

**NYISO Board of Directors Decision
On the
Zone J Black Start Capability Payment Proposal Appeal**

Mirant New York, Inc. (“Mirant”) appeals from the September 7, 2005, Management Committee decision to approve a proposal for the modification of the payment methodology for local Black Start Capability in the Consolidated Edison transmission zone (“Zone J Proposal”). Consolidated Edison and Orange and Rockland Utilities, Inc. filed a joint Motion in Opposition. No Motions in Support of the appeal were filed. We asked the parties to brief the question of whether a recent change to the Orange and Rockland local black start restoration plan has rendered this appeal moot, and both parties filed additional papers on that issue. The Board’s Governance and Market Structures Committees heard oral arguments on November 14, 2005.

Each member of the Management Committee has standing to appeal decisions of the Management Committee; there is no requirement to show a direct financial interest in the decision when filing an appeal. Thus Mirant has standing to appeal the Zone J Proposal even though it may no longer have an expectation of receiving Black Start Capability payments for future periods. The issue appealed from, the Zone J Proposal, is also not moot because this Board is still considering whether to direct the NYISO to file the proposal as a tariff amendment with FERC.

On the merits, we have considered the arguments of Mirant and find that its arguments do not challenge the soundness or reasonableness of the Zone J Proposal for the Zone J local Black Start Providers or for Consolidated Edison. Mirant’s claim relates to the process by which its issues are being addressed, and raises an objection that the Zone J issues should not go forward without resolution of local Black Start Capability issues across the New York Control Area. Mirant in fact acknowledges that it supported the Zone J Proposal on its merits.

This Board has never required all aspects of any issue to be resolved in a single filing where there was a reasonable basis for letting certain parts of an issue reach resolution while other parts remain open. We have delayed consideration of a proposal where further expected developments are likely to render the proposal moot, but here the Zone J Proposal is in

final form, and further developments on the related issues are not likely to require changes to the Zone J Proposal itself. We therefore deny this appeal.

While we deny Mirant's appeal, we disagree with Consolidated Edison's characterization of the appeal as an action that "needlessly and recklessly jeopardizes electric reliability." We have no indication that Mirant or any other local Black Start Service provider has suspended, or even threatened to suspend, continued provision of Black Start Capability during the years it has taken to clarify the payment mechanisms for the service. Mirant and the other local Black Start Capability providers are entitled to payment for the local Black Start Capability service they have provided since market start, and we understand Mirant's frustration, evidenced by this appeal, at the slow pace of resolving these issues. The tariff requires calculation of payments based on accounting systems used by regulated utilities, but not used by the unregulated generators who provide the local Black Start Capability. The tariff allows the use of "equivalent data," but provides no guidance on what data is "equivalent" to a regulated accounting system. This issue has been the source of the problem, and the Zone J Proposal eliminates the problem for Zone J going forward by stating what the service is worth without reference to regulated accounting calculations. We therefore direct NYISO Staff to make every reasonable effort to bring the parties together promptly to resolve the prior periods payment issues for all local Black Start Capability providers, and to resolve the prospective payment calculation issues for any other zone where a local restoration plan requires the purchase of local Black Start Capability. Staff should report monthly to the Board concerning the status of these issues. Meanwhile, the Board is instructing staff to calculate charges, based on its best understanding of available "equivalent data," and to be prepared to use such calculations for billing purposes. If the Board is not satisfied that a settlement of the prior period payment issues among all the parties has been reached, it will direct the Staff to post bills which include charges and payments for prior period black start service based on their best understanding of the tariff requirement and the best data available.

The appeal is denied. NYISO Staff is directed to file the Zone J Proposal as a tariff amendment with FERC.

Issued: 15 November 2005