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May 10, 2007

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

Re: Docket No. ER07-748-000 - Tariff Revisions to
Establish Margin Restoration Payments and Recovery
Mechanisms

Dear Secretary Bose:

For filing, please find the Request for Permission to Respond and Response of the State of New York Public Service Commission in the above-entitled proceeding. Should you have any questions, please feel free to contact me at 518-486-2652.

Very truly yours,

Saul A. Rigberg
Assistant Counsel

Attachment

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System)
Operator, Inc.) Docket No. ER07-748-000

**REQUEST FOR PERMISSION TO RESPOND AND RESPONSE OF THE PUBLIC
SERVICE COMMISSION OF THE STATE OF NEW YORK TO PROTEST OF
KEYSPAN-RAVENSWOOD, LLC**

On April 26, 2007 Keyspan-Ravenswood, LLC (Ravenswood) submitted a protest to the New York Independent System Operator, Inc.'s (NYISO) April 13, 2007 Filing of Tariff Revisions to Establish Margin Restoration Payments, and Recovery Mechanisms, for Units Complying with a Specific Local Reliability Rule Tariff Filing). In accordance with Rule 213(a)(2) of the Federal Energy Regulatory Commission's (Commission's) Rules of Practice and Procedure, the New York State Public Service Commission (NYPSC) requests leave to respond, and responds, to Ravenswood's protest.¹

REQUEST FOR LEAVE TO SUBMIT RESPONSE

The NYPSC recognizes that the Commission generally discourages responses to protests. However, the Commission has allowed responses when they help to clarify complex issues, provide additional information that will assist the Commission, correct inaccurate statements, or are otherwise helpful in

¹ The NYPSC filed a Notice of Intervention on April 25, 2007.

developing the record in a proceeding.² The NYPSC's response meets this standard because it is submitted for the limited purpose of clarifying certain factual matters and correcting inaccurate or misleading statements in the protest, thereby assisting the Commission in its review and consideration of the issues presented in this proceeding.

SUMMARY

The purpose of the Tariff Filing is to establish margin restoration payments for units that are re-dispatched from natural gas to more expensive fuel oil under Local Reliability Rule I-R3 of the New York State Reliability Council (the "Minimum Oil Burn Rule").³ Ravenswood asserts that the Tariff Filing fails to implement fully the principle of incremental, or "but-for" compensation in that certain incremental costs incurred by Minimum Oil Burn Rule generators are wrongly omitted. Ravenswood claims that although the Tariff Filing acknowledges that costs in maintaining "storage and delivery infrastructure required to be able to burn an

² See, e.g., *Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.*, 93 FERC ¶ 61,017 at 61,036 (2000) (accepting an answer that was "helpful in the development of the record..."); *New York Independent System Operator, Inc.*, 91 FERC ¶ 61,218 at 61.797 (2000) (allowing "the NYISO's Answer of April 27, 2000, [because it was deemed] useful in addressing the issues arising in these proceedings..."); *Central Hudson Gas & Electric Corp.*, 88 FERC ¶ 61,381 (1999) (accepting prohibited pleadings because they helped to clarify the issues and because of the complex nature of the proceeding).

alternative fuel at any given time" are appropriately recoverable costs,⁴ the Tariff Filing makes no provision for compensation of such costs, stating instead that further "design work" is needed and stakeholders have not "agree[d] on its necessity and its design."⁵ Ravenswood insists that costs that would not be incurred but for a generator maintaining its fuel switching capabilities to respond under the Minimum Oil burn rules should be recoverable on the same basis as the incremental operating costs recoverable under the filed proposal. It asks that the Commission require the NYISO to file a compliance tariff that includes these costs by June 1, 2007.

The protest should be denied. Ravenswood misunderstands the scope of the Tariff Filing and misstates the Tariff Filing's observations about the appropriateness of the costs. Simply put, no agreement among the stakeholders exists that oil storage and delivery infrastructure costs require separate recovery outside existing market mechanisms. For instance, some market participants assert that Ravenswood is seeking recovery not of "but for" costs but of costs incurred for its economic benefit.

³ Local Reliability Rule I-R3, "Loss of Generator Gas Supply (New York City & Long Island)," NYSRC Reliability Rules (Version 16, March 3, 2006), at 67-68.

⁴ Tariff Filing at 7.

⁵ *Id.*

DISCUSSION

A. Ravenswood Improperly Seeks To Broaden The Scope Of The Filing.

Ravenswood is a member of and participates in both the NYISO's Business Issues Committee and the Management Committee. These entities unanimously approved the proposal, which was carefully crafted to preserve affected generators' margin payments when oil is more expensive than gas.⁶ The scope of the Tariff Filing approved by the market participants simply did not include the type of compensation mechanisms that Ravenswood raises. Rather, its purpose is to permit generators to recover the profit they would have made had they burned lower price gas instead of the required higher price oil.

B. Contrary To Ravenswood's Assertions, The Tariff Filing Does Not Indicate Support For Ravenswood's Position.

Ravenswood misstates the NYISO's remarks about recovery of other costs. This is what the Tariff Filing actually says on the subject:

The NYISO recognizes that this proposal does not compensate I-R3 specified generating facilities for the storage and delivery infrastructure required to be able to burn an alternative fuel at any given time. The NYISO and its stakeholders are still pursuing a design mechanism to capture these costs. *Complicating this effort is that the capability to operate a unit using an alternative fuel provides economic opportunities when the primary fuel is unavailable or*

⁶ *Id.* at 9.

*less economic than the alternative fuel. Design options such as compensating only the cost to maintain this equipment have been explored but no final solutions have been reached. The NYISO is committed to bringing this unresolved issue back to its stakeholders for further work over the next several months. The NYISO continues to consider this request in stakeholder meetings and will propose a recovery mechanism for fixed costs if and when it and its stakeholders agree on its necessity and its design.*⁷

As is evident, the NYISO did not state support for Ravenswood's position; indeed, the NYISO indicated that it and a majority of stakeholders have not yet agreed on the need for such a recovery mechanism. The NYISO further acknowledged that a key impediment to developing a recovery mechanism is separating the economic benefits to the generator from the legitimate "but for" costs.

C. Ravenswood May Have Benefited Economically From These Facilities.

The costs Ravenswood is requesting recovery for may not be "but for" costs. Rather, generators have motivation to install (or purchase) and maintain these facilities because there is an economic benefit in doing so. In addition, generators must maintain these facilities to qualify for an interruptible gas rate, which is another economic benefit.

In fact, it is possible that over the years Ravenswood has enjoyed economic benefits from those facilities sufficient to have paid for themselves many times

⁷ *Id.* at 7; emphasis added.

over. The bottom line is that Ravenswood has not made a compelling case that there is a need for recovery outside of existing market mechanisms.

CONCLUSION

For the reasons discussed above, the protest of Ravenswood should be denied because it raises matters outside the scope of the Tariff Filing, might unjustly enrich Ravenswood, and is not in the public interest.

Respectfully submitted,

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New York Public Service Commission

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Dated: May 10, 2007
Albany, New York