

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE  
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June 28, 2010

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. EL10-70-000 - TC Ravenswood, LLC v.  
New York Independent System Operator, Inc.

Dear Secretary Bose:

For filing, please find the 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) 474-1585.

Very truly yours,

Alan T. Michaels  
Assistant Counsel

Attachment

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

TC Ravenswood, LLC )  
 )  
 v. ) Docket No. EL10-70-000  
 )  
New York Independent System )  
Operator, Inc. )

PROTEST OF THE NEW YORK STATE PUBLIC SERVICE COMMISSION

BACKGROUND AND INTRODUCTION

On May 27, 2010, TC Ravenswood, LLC (Ravenswood or Complainant) filed a Complaint<sup>1</sup> with the Federal Energy Regulatory Commission (FERC or Commission) against the New York Independent System Operator, Inc. (NYISO). Within the Complaint, Ravenswood seeks reimbursement under Rule 4.1.7a<sup>2</sup> of the NYISO Market Administration and Control Area Services Tariff (Services Tariff) of certain costs allegedly incurred in complying with Local Reliability Rule I-R3 (commonly referred to

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<sup>1</sup> EL10-70-000 TC Ravenswood, LLC v. New York Independent System Operator, Inc., Complaint of TC Ravenswood, LLC and Request for Confidential Treatment, May 27, 2010, (hereinafter "Complaint").

<sup>2</sup> NYISO FERC Electric Tariff, Original Volume No. 2, Fourth Revised Sheet No. 87.02, Section 4.1.7a, available at [http://www.nyiso.com/public/webdocs/documents/tariffs/market\\_services/services\\_tariff.pdf](http://www.nyiso.com/public/webdocs/documents/tariffs/market_services/services_tariff.pdf).

as the Minimum Oil Burn (MOB) Rule).<sup>3</sup> The New York State Reliability Council (NYSRC) established the MOB Rule to assure electric reliability in the New York City area during high-load periods.<sup>4</sup> Within its Complaint, Ravenswood seeks reimbursement for barging and delivery costs, off-site fuel storage costs, and incremental operation and maintenance costs associated with the delivery and handling of fuel oil.<sup>5</sup> The Complainant characterizes these items as "variable costs" that should be reimbursable under the local reliability rules. Ravenswood seeks approximately \$2.5 million plus interest in reimbursements for costs of these categories incurred between May and September of 2009.<sup>6</sup>

The New York State Public Service Commission (NYPSC) submits this Protest to the Complaint of TC Ravenswood, LLC under Rule 211 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure.<sup>7</sup> Within this Protest, the NYPSC respectfully incorporates the background information contained

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<sup>3</sup> NYSRC Reliability Rule I-R3, Version 16 (Mar. 3 2006), available at <http://www.nysrc.org/pdf/Reliability%20Rules%20Manuals/RRManualVer16.pdf>.

<sup>4</sup> Ravenswood Complaint at 6-7.

<sup>5</sup> *Id.* at 16-22.

<sup>6</sup> *Id.* at 13-15, 23-24.

<sup>7</sup> 18 CFR 385.211.

in the Motion to Intervene and Protest of the New York Transmission Owners and the City of New York in Docket No. ER10-1359-000.<sup>8</sup>

### SUMMARY

Contrary to its assertions, the costs which Ravenswood seeks to recover are excluded from reimbursement under Rule 4.1.7a as a matter of established law. Furthermore, as these same issues have been previously addressed by both the Commission and a federal court, Ravenswood is or should be aware that these costs are not reimbursable under this rule. By reasserting the same argument, after receiving an unfavorable decision only thirteen months ago, Ravenswood seeks to collaterally attack this precedent. Accordingly, the Commission should deny Ravenswood's Complaint.

### DISCUSSION

#### Ravenswood May Not Seek Reimbursement Under the NYISO Services Tariff Rule 4.1.7a, Because This Provision Does Not Allow the Recovery of Infrastructure-Related Costs

Rule 4.1.7a states that "Generating units designated ... as being required to burn an alternate fuel at designated minimum

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<sup>8</sup> Motion to Intervene and Protest, June 17, 2010, at 2-3 (hereinafter "TO & NYC Protest").

levels [in response to Local Reliability Rule I-R3]... shall be eligible to recover the *variable operating costs associated with burning the alternate fuel.*"<sup>9</sup> Contrary to the detailed arguments put forth in the Complaint, the history of this rule's approval clearly establishes that the recoverable "variable operating costs" do not include the delivery, storage, and incremental handling costs sought by Ravenswood.

The record of the rule's approval demonstrates the intent for which it was designed. The NYISO filed comments with FERC in support of revising the Services Tariff to include new section 4.1.7a. In its comments, the NYISO explained that the proposed tariff revision "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."<sup>10</sup> Rather, the tariff revision was designed to compensate generators for the disparity between the price of the alternate fuel burned pursuant to Local Reliability Rule I-

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<sup>9</sup> *Supra*, n.2 (emphasis added).

<sup>10</sup> Docket No. ER07-748-000, New York Independent System Operator, Inc., Filing of Tariff Revisions to Establish Margin Restoration Payments, and Recovery Mechanisms, for Units Complying with a Specific Local Reliability Rule, filed Apr. 13, 2007, p.7. (NYISO Tariff Filing)

R3 and the market price of the primary fuel (natural gas),<sup>11</sup> with the costs to be paid by ratepayers.<sup>12</sup>

Complainant filed a Protest with FERC against approval of the proposed tariff revisions. Ravenswood asserted that despite the NYISO's stated intent to eliminate the economic disadvantage imposed on dual-fuel generators by invocation of the MOB rule, 4.1.7a would still cause "discriminatory results" by failing to allow recovery of all such generators' incremental costs, in violation of the Federal Power Act (FPA).<sup>13</sup> The Protest went on to describe the unreimbursed incremental costs as "storage and deliverability infrastructure," specifically using the example of "barge transportation."<sup>14</sup> Ravenswood argued that these costs should have been covered by the tariff revision because they would not be incurred but for the invocation of the MOB rule.<sup>15</sup>

In accepting the NYISO's tariff revision, FERC specifically rejected the arguments made by Ravenswood. The Commission

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<sup>11</sup> *Id.* at 6. See also, Docket No. ER07-748-000, Astoria Generating Co., L.P., Motion to Intervene and Comments, p.5 n.8 (explaining that the generators understood NYISO's action as "designed to ensure that [a generating] unit's operating margin for the production day at issue is restored").

<sup>12</sup> NYISO Tariff Filing at 7.

<sup>13</sup> Docket No. ER07-748-000, Keyspan-Ravenswood, LLC, Motion to Intervene and Limited Protest, filed Apr. 26, 2007, p.6, citing FPA § 206.

<sup>14</sup> *Id.* at 7.

<sup>15</sup> *Id.*

stated that considerations of infrastructure costs related to the ability to burn an alternate fuel were "beyond the scope of [the] proceeding" and that the NYISO stakeholder process would be the "appropriate mechanism to address these issues."<sup>16</sup>

Ravenswood appealed the Commission's decision to the U.S. Court of Appeals for the District of Columbia. In upholding FERC's approval of the tariff revision just over one year ago, the Court described the Commission's decision as "reasonable and well-reasoned."<sup>17</sup> The Court explained that the exclusion from the tariff revision of the costs sought by Ravenswood were just and reasonable because "such costs were of a different type than those addressed by the proposed amendment."<sup>18</sup> Further, the Court stated that the "Commission reasonably determined that infrastructure compensation implicates distinct 'concerns . . . that are not present with respect to the incremental variable costs of burning oil,' and it reasonably deferred consideration of such compensation for a future proceeding."<sup>19</sup> Addressing

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<sup>16</sup> *N.Y. Indep. Sys. Operator, Inc.*, 119 F.E.R.C. ¶ 61,130, PP 16-17 (2007).

<sup>17</sup> *TC Ravenswood, LLC v. Federal Energy Regulatory Commission*, 331 Fed. Appx. 8, 9, 2009 WL 1455810 (D.C. Cir. 2009)

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 10.

Ravenswood's position, the court found that its arguments to the contrary were "meritless."<sup>20</sup>

In light of the foregoing, it is apparent that Ravenswood has already litigated unsuccessfully to have infrastructure costs associated with burning an alternate fuel included in rule 4.1.7a. Now Ravenswood repackages its same costs and renamed them "variable". However, despite the fact that "variable costs" are not defined in the NYISO Services Tariff of NYSRC Reliability Rules,<sup>21</sup> the prior litigation resolved the definition of "variable operating costs," as used 4.1.7a. Specifically, the costs sought by Ravenswood to be reimbursed have already been deemed excluded.

The overall argument advanced by Ravenswood in its present Complaint is nearly identical to that advanced in its unsuccessful protest before FERC three years ago and reiterated in its defeat before the D.C. Circuit Court only thirteen months ago. While the facility may have changed corporate parents in the interim,<sup>22</sup> counsel has remained consistent.<sup>23</sup> Therefore, when

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<sup>20</sup> *Id.*

<sup>21</sup> Ravenswood Complaint at 13 and n.33.

<sup>22</sup> TransCanada Corp. acquired all of Keyspan/NationalGrid's interest in the facility during the summer of 2008. See <http://www.transcanada.com/3071.html>

<sup>23</sup> See, e.g., Keyspan-Ravenswood Protest at 10; Keyspan-Ravenswood, LLC, Request for Rehearing, FERC Docket No. ER07-

filing its current Complaint, Ravenswood at a minimum should have known that these issues were already resolved before this Commission and before a federal court.

As further illustration of this point, even the arguments within Ravenswood's original Protest and the present Complaint are essentially the same. In Ravenswood's failed Protest, it asserted that the revised rule, if accepted, would violate the FPA by causing economic discrimination against dual-fuel generators that comply with the MOB rule.<sup>24</sup> It emphasized that the "non-discrimination principle is a bedrock requirement of the [FPA]."<sup>25</sup> Complainant now asserts that the MOB Rule, as applied by the NYISO, violates the FPA by putting it at an economic disadvantage relative to its competitors (i.e., economic discrimination).<sup>26</sup> Once again, Ravenswood emphasized that the NYISO's interpretation of the rule violates "the most basic bedrock principles of rate regulation."<sup>27</sup> Functionally,

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748-000, p.18 (June 11, 2007) ("Request for Rehearing"); Corrected Final Brief of Petitioner-Appellant at 1, TC Ravenswood, LLC v. Federal Energy Regulatory Commission, Nos. 07-1278 & 07-1517 (consolidated) (D.C. Cir. Mar. 17, 2009); and Ravenswood Complaint at 26.

<sup>24</sup> Keyspan-Ravenswood Protest at 6. See also Keyspan-Ravenswood Request for Rehearing at 8-10.

<sup>25</sup> Keyspan-Ravenswood Protest at 6.

<sup>26</sup> Ravenswood Complaint at 14.

<sup>27</sup> *Id.* at 11.

the arguments are parallel and seek the same result. However, as explained above, this result - reimbursement of infrastructure costs - is precluded by established precedent.

These Commission and federal court precedents further advised Ravenswood to pursue the NYISO stakeholder process to establish a separate rule allowing for the recovery of these costs.<sup>28</sup> According to other stakeholders, Ravenswood has not to date availed itself of this process.<sup>29</sup>

In short, Ravenswood is seeking to achieve that which was adjudicated before the D.C. Circuit a little more than a year ago. While the claims asserted in the Protest and Complaint are legally distinct (i.e., validity of a rule versus validity of its application) the nature of the claims is precisely the same. Accordingly, Ravenswood's claims should be rejected again.

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<sup>28</sup> See *supra* nn. 16, 19.

<sup>29</sup> TO & NYC Protest at 5.

CONCLUSION

For the reasons noted above, the New York State Public Service Commission respectfully requests that the Commission dismiss TC Ravenswood, LLC's Complaint.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter McGowan". The signature is written in a cursive style with a large initial "P" and "M".

Peter McGowan  
General Counsel  
Public Service Commission  
of the State of New York

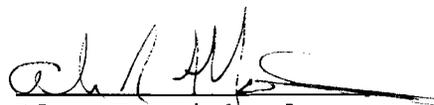
By: Alan T. Michaels  
Assistant Counsel  
3 Empire State Plaza  
Albany, NY 12223-1305  
(518) 474-1585

Dated: June 28, 2010  
Albany, New York

CERTIFICATE OF SERVICE

I, Alan T. Michaels, do hereby certify that I will serve on June 28, 2010, the foregoing Request for Rehearing of the New York State Public Service Commission upon each of the parties of record indicated on the official service list compiled by the Secretary in this proceeding.

Dated: June 28, 2010  
Albany, New York

  
Alan T. Michaels