood's proposed rate schedule states that the actual generation and sale of electric energy produced by its Steam Units 10, 20, and 30 is not included within the scope of this service. According to the rate schedule, the sale of such energy is conducted pursuant to Ravenswood's market-based rate authority and Commission-approved rate schedule Original Sheet Nos. 1, 2, and 3, filed in Docket No. ER10-2860-000 and such energy is sold either through bilateral agreements or the energy market operated by NYISO.<sup>10</sup>

9. Spot Black Start Service under the proposed Rate Schedule is to be available on a month-to-month basis and an entity contracting for such service will be required to contract for the entire block of service in the applicable month and will be responsible for paying all costs associated with Ravenswood's provision of Spot Black Start Service for that month.<sup>11</sup> Further, the Service Agreement for Spot Black Start Services provides that Ravenswood and the customers may mutually agree to extend the Services Agreement on a month-to-month basis pursuant to written agreement to that effect.<sup>12</sup>

10. The proposed Rate Schedule at 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.<sup>13</sup> The Rate Schedule provides that customers shall

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<sup>10</sup> Ravenswood April 2, 2012 Filing, Appendix A at 1.

<sup>11</sup> *Id.* at 2.

<sup>12</sup> Ravenswood April 2, 2012 Filing, Appendix A, Spot Black Start Service Rate Schedule, at Appendix 1.

<sup>13</sup> This information is redacted in the public version of the filing because, according to Ravenswood, it is Critical Energy Infrastructure Information.

compensate Ravenswood for this service at the rate of \$79,166.67 per month.<sup>14</sup> In addition, under the proposed Rate Schedule, the customer shall reimburse Ravenswood for all variable costs associated with the provision of Spot Black Start Services. The payments include compensation for operator training costs, labor costs, fuel costs and other legitimate, verifiable, and adequately documented variable costs associated with Black Start testing performed.<sup>15</sup> A customer also pays reimbursement for uninsured equipment damage associated with and caused by testing. In addition, the Rate Schedule provides that a purchaser will be responsible for equipment damage, not covered by insurance, caused by testing that would not have occurred but for Ravenswood providing services under its proposed rate schedule.<sup>16</sup> The proposed Rate Schedule also sets forth record-keeping requirements for test results, operation and maintenance records, and repairs and associated costs.<sup>17</sup> The proposed Rate Schedule provides for monthly billing, customer audit rights, and a procedure for resolving payment disputes, with final resolution resting with the Commission if the customer files a complaint with the Commission under FPA section 206 within a certain time period. Finally, Appendix 1 to the filing contains a proposed *pro forma* service agreement for Spot Black Start Service which, *inter alia*, provides in section 7.0 that “This service agreement shall be subject to all applicable and lawful governmental statutes, orders, rules and regulations of the Federal Energy Regulatory Commission.”

11. Ravenswood states that, because the NYSRC recently noted it is “critical” for Ravenswood’s generating units to provide Black Start Service to maintain the restoration capability of the Con Edison system and the New York Control Area (NYCA), it is

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<sup>14</sup> Ravenswood states that existing generators under Con Edison’s plan are paid a proxy for their fixed costs of facilities that can provide Black Start Service, *i.e.*, \$300,000 per year for each gas and steam unit that is connected at 138 kV and \$350,000 per year for each gas and steam unit that is connected at 345 kV. Ravenswood states that it will provide Spot Black Start Service subject to the identical proxies, except that at this time each month’s payment will reflect 1/12 of the annual fixed cost.

<sup>15</sup> Ravenswood April 2, 2012 Filing, Appendix A at 4b. Ravenswood states that because most of the testing under the appropriate procedures applicable to its units is being conducted in a similar manner each month, the cost should not vary tremendously from month to month except to the extent of a high degree of volatility in fuel, labor, repair or maintenance costs.

<sup>16</sup> Ravenswood April 2, 2012 Filing, Appendix A at 4c.

<sup>17</sup> *Id.* at 5.

proposing to establish its own rate schedule to sell Black Start Service. Ravenswood asserts that, in its September 27, 2011 Order, the Commission approved Ravenswood's withdrawal from NYISO's Black Start program and therefore Ravenswood needs Commission approval of its own rate schedule because, without an approved rate schedule, it may not sell Black Start Service at wholesale. Ravenswood states that it is better to provide Spot Black Start Service at wholesale in accordance with its own proposed rate as opposed to providing no service at all pursuant to the NYISO Services Tariff.

12. Ravenswood asserts that since 2005 it has raised concerns with NYISO, Con Edison, and NYSRC with respect to the scheduling and testing requirements for Black Start Services under the NYISO Services Tariff. Ravenswood states that it filed a motion with the Commission asking for waiver of the testing requirements and the three year commitment period for Black Start Service contained in the NYISO Services Tariff.<sup>18</sup> Ravenswood further states that it withdrew those requests as the result of the drastic drop in capacity prices in NYISO's in-City capacity market and a petition for a declaratory order that Con Edison filed with the New York PSC, which, according to Ravenswood, sought to have the New York PSC transform Black Start Service from a voluntary program under the NYISO Services Tariff into a compulsory service at the direction of the New York PSC.

13. Ravenswood states that, on October 28, 2011, NYISO sent a letter to Ravenswood indicating that it expected Ravenswood to timely schedule Black Start capability tests for its Units. Ravenswood then filed a complaint with the Commission asking it to confirm that the subject Units are not required to provide Black Start Service under the NYISO Services Tariff and to enjoin NYISO and NYSRC from requiring the Units to do so.<sup>19</sup> Ravenswood further states that on January 26, 2012, and on February 23, 2012, NYISO sent additional letters stating that Ravenswood remains obligated to schedule and successfully conduct the annual Black Start tests.

14. Ravenswood states that the draft report of NYSRC's Reliability Compliance Monitoring Subcommittee (NYSRC Subcommittee), which reported that restoration time in New York City, absent the Ravenswood facility, could increase by up to five hours, constitutes implicit evidence that NYISO and Con Edison have taken no practical measures to account for the departure of the Ravenswood Units from the Black Start Services program. Ravenswood states that it believes the delay in load restoration

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<sup>18</sup> Ravenswood Filing, Docket No. ER11-4200-000 (filed Aug. 2, 2011).

<sup>19</sup> Ravenswood Complaint, Docket No. EL12-9-000 (filed Nov. 7, 2011).

without its Units conforming exactly to the NYISO Services Tariff requirements will be minimal, if at all, particularly if Spot Black Start Service is provided as proposed in the instant filing.

15. Ravenswood states that it is not unwilling to work on a solution to the testing, term of service and general compensation issues in the NYISO market, but in the meantime it proposes to provide Spot Black Start Service pursuant to its own Rate Schedule thereby ensuring the continued provision of an important reliability service. In particular, it states that its proposed Rate Schedule includes a testing process that does not threaten serious damage to its generating Units. Further, it states that Commission approval may also help avoid the jurisdictional clash that it asserts will inevitably occur if NYISO, Con Edison, and the New York PSC continue on a path of attempting to require Ravenswood, an exempt wholesale generator, to provide some form of Black Start Service subject to the New York PSC's jurisdiction. Ravenswood states that as a public utility, it has the right to have its own rate schedule on file to provide Spot Black Start Service.<sup>20</sup>

### **III. Notice of Filings and Responsive Pleadings**

16. Notice of Ravenswood's April 2, 2012 Filing was published in the *Federal Register*, 77 Fed. Reg. 21,553 (2012) with comments, interventions, and protests due on or before April 12, 2012. Notice of Ravenswood's amendment to its filing was also published in the *Federal Register* with the April 12, 2012 comment date.

17. NRG Companies and Astoria Generating Company, L.P. filed timely motions to intervene. Entergy Nuclear Power Marketing, LLC and Independent Power Producers of New York, Inc. (IPPNY) filed motions to intervene out of time.

18. The New York PSC filed a notice of intervention and comments. Con Edison, NYISO, and NYSRC, filed motions to intervene and comments. The Indicated New York Transmission Owners (NYTOs)<sup>21</sup> and the City of New York filed motions to intervene and protests. On April 16, 2012, Ravenswood filed an answer to the comments and protests.

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<sup>20</sup> Ravenswood April 2, 2012 Filing at 17 (citing *Atlantic City Electric Co. v. FERC*, 295 F.3d 1 (D.C. Cir. 2002)).

<sup>21</sup> New York Transmission Owners for purposes of this filing consist of Central Hudson Gas & Electric Corporation, 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.

### Comments and Protests

19. NYISO states that it believes that an interim means should be found to permit Ravenswood to provide Black Start Service in New York while NYISO, Ravenswood, and other stakeholders complete the ongoing process to revise the Black Start requirements in the NYISO Services Tariff. NYISO states that it supports the substance of Ravenswood's request and would, therefore, welcome Commission action to permit the Ravenswood Units to provide Black Start Service consistent with the term-of-service and test requirements proposed by Ravenswood, but only within the framework of the NYISO Services Tariff. NYISO requests that the Commission grant NYISO a waiver of the three-year term-of-service requirement in section 15.5.3.1 of Rate Schedule 5 and the test requirements in section 15.5.3.1 and Appendix I of Rate Schedule 5. NYISO states this would set Ravenswood's proposal within the framework of the NYISO Services Tariff. NYISO requests that the waivers remain in place for an interim period while NYISO, Ravenswood, and other stakeholders complete the ongoing process to revise Black Start requirements for New York.<sup>22</sup>

20. NYISO states that, if the Commission determines that a waiver is not appropriate and that the term-of-service and test requirements described in Ravenswood's proposal must be expressly set forth in a tariff, the Commission should reject Ravenswood's proposed Rate Schedule. NYISO states that it cannot support a stand alone Rate Schedule for providing Black Start Service outside of the NYISO tariffs. It argues that the Commission should reject the Ravenswood's Spot Black Start Services Rate Schedule because it impermissibly duplicates Rate Schedule 5 of the NYISO Services Tariff. NYISO states that section 4.1.2 of the NYISO Services Tariff provides that:

[t]he ISO shall provide all Market Services in accordance with the terms of the ISO Services Tariff and the ISO Related Agreements. The ISO shall be the sole point of Application for all Market Services provided in the [New York Control Area]. Each Market Participant that sells or purchases Energy including Demand Side Resources, sells or purchases Capacity, or provides Ancillary Services in the ISO Administered Markets utilizes Market Services and must take service as a Customer under the Tariff.

Thus, according to NYISO, section 4.1.2 bars Ravenswood from establishing a separate, stand alone rate schedule to provide the same service already provided by NYISO. NYISO also states that the Commission has denied the two previous attempts to file a separate rate schedule to govern a service that properly fell within the scope of the

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<sup>22</sup> NYISO April 12, 2012 Comments at 3.

NYISO tariffs, most recently, a stand alone rate schedule seeking compensation for certain variable costs incurred in providing what Ravenswood called “Minimum Oil Burn Service.”<sup>23</sup>

21. NYISO also states that Ravenswood’s rate schedule is an impermissible unilateral attempt to amend the NYISO Services Tariff. NYISO cites Article 19 of the ISO Agreement, which requires NYISO’s independent Board of Directors and its stakeholder Management Committee to jointly approve proposed amendments to the NYISO tariffs. NYISO states that Ravenswood is part of this shared governance system and its application is the practical equivalent of a formal tariff amendment filed in contravention of Article 19 of the ISO Agreement. NYISO further argues that the Commission has previously rejected attempts by individual entities to make “end-runs” around ISO stakeholder processes<sup>24</sup> and should do the same here. NYISO also argues that denying Ravenswood’s application would be consistent with the United States Circuit Court for the District of Columbia’s decision in *Atlantic City Electric Co. v. FERC*,<sup>25</sup> wherein the court stated that “utilities may choose to voluntarily give up, by contract, some of their rate filing freedom under section 205.” NYISO states that Ravenswood voluntarily became a signatory to the ISO Agreement and thus voluntarily accepted its requirements.

22. NYISO further argues that even if Ravenswood’s Filing was not an impermissible, unilateral attempt to amend the NYISO Services Tariff, denying Ravenswood’s application would still be consistent with the *Atlantic City* decision. NYISO contends that public utilities have the right to make section 205 filings, but the Commission need not accept them when they are wholly and unnecessarily duplicative of previously accepted tariff provisions governing the same service. In this case, according to NYISO, the Commission has accepted Rate Schedule 5 of the NYISO Services Tariff and Ravenswood’s proposed rate schedule is impermissibly duplicative of Rate Schedule 5.

23. Similar to NYISO, Con Edison states that the Ravenswood rate schedule should be approved on an interim basis as a special provision of the NYISO tariff, pending Commission approval of a revised NYISO Black Start program. Con Edison states that Ravenswood’s provision of Black Start Service is vital to the reliability of the New York City electric system. Electric generators like those of Ravenswood that have Black Start capability and are positioned to reduce the time for restoring the system are essential

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<sup>23</sup> *Id.* at 14 (citing *TC Ravenswood*, 133 FERC ¶ 61,087, at P 4 (2010)).

<sup>24</sup> *Id.* at 16 (citing, *e.g.*, *ISO New England Inc.*, 130 FERC ¶ 61,145, at P 34 (2010)).

<sup>25</sup> 295 F.3d 1, 9 (D.C. Cir. 2002).

resources for the NYISO Black Start program and therefore the public interest requires that Ravenswood resume Black Start service as soon as possible. Con Edison cites the NYISO Subcommittee draft report assertion that absent the Ravenswood Units, system restoration in New York City could be delayed up to five hours for a significant portion of the New York City load.<sup>26</sup>

24. Similar to NYISO, Con Edison supports consideration of Ravenswood's proposal in the stakeholder process that NYISO recently initiated<sup>27</sup> and, given that alternative process, supports the resumption of Ravenswood's Black Start Service on May 1, 2012, the date proposed by Ravenswood. Con Edison adds that Ravenswood's proposed testing and term provisions should remain effective, as special provisions of the NYISO Services Tariff, pending the completion of the NYISO stakeholder process. Con Edison acknowledges that effectuation of service prior to the resolution of associated issues would be a departure from normal practice, but argues that the departure is warranted by the demonstrated reliability need, the fact that the issues are limited, the existence of an alternative forum for timely consideration of the issues, and the limited time the proposed service arrangements would be in effect.<sup>28</sup> Con Edison contends the benefits of initiating service outweigh any potential negative implications of the departure from normal practice. Con Edison, therefore, urges that Ravenswood's proposed terms be made effective without delay and remain effective until completion of the NYISO stakeholder process and the Commission's approval of any tariff amendments that emanate from that process.<sup>29</sup>

25. Like NYISO, Con Edison argues that Ravenswood's testing and term provisions should be incorporated in the NYISO Services Tariff, rather than remaining as a generator-specific rate schedule. Con Edison reasons that the incorporation would give Ravenswood's proposed provisions the status of special provisions applicable specifically to Ravenswood as well as preserving the primacy of the NYISO Services Tariff as the

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<sup>26</sup> RCMS Report "Evaluation of the NYCA Black Start Program," dated March 16, 2012, at 1.

<sup>27</sup> Con Edison states that on March 30, 2012 NYISO initiated a stakeholder process to revise the Con Edison Black Start program. Con Edison attaches to its filing a copy of NYISO's proposal for changes to the Con Edison plan. Con Edison April 12, 2012 Comments at 3.

<sup>28</sup> *Id.* at 6-7.

<sup>29</sup> *Id.* at 7.

exclusive tariff for control area services.<sup>30</sup> Further, Con Edison states that the incorporation of Ravenswood's testing and term provisions into the NYISO Services Tariff obviates the possible issues that might arise because of differences in phrasing between the provisions of Ravenswood's proposed rate schedule and the NYISO Services Tariff.<sup>31</sup>

26. Con Edison further comments on Ravenswood's proposed performance of monthly and annual testing under its Black Start proposal. Con Edison argues that in order to ensure the observance of the NYSRC, NERC, and Northeast Power Coordinating Council's rules and requirements, the Commission should require NYISO to verify that the proposed Ravenswood testing provisions and Ravenswood's implementation of those provisions comply with the applicable reliability requirements.<sup>32</sup>

27. Similar to Con Edison and NYISO, the New York PSC states that Ravenswood's Filing represents a practicable interim solution for ensuring that adequate Black Start generation facilities are available until other solutions are implemented. It adds that Ravenswood's proposed tariff provisions should be subject to modification based upon the results of the NYISO stakeholder process. The New York PSC also states that, although it is willing to support the implementation of the Ravenswood Filing on an interim basis under the circumstances, its support should not be construed as waiving its jurisdiction over reliability and the adequacy of Black Start generation service.

28. The New York PSC states that it is concerned with the potential for adverse reliability impacts that might result from a termination of Black Start Service by Ravenswood. It adds that its Declaratory Ruling ensures that the reliability implications of discontinuing Black Start Service can be adequately addressed by obligating Ravenswood to obtain the New York PSC's consent prior to terminating such service. It notes that Ravenswood has not sought such consent. The New York PSC reiterates the NYSRC Subcommittee assertion regarding additional hours needed for restoration in New York City, absent the Ravenswood Units, and asserts that the NYSRC has indicated that the delay would have a significant adverse impact on the NYCA System Restoration Plan and thus would violate NYSRC's reliability rules. The New York PSC is particularly concerned with the potential delay in restoration time during the upcoming summer capability period between May 1 and October 31 and contends that it is therefore necessary that Ravenswood continue to provide Black Start Service at this time.

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<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 8.

<sup>32</sup> *Id.* at 9.

29. In addition, the New York PSC states that Ravenswood proposes that its facilities would only be available on a month-to-month basis and Ravenswood may unilaterally terminate its Black Start Service at the end of any month, without any justification. According to the New York PSC, this type of open-ended commitment on the part of Ravenswood is not acceptable. Therefore, the New York PSC states, the Commission should clarify that Ravenswood's proposed tariff would require it to offer Black Start Service until such time as: (i) it retires its generating facilities (with adequate notice to the New York PSC); (ii) good cause is shown to NYISO as to why Ravenswood's generating facilities are unable to provide the service; or (iii) the New York PSC's consent to terminate such service is granted.

30. Both the City of New York and the NYTOs argue that Ravenswood's Filing is an improper attempt to bypass the NYISO stakeholder process and circumvent the NYISO Services Tariff and NYISO's authority and should be rejected. They assert that Ravenswood has previously attempted to circumvent the NYISO stakeholder process and establish its own rules and the Commission has consistently directed it to use the stakeholder process as the initial means of addressing contested issues that are within the purview of a system operator.<sup>33</sup> They also both reiterate NYISO's argument above<sup>34</sup> that Ravenswood cannot have a rate schedule for a NYISO service separate and apart from the NYISO tariff. The City of New York maintains that in filing its own rate schedule, Ravenswood is arguably collaterally attacking the Commission's orders authorizing NYISO to act as the NYCA's sole system operator, and its order approving the NYISO Services Tariff.

31. The NYTOs state that, while the existing NYISO Services Tariff may not adequately address Ravenswood's concerns or its costs of participating in the NYISO Black Start program, Ravenswood should raise its concerns in the pending NYISO stakeholder process. The NYTOs further state that if the Commission determines that the public interest requires Ravenswood's participation in the NYISO's Black Start market pending resolution of the NYISO stakeholder process, the Commission might consider Ravenswood's Filing as a temporary waiver of the NYISO's tariff provisions pending resolution of the current stakeholder process that is reviewing the provisions of the NYISO Black Start tariff.

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<sup>33</sup> City of New York April 12, 2012 Protest at 6-7 (citing, *inter alia*, *New York Indep. Sys. Operator, Inc.*, 119 FERC ¶ 61,130, at P 14 (2007); *New York Indep. Sys. Operator, Inc.*, 121 FERC ¶ 61,039, at P 23 (2007); *TC Ravenswood, LLC*, 133 FERC ¶ 61,087 (2010)).

<sup>34</sup> *See supra* P 21.

32. The NYSRC requests that the Commission consider the potential reliability impacts of allowing an important reliability service to be provided outside NYISO's tariff and possibly outside the ability of the NYSRC to ensure that the service is compliant with the reliability standards adopted by the NYSRC for system restoration service in the NYCA. The NYSRC also clarifies that, contrary to a statement in the Ravenswood Filing, the NYSRC did not participate in discussions or negotiations with Ravenswood aimed at developing revised testing procedures for Ravenswood's steam Units. The NYSRC submits to the Commission the final report of its Subcommittee, which is entitled "Evaluation of the New York Control Area Black Start Program"<sup>35</sup> and states several of the recommendations in the final report differ from those in the draft. The NYSRC also notes that the report has been submitted to its Executive Committee which will make the determination as to whether the report's findings and recommendations will be adopted.

33. In its April 16, 2012 Answer, Ravenswood generally opposes any revisions to its proposal and includes a copy of a NYISO stakeholder presentation on proposed modifications to the Black Start provisions of the NYISO Services Tariff and reiterates its request that the Commission accept its proposal as filed. Ravenswood also claims a right to file its own stand-alone tariff provisions. However, Ravenswood states that it recognizes that Con Edison, NYISO, and the New York PSC are attempting to be constructive and practical in finding a solution without further litigation and it commits to work with the other parties to that end. It states that it is its intention to seek mediation through the Commission's Alternate Dispute Resolution (ADR) procedures to achieve that goal.

#### **IV. Commission Determination**

##### **A. Procedural Matters**

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

35. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2011), the Commission will grant the late-filed motions to intervene filed by IPPNY and Entergy Nuclear Power Marketing, LLC given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

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<sup>35</sup> NYSRC Evaluation of the NYCA Black Start Program (March 16, 2012).

36. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We will accept Ravenswood's April 16, 2012 Answer because it has provided information that assisted us in our decision-making process.

### **B. Substantive Matters**

37. Our preliminary analysis indicates that Ravenswood's proposed Spot Black Start Rate Schedule has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will waive the 60-day prior notice requirement of section 205 of the FPA, accept Ravenswood's proposed rate schedule for filing, suspend its effectiveness for a nominal period, to be effective May 1, 2012, as requested, subject to refund and further order of the Commission, and set it for settlement judge procedures.

38. Parties are in agreement that the Ravenswood Units are important to transmission system restoration in the event of a black out in New York City. Although some parties raise procedural and substantive issues with the filing, they generally agree that Ravenswood's proposed Spot Black Start Rate Schedule provisions should be accepted as an interim solution while long-term solutions are pursued. We agree and accept this 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.

39. While we encourage the parties to make every effort to resolve their dispute through the current NYISO stakeholder proceedings or ADR, to aid the parties in their settlement efforts, we direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>36</sup> If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.<sup>37</sup> The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, and every 60 days thereafter, concerning the status

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<sup>36</sup> 18 C.F.R. § 385.603 (2011).

<sup>37</sup> If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five (5) days of the date of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

of settlement discussions. Any proposals that result from the stakeholder process shall be considered in the settlement process established here.

40. Finally, we note the concerns of NYISO and the NYTOs that Ravenswood's stand-alone tariff was filed outside of the NYISO ISO Agreement and Service Tariff's stakeholder procedures and duplicates the Black Start Services of Rate Schedule 5 of NYISO's Services Tariff. However, we will not address this issue at this time and will accept the filing as an interim solution, subject to the conditions above intended to facilitate a long-term solution.

The Commission orders:

(A) Ravenswood's proposed Spot Black Start Rate Schedule is hereby accepted, and suspended for a nominal period, to become effective May 1, 2012, as requested, subject to refund and further order by the Commission.

(B) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2011), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(C) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.