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May 2, 2014

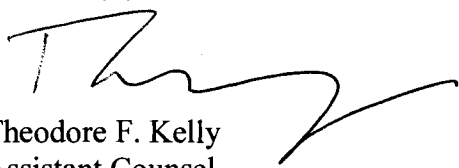
SENT VIA ELECTRONIC FILING
Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Room 1-A209
Washington, D.C. 20426

Re: Docket No. ER14-1711-000 – Application of TC Ravenswood, LLC to
Implement a Reliability Oil Burn Service Cost of Service Rate Schedule

Dear Secretary Bose,

For filing, please find the Notice of Intervention and Protest of the New York State Public Service Commission in the above-entitled proceeding. Should you have any questions, please feel free to contact me at (518) 473-4953.

Very truly yours,


Theodore F. Kelly
Assistant Counsel

Attachment

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Application of TC Ravenswood,)
LLC to Implement a Reliability) Docket No. ER14-1711
Oil Burn Service Cost of)
Service Rate Schedule)

NOTICE OF INTERVENTION AND PROTEST
OF THE NEW YORK STATE PUBLIC SERVICE COMMISSION

NOTICE OF INTERVENTION

On April 11, 2014, TC Ravenswood, LLC (Ravenswood) filed an Application to Implement a Reliability Oil Burn Service Cost of Service Rate Schedule (Ravenswood Application), along with a proposed Rate Schedule (Ravenswood Schedule). The New York State Public Service Commission (NYPSC) hereby submits its Notice of Intervention and Protest in the above-captioned proceeding pursuant to the Federal Energy Regulatory Commission's (FERC or Commission) Combined Notice of Filings, issued on April 16, 2014, and Rules 211 and 214 of the Commission's Rules of Practice and Procedure.¹

Copies of all correspondence and pleadings should be addressed to:

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¹ 18 C.F.R. §§385.211 and 385.214(a)(2).

BACKGROUND

New York State Public Service Law (PSL) assigns the NYPSC responsibility for, inter alia, ensuring safe and adequate service for ratepayers at just and reasonable rates.² In order to fulfill that responsibility, protect New York's citizens, and protect New York ratepayers against power system failures, the NYPSC participates in Commission proceedings where appropriate to protect system reliability and promote public policy and ratepayer interests. As described infra, the Ravenswood Application raises substantial concerns with respect to system reliability and rate impact. The Ravenswood Schedule is procedurally improper, duplicative of existing tariff, and unjust and unreasonable.

The New York State Reliability Council (NYSRC) is the Commission-approved organization responsible for promoting and preserving the reliability of the New York State power system by setting and enforcing Reliability Rules. The New York Independent System Operator (NYISO), which operates New York's electric system (New York Control Area or NYCA), is responsible for implementing these rules. Participants in NYISO markets may be required to take action to comply with the rules under the Reliability Rules or NYISO procedures or tariffs.

² New York Public Service Law §65.

NYSRC Reliability Rule I-R3 is designed to reduce the risk of loss of electric load in the New York City zone. NYISO's implementation of the rule requires that certain generators fulfill minimum oil burn requirements.

Ravenswood owns the Ravenswood Generating Station (Ravenswood Station) in Queens, New York, which consists of 21 gas-fired generating units. Three of those units, identified as Units 10, 20, and 30, are capable of burning No. 6 fuel oil. For the most part, Ravenswood fuels those units with natural gas. However, Ravenswood sometimes employs fuel oil in those units, either because the use of fuel oil is more economical than the use of natural gas or to comply with Reliability Rule I-R3. The NYISO or Consolidated Edison Company of New York, Inc. (Con Edison) tells Ravenswood when to use fuel oil for I-R3 compliance and pays certain resulting costs. Ravenswood describes this service as Reliability Oil Burn Service.

Generators are paid for Reliability Oil Burn Service based on a provision in the NYISO Market Administration and Control Area Services Tariff (NYISO Tariff), which contains a rate schedule applicable to generating units burning alternate fuel in compliance with instructions under Rule I-R3.³ The rate

³ NYISO Market Administration and Control Area Services Tariff § 4.1.9.

schedule is designed to compensate unit owners for additional costs associated with Reliability Oil Burn Service.⁴

Four years ago, Ravenswood engaged in a dispute with the NYISO over the sufficiency of the payments provided by that rate schedule. As part of that dispute, Ravenswood filed two separate requests with the Commission: a complaint under Federal Power Act (FPA) Section 206 alleging that the rates provided in the NYISO Tariff were not just and reasonable;⁵ and an application requesting that the Commission implement a proposed rate schedule, not as part of the NYISO Tariff but as a separate tariff specific to the Ravenswood Station.⁶

In October 2010, the Commission issued an Order denying Ravenswood's application for its own rate schedule, holding that the proposed schedule was duplicative of the NYISO Tariff, the exclusive tariff for market services in NYCA.⁷ Ravenswood requested rehearing of this decision, but in the

⁴ Id.

⁵ Docket No. EL10-70, TC Ravenswood, LLC v. New York Independent System Operator, Inc., Complaint of TC Ravenswood, LLC (filed May 27, 2010).

⁶ Docket No. ER10-1359, Application of TC Ravenswood, LLC to implement a Minimum Oil Burn Service Cost of Service Recovery Rate Schedule, Letter of TC Ravenswood, LLC (filed May 27, 2010).

⁷ Docket No. ER10-1359, 133 FERC ¶ 61,087, Order Rejecting Proposed Rate Schedules (issued October 27, 2010). In litigation before the D.C. Circuit Court of Appeals, the Commission described this order as a non-final "Initial Order." TC Ravenswood, LLC v. Federal Energy Regulatory Commission, No. 12-1434, Brief for Respondent (filed December 6, 2013 D.C. Circuit).

interim settled its dispute with the NYISO and Con Edison (2011 Settlement).⁸ In view of the settlement, the Commission issued an Order dismissing the request for rehearing as moot.⁹ Ravenswood subsequently filed suit in the D.C. Circuit Court of Appeals, challenging both orders; that litigation is currently ongoing.¹⁰

The 2011 Settlement provided for an amendment to the NYISO Tariff allowing for additional compensation to the providers of Reliability Oil Burn Service through Implementation Agreements. It also detailed an Implementation Agreement that the NYISO and Ravenswood entered into governing payments for Reliability Oil Burn Service between May 1, 2011 and April 30, 2014. That agreement has now expired and no new agreement has been signed. On April 11, 2014, Ravenswood filed a proposed rate schedule in an attempt to receive compensation for Reliability Oil Burn Service outside of the NYISO Tariff.

DISCUSSION

I. The Commission Should Reject the Ravenswood Application Because the Ravenswood Schedule Is Duplicative of the NYISO Service Tariff

The Commission has stated that independent system operators (ISOs) have the authority to set rates and policies

⁸ Docket No. EL10-70, Offer of Settlement (filed April 19, 2011).

⁹ Docket No. ER10-1359, 140 FERC ¶ 61,214, Order Dismissing Rehearing as Moot (issued September 20, 2012).

¹⁰ TC Ravenswood, LLC v. Federal Energy Regulatory Commission, No. 12-1434 (D.C. Circuit).

for transactions on their jurisdictional system.¹¹ A utility that participates in markets established by an ISO has chosen to operate under that ISO's tariff.¹² In response to Ravenswood's previous attempt to file its own rate schedule for Reliability Oil Burn Service, the Commission issued an initial decision rejecting the schedule because it was duplicative of the NYISO Tariff and because it covered a Market Service falling under NYISO's "exclusive purview."¹³

The Commission has designated the NYISO as the independent system operator for NYCA. The NYISO Tariff, which the Commission has accepted, governs transactions in NYCA.

Section 4.1.2 of the NYISO Services Tariff states:

The 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 NYCA. Each Market Participant that sells or purchases Energy, including Demand Side Resources, Special Case Resources and Emergency Demand Response

¹¹ See, e.g., 89 FERC ¶ 61,285 Regional Transmission Organizations, Final Rule at 421 (issued December 20, 1999).

¹² Cal. Indep. Sys. Operator Corp., 129 FERC ¶ 61,241, at ¶ 102 (2009).

¹³ Docket No. ER10-1359, 133 FERC ¶ 61,087, Order Rejecting Proposed Rate Schedules (issued October 27, 2010). As described supra, Ravenswood subsequently submitted a request for rehearing that was dismissed as moot and is currently challenging the orders at the D.C. Circuit, where the Commission has described the order rejecting the rate schedule as a non-final "Initial Order." TC Ravenswood, LLC v. Federal Energy Regulatory Commission, No. 12-1434, Brief for Respondent (filed December 6, 2013 D.C. Circuit).

Program participants, sells or purchases Capacity, or provides Ancillary Services in the ISO Administered Markets utilizes Market Services and must take service as a Customer under this Tariff . . . (emphasis added)

Ravenswood is a participant in the NYISO's markets.

Its sales of energy and ancillary services are therefore subject to the terms of the NYISO Tariff. Reliability Oil Burn Service is one such ancillary service. The NYISO Tariff specifically provides for it in Section 4.1.9, which sets rules for cost recovery for "burning the required alternate fuel when Local Reliability Rule I-R3 or I-R5 is invoked." Since the NYISO tariff governs the provision of Reliability Oil Burn Service in the New York Control Area, the Ravenswood Schedule, like the schedule rejected by the Commission in 2010, is duplicative and should be rejected.

II. The Commission Should Reject the Ravenswood Application Because It Represents an Improper Attempt to Circumvent Other Dispute Resolution Procedures

A. Ravenswood Is Attempting to Circumvent the Negotiation and Dispute Resolution Procedures Provided in the 2011 Settlement

Where parties resolve proceedings before the Commission by entering into settlement agreements, the Commission should expect them to comply with the terms of those agreements. In particular, where the agreement contains terms governing resolution of future disputes, the Commission should not allow parties to circumvent those requirements. The

Commission should step in only as provided by the settlement or where parties demonstrate that they have attempted to follow its requirements but have been unable to reach an agreement.

The 2011 Settlement contains detailed provisions regarding dispute resolution processes for future disagreements.¹⁴ In these provisions, Ravenswood agreed to negotiate in good faith for an agreement commencing May 1, 2014.¹⁵ The 2011 Settlement also permitted parties to seek assistance from the Commission's Dispute Resolution Service.¹⁶ If no agreement was reached, each party could file an unexecuted Implementation Agreement for the Commission's review and acceptance.¹⁷ Even if Ravenswood can demonstrate that it negotiated in good faith, the filing of the Ravenswood Application rather than an unexecuted Implementation Agreement represents a failure to follow the dispute resolution guidelines outlined in the 2011 Settlement. For this reason, the Commission should reject the Ravenswood Application and encourage Ravenswood to instead follow that process.

¹⁴ Docket No. EL10-70, Offer of Settlement (filed April 19, 2011).

¹⁵ Id.

¹⁶ Id.

¹⁷ Id. On April 30, 2014, the NYISO filed an unexecuted Implementation Agreement pursuant to this provision. Docket No. ER14-1822, New York Independent System Operator, Inc. Filing of Unexecuted Minimum Oil Burn Agreement with TC Ravenswood, LLC, Request for Waiver of 60-Day Notice Period, Request for Expedited Action, and Request for Settlement Judge or Other Dispute Resolution Services.

B. Ravenswood Is Attempting to Circumvent the Stakeholder Process for Tariff Revisions

The Commission has consistently encouraged parties to attempt to resolve tariff-related disputes through an ISO's stakeholder processes before filing a complaint with the Commission. This serves several purposes: it promotes efficient use of Commission resources by only requiring Commission intervention for disputes that cannot be resolved at a local level;¹⁸ it ensures that all interested stakeholders are fully aware of the proposal and have the opportunity to participate in its consideration;¹⁹ it creates a full record for any eventual Commission consideration;²⁰ and it allows stakeholders to choose in the first instance between the variety of permissible market designs, with the Commission serving as a backstop preventing or reversing decisions that will lead to unjust or unreasonable rates.²¹ Where parties have come to the Commission without first engaging in the stakeholder process, the Commission has

¹⁸ FirstEnergy Solutions Corp. v. PJM Interconnection, L.L.C., 138 FERC 61,158 at 61,642 (2012).

¹⁹ New York Independent System Operator, Inc., 126 FERC 61,046 at 61,411 (2009).

²⁰ ISO New England, Inc., 128 FERC 61,266 at 62,261, 62,263-64 (2009).

²¹ 126 FERC 61,046 at 61,411.

regularly dismissed their complaints or otherwise referred their concerns back to the stakeholder process.²²

In 2011, Ravenswood worked with the NYISO to reach a settlement that included revisions to the NYISO Tariff. To the extent that Ravenswood believes that the NYISO Tariff still fails to provide appropriate compensation for Reliability Oil Burn Service, and that other remedies are not appropriate, it should work through the stakeholder process to seek alterations to the NYISO Tariff rather than attempting to unilaterally impose its own preferred solution. For this reason, the Commission should reject the Ravenswood Application.

C. Ravenswood Is Attempting to Circumvent the FPA Section 206 Process for Commission Relief

Where a dispute cannot be resolved through the stakeholder process, or where an entity has performed services and received payments under a schedule it believes is unjust or unreasonable, the Federal Power Act provides a method for Commission review, described in Section 206. Under Section 206 and the Commission's Rules of Practice and Procedure, a party may submit a complaint and request relief including tariff amendments and back payment. Ravenswood used this method to protest insufficient payments for Reliability Oil Burn Service

²² Southwest Power Pool, Inc., 141 FERC 61,048 at 61,274 (2012); 138 FERC 61,158 at 61,642; 126 FERC 61,046 at 61,411; 128 FERC 61,266 at 62,261, 62,263-64.

under the NYISO Tariff in 2010 and successfully reached a settlement with the NYISO. To the extent that other dispute resolution mechanisms are unsuccessful, Ravenswood could again use the Section 206 process to request appropriate compensation. The Commission should not allow Ravenswood to file its own rate schedule in order to circumvent this process.

III. The Commission Should Reject the Ravenswood Schedule Because It Contains Unjust and Unreasonable Rates

A. Ravenswood's Proposed Demand Charge Represents an Unjust and Unreasonable Increase from the Rate Charged Under the 2011 Settlement

The Ravenswood Schedule includes a Demand Charge of almost five million dollars per year. This represents an increase of more than forty percent from the equivalent charge in the final year of the 2011 Settlement.²³ It also stands in stark contrast to the annual increases provided in the 2011 Settlement, of less than three percent per year.²⁴

Ravenswood fails to sufficiently justify this increase. In fact, it admits that a significant portion of the Demand Charge is based on estimation and speculation about the costs of new contracts for certain services.²⁵ It would be unjust and unreasonable to allow such a large increase in a fee

²³ For the period May 1, 2013 to April 30, 2014, Ravenswood received approximately three and a half million dollars. Docket No. EL10-70, Offer of Settlement (filed April 19, 2011).

²⁴ Id.

²⁵ Ravenswood Application at App'x D, Ex. TCR-1 20-21.

intended to compensate a generator for its costs without stronger evidentiary basis for the increase, particularly considering that the Ravenswood Schedule gives customers no right to reduce or recover payment if actual costs are lower than expected. For this reason, the Commission should reject the Ravenswood Schedule.

B. Both Option 1 and Option 2 Unreasonably Favor Ravenswood

Ravenswood explains in its Application that if it uses fuel oil for more than ten percent of its heat input over a three year period or more than fifteen percent of its heat input in one year, it will become permanently subject to the Environmental Protection Agency's Mercury and Air Toxics Standards (MATS) rule. Ravenswood asserts that its compliance costs if subject to the MATS rule will be approximately sixteen million dollars per year. Ravenswood states that it believes Reliability Oil Burn Service customers should pay that cost if MATS compliance is required. The Ravenswood Schedule presents customers with two options for dealing with this possibility.

If customers select Option 1, Ravenswood guarantees Reliability Oil Burn Service, but if and when the MATS rule is triggered customers must pay full compliance costs. This option also allows Ravenswood to receive all of the benefits while paying none of the costs, since Ravenswood could trigger the MATS rule by burning fuel oil for economic reasons and then pass

costs on to customers. The ability to burn an unlimited amount of fuel oil economically benefits Ravenswood. MATS compliance may also provide other collateral benefits to Ravenswood. A rate that passes all costs to customers while providing benefits to Ravenswood is unjust and unreasonable.

Option 2 allows Ravenswood to stop providing Reliability Oil Burn Service without warning and solely on its own discretion. If customers select Option 2, they will not be responsible for any MATS compliance costs because Ravenswood will avoid triggering the rule. Because Reliability Oil Burn Service is important for the reliability of the New York City electric system, this option is likely to be unacceptable to Ravenswood customers. Furthermore, Option 2 allows Ravenswood to use part or all of its permitted ten percent usage of fuel oil in order to make profits, rather than to provide reliability. Reliability requires advance knowledge of what resources are available; Option 2 gives customers no way to predict whether Ravenswood will be available. Its terms are not just or reasonable policies for a reliability service.

IV. The Commission Should Direct Ravenswood to Provide Reliability Oil Burn Service Under the NYISO Tariff or Under the 2011 Settlement

In its Application, Ravenswood states that absent a Commission ruling or a new agreement with NYISO approved by the Commission, it will be unable to legally provide Reliability Oil

Burn Service after April 30, 2014.²⁶ In dismissing the Ravenswood Application, the Commission should correct Ravenswood's erroneous statement of the law. Further, because Ravenswood's Reliability Oil Burn Service is important for system reliability and because Ravenswood agreed as a participant in NYISO markets to support the NYISO's compliance with reliability rules, the Commission should direct Ravenswood to continue providing Reliability Oil Burn Service.

There is no precedent for Ravenswood's assertion that market participants must file their own rate schedules before providing services covered in the tariff of the jurisdictional ISO. It is the regular practice of the Commission to approve ISO tariffs that contain exclusive rate schedules for a variety of services that will be provided by a number of market participants in the ISO's control area.²⁷ Ravenswood itself has been providing Reliability Oil Burn Service for years without having its own rate schedule.

The NYISO Tariff provides a rate schedule for Reliability Oil Burn Service that applies with or without an Implementation Agreement in place. Given the expiration of the Implementation Agreement, Ravenswood should continue to provide Reliability Oil Burn Service under the NYISO Tariff until a new

²⁶ Ravenswood Application at 2-3, 8.

²⁷ See, e.g., 89 FERC ¶ 61,285 Regional Transmission Organizations, Final Rule at 421 (issued December 20, 1999).

agreement is reached. Alternately, the 2011 Settlement could be extended on an interim basis to ensure that Ravenswood continues to receive appropriate payment for costs associated with Reliability Oil Burn Service. If Ravenswood refuses to provide Reliability Oil Burn Service, the Commission should direct it to do so pursuant to the Commission's authority to enforce compliance with reliability rules.²⁸

CONCLUSION

Despite having notice well in advance of the previous agreement's expiration, Ravenswood failed to use the dispute resolution processes listed in the agreement or file with the Commission sufficiently far in advance of that deadline. Instead, Ravenswood filed a procedurally improper application just before the deadline and requested a Commission decision in less than a month.

The Ravenswood Application requests that the Commission authorize an unjustified rate increase of more than forty percent. Based upon its papers, this request apparently has no cost basis other than increasing Ravenswood's profit opportunity. Options 1 and 2 represent attempts by Ravenswood to further exploit its market power by proposing manifestly unfair solutions to a potential future environmental compliance issue.

²⁸ 16 U.S.C. 824o(b).

Furthermore, Ravenswood has threatened to stop providing the important reliability service at issue here unless its demands are met. Ravenswood's decision to issue this threat, knowing that the NYISO depends on its Reliability Oil Burn Service, demonstrates a reckless disregard for the public interest in system reliability.

For all of the above reasons, the Commission should reject the Ravenswood Application. The Commission should also instruct Ravenswood to continue providing Reliability Oil Burn Service under the NYISO Tariff.

Respectfully submitted,

Handwritten signature of Kimberly A. Harriman in black ink, with the initials 'SH' written at the end of the signature.

Kimberly A. Harriman
General Counsel
Public Service Commission
of the State of New York
By: Theodore F. Kelly
Assistant Counsel
3 Empire State Plaza
Albany, NY 12223-1305
(518) 473-4953

Dated: May 2, 2014
Albany, New York

CERTIFICATE OF SERVICE

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

Dated: May 2, 2014
Albany, New York



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