UNITED STATES OF AMERCIA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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

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MOTION TO ANSWER AND ANSWER OF THE NRG COMPANIES

Pursuant to Rules 101(e), 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"),[1] the NRG Companies (collectively, "NRG")[2] file this brief motion for leave to answer and answer, in response to the answer submitted by ISO New England, Inc. ("ISO-NE") on May 25, 2011 in the above-captioned docket ("ISO Answer").

I. ANSWER

We file this brief answer to address the puzzling assertion by ISO-NE in its Answer that the NRG Companies are seeking extraordinary relief in asking the ISO to follow the requirements of its Open Access Transmission Tariff ("Tariff") regarding the schedule on which the ISO must study and update its existing Black Start Service rates. The issue raised in NRG's Protest is painfully simple: is ISO-NE required 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?

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[1] 18 C.F.R. §§ 385.101(e), 385.212 and 385.213 (2010).

[2] 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.

The plain language of the ISO-NE Tariff says the answer to this question is "yes." Section II.B of Schedule 16 states that ISO-NE "will" re-evaluate the existing rate, and will make a new filing on July 1, 2011, that "will either (i) justify the continuation of the $4.58 for the '[component]' value, or (ii) propose a change to the '[component]' value for the years following 2011." (Emphasis added.) The use of the word "will" in the Tariff language means that this obligation is not discretionary, and absent a waiver from the Commission, the ISO-NE is required to carry out this analysis on schedule. Further, Section II.B.ii directs the ISO to put the modified rate into effect "for the years following 2011," *i.e.*, for calendar year 2012 and beyond. The Commission's previous order approving the current Black Start Service rate specifically ordered ISO-NE to re-justify its rates periodically, and the ISO complied by filing to include this requirement in its tariff. *See New England Power Pool*, 102 FERC ¶ 61,176 (2003). The Commission stated that the rates adopted in that order "would then remain at that level, pending periodic review and adjustment." *Id.* at P 7.

Nowhere does the ISO Answer (i) rebut NRG's interpretation of the plain language of the Tariff; (ii) explain how its conduct meets the obligations of the Tariff; or (iii) explain why it may now disregard the Commission's prior directives and its own Tariff language to review the existing rates.

In fact, the ISO Answer omits any reference to the relevant Tariff requirement or the Commission's prior case law. Instead, the Answer raises a series of specious

arguments apparently designed to deflect the Commission's attention from the simple issue of tariff interpretation that forms the heart of NRG's Protest. We respond to these additional arguments (very) briefly. *First*, NRG in no way bears the burden of proof in this proceeding. NRG is not seeking the imposition of a specific rate; merely that the ISO conduct the analysis plainly required by Section II.B and implement the results for 2012[3]. *Second*, NRG does not dispute 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[4], we expect that costs have increased and thus the Black Start rates should increase – but we are not asking the Commission to pre-judge the outcome of an ISO analysis that has not yet been conducted.[5] *Third*, our request that the ISO follow directly-applicable Tariff requirements is well within the scope of this

[3] ISO's Answer appears to be out of step with the project already underway to evaluate Black Start Service costs, as reflected in the presentation to the NEPOOL Transmission Committee on May 24, 2011 in which ISO indicated that emphasis would be placed on gathering cost data for units that currently are in the Black Start program (at 3). At the meeting, ISO staff indicated they anticipated results of that survey by August. Certainly, that would allow sufficient time to implement a revised rate for 2012. http://www.iso-ne.com/committees/comm_wkgrps/trans_comm/tariff_comm/mtrls/2011/may242011/tcc_052411_sched_16.ppt

[4] ISO's Answer (at 5) notes that "Black Start compensation is designed to cover only the incremental costs of a generating unit that are associated with providing Black Start service (i.e., the costs that would not otherwise be incurred but for the provisions of Black Start service)." The NERC physical and cyber security measures are in fact incremental to Black Start service, by virtue of the designation of Black Start resources as 'critical facilities,' while most resources not providing Black Start services would not be so designated and thus would not have the additional security requirements.

[5] As noted previously, that analysis is already underway, and there is no 'inefficiency' created by completing that analysis promptly, establishing the appropriate rate for 2012, and at the same time continuing the major overhaul to the Black Start Service compensation mechanism that the ISO is embarked upon for the specific purpose of inducing *new* resources to enter the Black Start program.

proceeding and is in no way procedurally improper. It is the ISO that is seeking permission to ignore the requirement that it placed into its own Tariff to conduct an analysis of existing Black Start Service rates, and implement the results of that analysis starting in 2012. For these reasons, our Protest raised important and legitimate issues that should be considered by the Commission.

II. MOTION FOR LEAVE TO ANSWER.

The ISO-NE Answer ignores the plain language of ISO's own Tariff, and instead raises specious claims that NRG's protest was not procedurally proper. This may be good litigation strategy, but certainly does not shed any light on the issues underlying NRG's protest. NRG submits that there is thus good cause to consider this brief response.[6] We recognize that, as a general matter, the Commission's rules prohibit answers to answers.[7] However, where answers raise issues of dubious relevance, as is the case here, justice requires that the other parties to the proceeding be given the chance to respond and provide information helpful in developing the record,[8] to create a complete record,[9] and this response is necessary to re-focus attention on the actual issues in this proceeding.

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[6] *See* 18 C.F.R. § 385.213(a)(2) – (a)(3) (2010).

[7] *Id.*

[8] *See, e.g., CNG Transmission Corp.*, 89 FERC ¶ 61,100 at 61,287 n.11 (1999); *see also New Energy Ventures, Inc. v. Southern California Edison Co.*, 82 FERC ¶ 61,335 at 62,323 n.1 (1998); *Tennessee Gas Pipeline Co.*, 92 FERC ¶ 61,009 at 61,016 (2000).

[9] *See, e.g., Pacific Interstate Transmission Co.*, 85 FERC ¶ 61,378 at 62,444 (1998), *reh'g denied*, 89 FERC ¶ 61,246 (1999); *see also PJM Interconnection, L.L.C.*, 84 FERC ¶ 61,224 at 62,078 (1998).

III. CONCLUSION

Wherefore, the NRG Companies respectfully request that the Commission accept this brief answer and direct the ISO-NE to develop and implement an updated rate for Black Start Service, to be effective January 1, 2012.

Respectfully submitted,

May 27, 2011

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Certificate Of Service

I hereby certify that I have served a copy of the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Princeton, New Jersey this 27th day of May, 2011

_/s/ *Gretchen Hunt*_____
Gretchen Hunt