

MOTION OF CON EDISON AND O&R IN OPPOSITION TO AN APPEAL

Consolidated Edison Company of New York, Inc. (“Con Edison”) and Orange and Rockland Utilities, Inc. (“O&R,” collectively, the “Companies”) hereby file this motion in opposition to the appeal filed by Mirant New York, Inc. (“Mirant”) with respect to the Black Start proposal (the “Proposal”) approved by the Management Committee (“MC”) on September 7, 2005.

The Proposal includes strict testing and modified payment provisions pursuant to which the three existing In-City generators will provide Black Start and Restoration services in the Con Edison transmission district. Absent the Proposal, Con Edison and the NYISO would be unable to ensure that sufficient generation capability would exist in the event of a blackout in the New York City transmission district.

In its appeal, Mirant requests that the NYISO refrain from acting on the Proposal until it is ready to consider plans for Black Start proposals for the O&R and Central Hudson Gas & Electric Corporation (“CH”) transmission districts. Simply stated, Mirant seeks to hold the New York City Black Start Program hostage pending the resolution of Black Start related issues in the O&R and CH transmission districts. By doing so, Mirant needlessly and recklessly jeopardizes electric reliability in New York City. The reliability of New York City’s electric system is just too critical to the state, the nation and the world for the NYISO to acquiesce in such brinksmanship. Accordingly, the NYISO Board should reject Mirant’s appeal, affirm the Proposal adopted by the MC, and expeditiously file the Proposal and associated tariff language with the FERC under Section 205 of the Federal Power Act (“FPA”).

ARGUMENT

I. The MC's Proposal Is Reasonable

The events surrounding the August 2003 blackout in the Northeast demonstrate the need to have a reliable Black Start and Restoration compensation and testing program in place for the Con Edison transmission district. The Proposal adopted by the MC is just that. It provides a modified payment structure for the In-City generators while simultaneously instituting a rigorous annual testing program to ensure the availability of Black Start and Restoration providers. Despite the Proposal's obvious contributions to the overall reliability of New York City's electric system, by its appeal Mirant seeks to delay the adoption of the Proposal solely as a means to accommodate its own needs.

Con Edison, the three existing In-City Black Start providers and the NYISO have spent over a year negotiating the Proposal. As delineated in the tariff amendments, the Proposal changes the focus of the payment and testing structure from that of paying a cost-based fee for equipment exclusively used for Black Start to that of paying a modified site-based fee for Black Start and Restoration services. In-City Black Start providers will now receive payments based on their relative contribution to the restoration process for the Con Edison transmission district. The most probable restoration scenario extends the state restoration backbone from Dunwoodie through Staten Island through the 345 KV system and then, from this extended backbone, to the 138 KV system. Providers connected to the 345kV system will be paid \$350,000 per year per unit, while providers connected to the 138kV system will be paid \$300,000 per year per unit. This payment difference recognizes that units connected to the 345kV system are of greater value to system restoration than those connected to the 138kV system.

In addition, the Proposal provides for rigorous and timely testing of the Black Start capability of the In-City generators, including actual Black Start of the necessary Gas Turbine equipment, starting up the associated steam generators or another gas turbine on a site, and in most cases actual synchronization to the bulk power system. These testing requirements will help to ensure that sufficient Black Start and Restoration capability will be available in the event of a blackout. This will ensure that Con Edison and its customers will pay only for demonstrated Black Start capability.

II. The Proposal Should Not Be Held Hostage By Mirant

Mirant argues that it would be “inappropriate and inequitable” for the Board to file a New York City Black Start program without “resolving the issue” and providing compensation for the Black Start providers in other areas.¹ Contrary to Mirant’s assertion, quite the opposite is true. It would be both inappropriate and inequitable for the NYISO to allow Mirant to hold New York City reliability hostage while Mirant and other potential Black Start providers in the Lower Hudson Valley attempt to resolve outstanding issues, including proper payment levels, with O&R and CH.

Local Black Start programs are distinct and function independent of each other. Mirant can continue to negotiate with O&R as to the appropriate payment structure for the past period. Therefore, going forward with the Proposal will not harm Mirant.

In attempting to justify its appeal, Mirant presents a misleading view of O&R’s, Con Edison’s and the NYISO’s restoration plans.² Mirant would have the Board believe that the restoration of New York City invariably starts in Niagara and systematically winds its way down the state through each transmission district until it reaches New York

¹ Mirant Appeal, p.6.

² Mirant Appeal, p.3.

City. The implication here is that without the O&R and CH plans, service to New York City could not be restored. Such implication is false. The restoration of New York City is not dependent on the restoration efforts of O&R and CH. Nor is it dependent upon Mirant. It is only dependent on the extension of the statewide backbone down to Dunwoodie, which does require that some load be picked up along the way from the NYISO energized portions of the grid. The extension of the backbone, however, does not depend on the successful implementation of CH's or O&R's Black Start programs.

What is true, however, is that the Proposal needs to be filed with FERC and put into effect sooner rather than later. The Proposal contains extensive testing requirements, which must be scheduled and completed in the period November 1, 2005 through April 30, 2006. Accordingly, the NYISO cannot let Mirant delay the implementation of the Proposal.

III. Mirant Has Not Demonstrated That It Is Entitled To Black Start Payments

As shown herein, resolution of Mirant's payment issue is not relevant to the NYISO's consideration of the Proposal. Nonetheless, Mirant tries to tie the two together by arguing that it has not been paid for Black Start services since the NYISO commenced operation in 1999 and that any payment for both the past and future period should be based on the compensation that is agreed to for the In-City generators³ – a standard that only Mirant has endorsed, is not contemplated by the Proposal, and is not consistent with the effective tariff. The NYISO Services Tariff provides that a Black Start provider must, by May 1 of each year, submit to the NYISO certain cost data that is based on "FERC Form 1 or equivalent data,"⁴ which Mirant has not done. Furthermore, although Mirant's

³ Mirant Appeal, p. 4.

⁴ NYISO Services Tariff, Original Sheet No. 312.

units were included in O&R's local restoration plan through September 26, 2005, when O&R called on Mirant to supply Black Start services during the blackout of August 2003, Mirant failed to provide such services, in effect, failing a live test of its Black Start capability.

On September 26, 2005, O&R officially notified the NYISO that it revised its "System Restoration Plan," and that Mirant's services were no longer required. In revising its System Restoration Plan, O&R determined that three recent transmission system upgrades made it more reliable for O&R to restore its system through one of its five ties to the bulk power transmission system. Accordingly, there is no need to hold up the Proposal to determine what Mirant should receive for Black Start services it will not be providing.

CONCLUSION

Accordingly, for the reasons set forth above, the Companies respectfully request that the NYISO Board reject Mirant's appeal, affirm the MC's decision to adopt the Proposal and expeditiously file the Proposal with the FERC.

Dated: September 29, 2005

Respectfully submitted,
Consolidated Edison Company of New York, Inc. and
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