

**NOTICE OF APPEAL OF MANAGEMENT COMMITTEE’S SEPTEMBER 7, 2005
DECISION APPROVING A PROPOSAL APPLICABLE ONLY TO LOAD ZONE J
LOCAL PROVIDERS OF BLACK START AND SYSTEM RESTORATION
SERVICES**

ACTION APPEALED

Mirant New York, Inc.¹ (“Mirant”) hereby appeals the Management Committee’s (“MC”) September 7, 2005 decision to approve a proposal addressing the terms and conditions for compensation to existing local providers of Black Start and System Restoration Services (“Black Start Services”) in Load Zone J only without also addressing such terms for the two other existing local providers in the Lower Hudson Valley (the “MC Decision”).

SUMMARY

The compensation formula for Black Start Services that currently is set forth in the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”) requires suppliers of this service, inter alia, to submit FERC Form No. 1 data. All five existing providers of this service designated under the Transmission Owners’ local plans (“Local Providers”) are merchant generators that do not compile information in this format.² As a result – and despite the occurrence of a major blackout in August, 2003, no Local Provider has received any payment whatsoever for Black Start Services since the NYISO’s inception in November, 1999.

¹ Mirant New York, Inc. is a member of the NYISO Management Committee. Through its subsidiaries, it owns two gas turbines and hydro facilities located in the Lower Hudson Valley that have been designated as local black start providers on the Orange & Rockland Utilities, Inc. (“O&R”) local black start plan since the NYISO’s inception.

² The existing five Local Providers are KeySpan Ravenwood, NRG, Reliant, Mirant and Dynegy. KeySpan Ravenwood, NRG and Reliant are located in the Consolidated Edison Company of New York (“Con Edison”) service territory. Mirant is located in the O&R service territory and Dynegy is located in the Central Hudson Gas and Electric Corporation (“Central Hudson”) service territory.

NYISO Staff has been working with the affected Market Participants to rectify this shortcoming in its Tariffs by addressing, among other things, compensation to the existing Local Providers for this service, including retroactive payments. Each Local Provider is entitled to receive retroactive and prospective payments for Black Start Services. However, rather than reaching a comprehensive resolution for all Local Providers, the MC Decision applied to the Load Zone J Local Providers alone.

Management Committee discussion and action on a proposal for Black Start Services for the remaining two Local Providers is expected to take place at the regular October, 2005 MC meeting.³ Mirant respectfully requests that the Board find that the MC Decision addressing the Load Zone J Local Providers alone without also defining the terms and conditions for Black Start Services for the remaining two Local Providers is inappropriate and inequitable. Accordingly, Mirant requests that the Board refrain from acting on the MC Decision alone and rather consolidate the MC Decision with the MC decision for the remaining two Local Providers as a complete Black Start package to be submitted to the Federal Energy Regulatory Commission (“FERC”) for approval.

ARGUMENT

A. BACKGROUND

The NYISO Services Tariff defines “Black Start Capability” as the ability of generation facilities to assist in the restoration of the New York State Power System in the event of a system-wide blackout. The NYISO procures Black Start Services from the New

³ The October MC meeting currently is scheduled to be held on October 12, 2005 but may be moved to the day before to honor a religious observation. Due to the timing requirements of the NYISO’s appeal process, actions taken at the October MC meeting will not be deemed final actions by the now scheduled October NYISO Board meeting. Accordingly, Mirant respectfully requests that the NYISO Board schedule a special meeting to address the proposals for all five Local Providers so that they may be filed by early November, 2005.

York Power Authority to restore the Rest of State “back-bone” system which leads down to the Hudson Valley. In addition, five Local Providers are designated in individual Transmission Owner system restoration plans to provide local Black Start Services. These local plans meet the Rest of State back-bone system in the Lower Hudson Valley and run first through the Central Hudson service territory and then the O&R service territory.⁴ From that point, the critical link is made going into New York City to join with the Con Edison local plan. The NYISO Black Start Restoration Plan is comprised of the Rest of State back-bone plan and all three local plans. The NYISO’s Black Start Restoration Plan is designed to ensure that the New York Control Area possesses Black Start capable generators of sufficient capacity and geographic distribution to be able to re-energize the transmission system as quickly and efficiently as practicable following a system-wide blackout.

Load Serving Entities (“LSEs”) are required to purchase Black Start Services under Rate Schedule 6 of the NYISO’s Open Access Transmission Tariff (“OATT”). The compensation formula for Black Start Services is set forth in Schedule 5 of the NYISO’s Services Tariff. As currently set forth in the NYISO’s Services Tariff, the payment for this service is comprised of two components: (1) “capital and fixed operation and maintenance costs”; and (2) “annual costs associated with training operators in system restoration.” The NYISO’s Services Tariff further provides that a Provider’s data “must be based upon FERC Form No. 1 or equivalent data.” Because merchant generators do not use the FERC system of accounts, FERC Form No. 1 data is not available from any of the Local

⁴ In its draft Reliability Needs Assessment issued on September 1, 2005, the NYISO reported that the Lower Hudson Valley is projected to face both MW and MVAR shortages in the near future. Such potential shortages render the need to compensate suppliers in these local areas for Black Start Services all the more critical.

Providers. Due to this issue with its current Tariff, the NYISO has not paid any Local Provider for Black Start Services since November 1999.

Recognizing that the current methodology for determining compensation was not workable, the NYISO formed the Black Start Task Force to develop a resolution to this issue for all five Local Providers. The Black Start Task Force began to hold meetings to rectify this problem in early 2003. During each of the first several meetings of the Black Start Task Force, Con Edison and the three Zone J Local Providers repeatedly debated and then disagreed about the number of MWs that qualified for this service in Load Zone J. Because the Task Force's mission was to resolve the compensation issues for all five Local Providers, resolution for the two remaining Local Providers was stymied by the inability of the In City parties to reach agreement. After a number of meetings that occurred first before and then after the August 2003 blackout, impasse between Con Edison and the Zone J Local Providers occurred.

The disagreements between Con Edison and the three Zone J Local Providers clearly were interfering with the ability to achieve any progress in the negotiations. In the interest of facilitating a global plan, the other two Local Providers consented to closed door meetings among NYISO Staff, Con Edison and the Zone J Local Providers. The quid pro quo for allowing such meetings to proceed, however, was that the Zone J parties were to reach agreement on key compensation components that then would be translated to the other two Local Providers. Once designed, a compensation proposal to be applied to all five Local Providers would be submitted to the FERC for approval.

In mid August, Mirant learned for the first time that the Zone J Local Providers and Con Edison had reached an agreement in principle, with respect only to themselves, on the

terms and conditions of Black Start Services, including retroactive and prospective compensation. NYISO counsel presented the components of this agreement in principle (“Zone J Proposal”) for discussion and action at the August 24, 2005 Business Issues Committee (“BIC”) meeting.⁵ As reflected in the BIC Presentation, a straight cost-based approach was eliminated. Rather, to recognize the inherent value of this service, a key principle of the Zone J Proposal was to establish a new annual compensation plan that more accurately reflected the costs and benefits of Black Start Services.⁶ In its presentation, NYISO counsel identified the two other Local Providers and established that the Black Start Services proposal for these two suppliers must be developed on a fast track.⁷ Such proposal would contain terms and conditions that treat the remaining two Local Providers of Black Start Services consistently with the three Zone J Local Providers.

Mirant agreed to support the Zone J Proposal based on its understanding that MC action on a Black Start Services proposal for the two remaining Local Providers would be secured by no later than the October, 2005 MC meeting. In fact, the BIC motion addressing the Zone J Proposal was modified prior to the vote to specify BIC’s recommendation that a proposal “to address the rights, obligations and compensation plan, for the two other existing providers of black start and system restoration services, shall be presented by the NYISO Staff at its September 2005 BIC meeting for discussion and action.”⁸

⁵ See “Proposal To Address Providers of Local Black Start and Restoration Services in Load Zone J (New York City),” Business Issues Committee, August 24, 2005 (presented by Gina Fedele, Hunton & Williams) (“BIC Presentation”).

⁶ See BIC Presentation at 4.

⁷ See BIC Presentation at 9-10.

⁸ See Summary of Motions, Motion #5, Business Issues Committee meeting, August 24, 2005.

The BIC approved the Zone J Proposal at the August 24th meeting. The Zone J Proposal then was noticed on the September 7, 2005 MC meeting agenda for discussion and action. Like the BIC Presentation, the MC Presentation pointed to the fact that compensation to Local Providers would reflect the sites' relative value in restoring the transmission system and network loads in the Con Edison service territory.⁹ The MC approved the Zone J Proposal on September 7, 2005.

Before the BIC meeting, NYISO counsel began obtaining site specific information to formulate a Black Start Services proposal for the two remaining Local Providers that would be consistent with the terms and conditions of the Zone J Proposal. NYISO counsel continues to work with Mirant and O&R and – upon information and belief, Dynegey and Central Hudson. In the absence of an agreement among these four affected parties that may be reached in the interim, work remains on schedule for NYISO Staff to present a Black Start Services proposal for the two remaining Local Providers to the MC at its October meeting for discussion and action.

B. IT WOULD BE INAPPROPRIATE AND INEQUITABLE FOR THE NYISO BOARD TO GO FORWARD AND SUBMIT A FILING TO THE FERC THAT RESOLVES THE BLACK START SERVICES ISSUES FOR, AND PROVIDES COMPENSATION TO, ONLY A SUBSET OF THE LOCAL PROVIDERS

Each of the five existing Local Providers is owed compensation for Black Start Services going back to the NYISO's inception in 1999 and continuing forward. Indeed, in recognition of the improper data point currently embedded in the NYISO's Services Tariff, the Black Start Task Force was convened for the express purpose of resolving this issue for all five existing Local Providers. When attempts to resolve these issues with the

⁹ See "Proposal To Address Existing Providers of Black Start and Restoration Services in Local Transmission Districts," Management Committee, September 7, 2005 (presented by Gina Fedele, Hunton & Williams) at 5.

participation of all affected parties failed due to the inability of the In City parties to agree upon the number of MWs at issue In City, Mirant agreed to allow separate In City discussions to proceed to develop a proposal that then would be translated back to all Local Providers.

It appears that Mirant's willingness to work "outside the box" and agree to allow side discussions to take place has been beneficial. More progress has been made to resolve these issues for all Local Providers in the past five weeks than in the past five years. However, due in large measure to the fact that Mirant agreed to allow certain In City aspects to be addressed first, work on the proposal for the remaining two Local Providers will not be completed until the October MC meeting. Having agreed to proceed in this fashion, the second half of the bargain that was struck must now be honored.

There is no reason at this juncture that the NYISO Board should file a proposal with the FERC addressing the terms and conditions for Black Start Services for only some of the Local Providers when all five of the Local Providers are affected by these issues. Accordingly, Mirant respectfully requests that the NYISO Board refrain from acting on the MC Decision alone. Rather, Mirant requests that the NYISO Board consolidate the MC Decision with the decision reached by the MC at its regular October meeting concerning the remaining two existing Local Providers and submit a complete package to the FERC for approval that addresses the terms and conditions for Black Start Services for all Local Providers.

C. THE BLACK START RULES APPLICABLE TO THE LOAD ZONE J LOCAL PROVIDERS CANNOT BE CONSIDERED IN A VACUUM

As established in both the BIC Presentation and the MC Presentation, compensation to Local Providers for Black Start Services expressly will be designed to reflect the inherent value of those services to the system. At the time that the Zone J Proposal was acted upon and the MC Decision was reached, defined and specific local plans also were in place north of the City in the Lower Hudson Valley running to the Rest of State back-bone system. The premise was that a proposal would be developed on a fast track basis that would treat the two remaining Local Providers on comparable terms with the Zone J Local Providers.

The Zone J Proposal cannot be considered in a vacuum. To the contrary, all three components -- the Zone J Proposal, the proposal for the two existing Local Providers in the Lower Hudson Valley and the Rest of State back-bone plan -- are used for the New York system to be re-energized efficiently in the event of a system-wide blackout. Any changes to the local plans in the Lower Hudson Valley may, in fact, affect the value of the services that are provided in Zone J. Thus, only when the terms of the plan for the remaining two Local Providers are determined can the appropriateness of the Zone J Proposal -- and, specifically the value placed on those services -- be confirmed.

CONCLUSION

For the foregoing reasons, the NYISO Board should address the terms and conditions applicable to all Local Providers of Black Start Services at the same time, not just the Load Zone J parties alone. Accordingly, Mirant respectfully requests that the NYISO Board act on the MC Decision and the expected October MC decision together and submit them as a complete Black Start Services package to the FERC for approval.

Respectfully submitted,

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Dated: September 21, 2005
Albany, New York

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