

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

<b>Application of TC Ravenswood, LLC to</b>	)	
<b>Implement a Reliability Oil Burn Service</b>	)	<b>Docket No. ER14-1711-000</b>
<b>Cost of Service Rate Schedule</b>	)	

**MOTION TO INTERVENE AND PROTEST OF  
THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rules 211 and 214 of the Commission’s Rules of Practice and Procedure,<sup>1</sup> the New York Independent System Operator, Inc. (“NYISO”) respectfully moves to intervene in this proceeding and protests the *Application of TC Ravenswood, LLC to implement a Reliability Oil Burn Service Cost of Service Rate Schedule* (“Application”).<sup>2</sup> The Application should be rejected for the reasons set forth below. Instead of accepting the Application, the Commission should, consistent with the NYISO’s pending request in Docket No. ER14-1822-000,<sup>3</sup> accept the unexecuted service agreement submitted in that proceeding. It should also direct TC Ravenswood, LLC to address its concerns through negotiations with the NYISO, as requested in ER14-1822-000, and via the NYISO’s stakeholder process.

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<sup>1</sup> 18 C.F.R. §§ 385.211, 385.214 (2006).

<sup>2</sup> *Application of TC Ravenswood, LLC to implement a Reliability Oil Burn Service Cost of Service Rate Schedule*, Docket No. ER14-1711 (April 11, 2014) (“Application”).

<sup>3</sup> 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*, Docket No. ER14-1822 (filed April 30, 2014) (“April 30 Filing”).

## **I. COMMUNICATIONS AND CORRESPONDENCE**

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## **II. BACKGROUND**

### **A. Local Reliability Rule I-R3**

The New York State Reliability Council (“NYSRC”) establishes reliability rules for the New York State Power System,<sup>5</sup> that the NYISO complies with in its operations and in its administration of the electricity markets. Certain rules require the NYISO, the Transmission Owners, and generators to take specific actions in particular Load Zones in defined circumstances. These are referred to by the NYSRC as “local reliability rules.” One such rule, Local Reliability Rule I-R3 (“Rule I-R3”), often referred to as the “Minimum Oil Burn Rule,” states that:

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<sup>4</sup> The NYISO respectfully requests waiver of 18 C.F.R. § 385.203(b)(3) (2011) to permit service on counsel for the NYISO in both Washington, D.C. and Miami, FL.

<sup>5</sup> Capitalized terms that are not otherwise defined herein shall have the meaning specified in the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”).

The NYS Bulk Power System shall be operated so that the loss of a single gas facility does not result in the loss of electric load within the New York City or Long Island zones.

Under this rule, the Consolidated Edison Company of New York, Inc. (“Con Edison”) and the Long Island Power Authority establish procedures pursuant to which specifically identified units that have dual fuel capability are required to utilize a minimum level of an alternative fuel, usually oil, when loads are expected to reach certain levels. Generators operating with at least a minimum of the alternative fuel will remain on-line should the loss of gas contingency occur.

Section 4.1.9 of the Services Tariff (previously Section 4.1.7a) establishes compensation rules under which generators subject to Rule I-R3 are eligible to recover the “variable operating costs” of burning an alternate fuel in compliance with Rule I-R3 when: (i) such costs are not reflected in the unit’s reference level; (ii) the indexed alternate fuel cost, being burned (typically Fuel Oil) is more than the indexed variable operating costs for natural gas; (iii) Rule I-R3 was activated; and (iv) the variable operating costs would not have been incurred but for the requirement to burn the required alternate fuel. At the time that the NYISO proposed Section 4.1.9 to the Commission, it explained that it did not compensate generators “for the storage and delivery infrastructure required to be able to burn an alternative fuel at any given time.”<sup>6</sup>

**B. The 2010 Proceedings Regarding TC Ravenswood’s Compensation for Compliance with Rule I-R3**

In 2010, TC Ravenswood filed a complaint in Docket No. EL10-70-000 asserting that the NYISO failed to fully compensate it for certain delivery, handling, storage and maintenance

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<sup>6</sup> 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*, at 7, Docket No. ER07-748-000 (filed April 13, 2007).

costs it incurred to meet its obligations under Rule I-R3 during the June through September 2009 time period.<sup>7</sup> Several parties, including the NYISO and Con Edison opposed the complaint on the grounds that the claimed costs did not fall within the scope of the Services Tariff. TCR Ravenswood separately filed its own rate schedule in Docket No. ER10-1359-000,<sup>8</sup> to govern the prospective recovery of “the variable costs it would incur solely and exclusively to comply with the Minimum Oil Burn Rule.”<sup>9</sup> It made this filing unilaterally, *i.e.*, without working through the NYISO stakeholder process or obtaining the necessary approvals to revise the Services Tariff.

The NYISO and other parties opposed TC Ravenswood’s rate schedule filing on a number of substantive and procedural grounds.<sup>10</sup> The Commission issued an order that rejected the rate schedule filing.<sup>11</sup> It stated that, “the service Ravenswood proposes to provide is the generation of electricity which is a jurisdictional Market Service that already falls under the exclusive purview of the NYISO tariff.”<sup>12</sup> It also explained that:

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 [New York Control Area]. Each Market Participant that sells or purchases Energy, including Demand Side Resources, sells or purchases Capacity, or provides Ancillary Services in the

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<sup>7</sup> *TC Ravenswood LLC, Complaint of TC Ravenswood, LLC and Request for Confidential Treatment*, Docket No. EL10-70-000 (filed May 27, 2010).

<sup>8</sup> *Application of TC Ravenswood LLC to Implement a Minimum Oil Burn Service Cost of Service Recovery Rate Schedule*, Docket No. ER10-1359 (filed May 27, 2010).

<sup>9</sup> Application at 2-3 (describing TCR Ravenswood’s 2010 filing).

<sup>10</sup> *See, e.g. Protest of the New York Independent System Operator, Inc.* (filed July 2, 2010) and *Motion to Intervene and Protest of the New York Transmission Owners and the City of New York* (filed June 17, 2010).

<sup>11</sup> *TC Ravenswood, LLC*, 133 FERC ¶ 61,087 (2010) (“October 2010 Order”).

<sup>12</sup> *Id.* at P 24.

ISO Administered Markets utilizes Market Services and must take service as a Customer under the Tariff.<sup>13</sup>

Accordingly, the Commission said:

Because NYISO is the sole provider of Market Services, and because the production of wholesale energy by burning fuel oil to comply with NYSRC Rule I-R3 is a Market Service as defined in the Services Tariff, the NYISO Services Tariff bars Ravenswood from proposing its own duplicative rate schedule to provide the same generation service already governed exclusively by the NYISO Services Tariff. The same reasoning leads us to conclude that the NYISO Services Tariff exclusively governs the pricing for this service. More specifically, section 4.1.7a of NYISO's Services Tariff governs the rates that Ravenswood may charge when required to burn alternate fuels pursuant to NYSRC Rule I-R3 to generate wholesale electric energy and, therefore, Ravenswood cannot propose its own tariff or rate schedule to recover the costs of providing this service.<sup>14</sup>

Subsequently, TC Ravenswood sought rehearing in Docket No. ER10-1359-000 but also agreed to a settlement in Docket No. EL10-70-000. That settlement resolved all questions concerning TC Ravenswood's compensation for compliance with Rule I-R3 from May 1, 2011 through April 30, 2014 but expressly did not address the question of the extent of its filing rights under Section 205 of the Federal Power Act ("FPA").<sup>15</sup> The Commission dismissed TC Ravenswood's request for rehearing in Docket No. ER10-1359-000 as moot, without prejudice, in light of the intervening settlement.<sup>16</sup>

TC Ravenswood filed an appeal with the United States Court of Appeals for the District of Columbia Circuit.<sup>17</sup> The appeal is currently pending and oral arguments were recently held. In its appeal TC Ravenswood essentially seeks an advisory ruling on its asserted right under

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at P 25.

<sup>15</sup> *TC Ravenswood, LLC v. New York Independent System Operator, Inc.*, 135 FERC ¶ 61,125 (2011).

<sup>16</sup> *TC Ravenswood, LLC*, 140 FERC ¶ 61,214 (2012).

<sup>17</sup> *TC Ravenswood, LLC v. Federal Energy Regulatory Commission*, D.C. Cir. No. 12-1434 (filed Oct. 31, 2012).

Section 205 to file its own rate schedules without regard for whether they duplicate, overlap, or conflict with the Services Tariff.<sup>18</sup>

**C The Application and the NYISO's Alternative Proposal in Docket No. ER14-1822-000**

On April 11, 2014, TC Ravenswood filed a cost-based “Oil Burn Rate Schedule” (the “Proposed Rate Schedule”) to govern its sale of what it calls “Reliability Oil Burn Services.”<sup>19</sup> According to TC Ravenswood, it would provide “Reliability Oil Burn Services” in situations when it is required to burn fuel oil in compliance with Rule I-R3 or for any other reason.<sup>20</sup> TC Ravenswood requested highly expedited action, and a waiver of the normal sixty day notice period, so that the Commission might issue an order by April 30 accepting the Proposed Rate Schedule effective May 1, 2014. TC Ravenswood asserted that expedited action was necessary because the settlement compensation arrangements in Docket No. EL10-70-000 would expire on April 30 and it needed to have a rate on file because it anticipated that it would continue to be called upon to produce Energy by burning fuel oil after April 30.<sup>21</sup>

As in Docket No. ER10-1359-000, TC Ravenswood did not raise the issues that it asserts prompted its filing in the NYISO stakeholder process or make any effort to work through that process to revise the Services Tariff. TC Ravenswood took this course even though “Reliability Oil Burn Service,” exactly like the “service” that it proposed in 2010, in reality amounts to the production and sale of Commission-jurisdictional Energy using oil as fuel instead of natural gas. Just as in ER10-1359-000, TC Ravenswood’s proposal is duplicative of, or at the very least

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

<sup>19</sup> Application at 1.

<sup>20</sup> *See* Application at 9.

<sup>21</sup> *See, e.g.,* Application at 2.

overlaps and potentially conflicts with, provisions in the NYISO Services Tariff that address compensation for Rule I-R3 compliance.

On April 30, 2014, the NYISO submitted an unexecuted service agreement between the NYISO and TC Ravenswood in Docket No. ER14-1822-000 to further address Rule I-R3 compensation. The terms and conditions of the unexecuted agreement are, except for minor pricing adjustments, identical to those accepted in the EL10-70-000 settlement.<sup>22</sup> The purpose of the filing was to ensure that there “will be a lawful mechanism on file after April 30, 2014 for TC Ravenswood to receive compensation for costs associated with compliance under [Rule I-R3] that are not otherwise expressly addressed by the Services Tariff.”<sup>23</sup> The NYISO hoped that having such a mechanism on file would allow it and TC Ravenswood to resume good faith negotiations to resolve their relatively narrow remaining differences concerning Rule I-R3 compensation without reference to the legal issues raised by the Application.<sup>24</sup> The NYISO asked that the Commission issue an order accepting its filing in Docket No. ER14-1822-000 no later than the date that it issues an order in this proceeding.<sup>25</sup>

### **III. MOTION TO INTERVENE**

The NYISO is the independent body responsible for providing open access transmission service, maintaining reliability, and administering open and competitive wholesale markets for Energy, Capacity, and Ancillary services in New York State. The NYISO is responsible for the reliable operation of the bulk electricity grid, and both short-term and long-term planning for the bulk power system in New York State. The NYISO maintains and implements an Open Access

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<sup>22</sup> See April 30 Filing at 1.

<sup>23</sup> *Id.* at 1-2.

<sup>24</sup> *Id.* at 3.

<sup>25</sup> *Id.* at 6-7.

Transmission Tariff, as well as the Services Tariff, including its provisions related to Rule I-R3. Therefore, the NYISO has an interest in this proceeding that cannot be adequately represented by any other party and should be permitted to intervene in this proceeding.

#### **IV. PROTEST**

##### **A. The Commission Should Reject the Proposed Rate Schedule Because it Is Every Bit as Duplicative of the Services Tariff as the Rate Schedule in Docket No. ER10-1359-000**

The Commission should reject the Proposed Rate Schedule for the same reasons that it initially rejected TC Ravenswood's filing in Docket No. ER10-1359-000. Namely, because the "service" that TC Ravenswood proposes to provide is nothing more than the generation of electricity using a different fuel. This is the case even though TC Ravenswood presents its proposed "Reliability Oil Burn Service" as broader in scope than the "service" it proposed in 2010. The terms and conditions of the sale of electric Energy in the NYISO-administered markets, including the provision of non-market based compensation for burning fuel oil, is exclusively governed by the Services Tariff.<sup>26</sup> Accordingly, the Proposed Rate Schedule is duplicative and should be rejected.

Just as TC Ravenswood did in Docket No. ER10-1359-000, the Application attempts to depict "Reliability Oil Burn Service" as if it were a new service unrelated to the sale of Energy. But the mere fact that TC Ravenswood is sometimes required, whether by NYSRC Rules or for any other reason contemplated in the Application, to produce Energy using fuel oil instead of natural gas does not mean that it is somehow not producing (and selling) Commission-jurisdictional Energy. Indeed, Commission-jurisdictional public utility sellers, including TC Ravenswood, obtain market-based rate authority to sell Energy in the NYISO-administered

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<sup>26</sup> October 2010 Order at P 24.



markets. That authorization encompasses electricity produced from all fuels. If TC Ravenswood were correct that “Reliability Oil Burn Service” somehow involved the production of a distinct form of Energy then it would presumably not be entitled to sell the Energy it generates while burning fuel oil at market-based rates because its market-based rate tariff encompasses only the sale of Energy, Capacity, and Ancillary Services.

Section 4.1.9 of the Services Tariff allows generators that are subject to Rule I-R3, like TC Ravenswood, to recover the variable costs of producing Energy, such as the cost of oil, and associated taxes and emissions allowances, when Rule I-R3 is in effect. Section 4.1.9 also allows recovery, pursuant to individually negotiated Implementation Agreements, of other costs such as tank storage, barge lease payments, variable costs of on-site storage and other variable operations and maintenance costs associated with burning the required alternate fuel when that rule is invoked.<sup>27</sup> Section 4.1.2 expressly states that any Market Participant that sells Energy, Capacity, or Ancillary Services in the NYISO-administered markets is utilizing Market Services provided by the NYISO which must be the “sole point of Application for all Market Services.”

Thus, as the NYISO is the sole provider of Market Services, and because the production of wholesale Energy by burning fuel oil to comply with Rule I-R3 and other reliability requirements is a Market Service as defined in the Services Tariff, the Services Tariff bars TC Ravenswood from proposing its own duplicative rate schedule to provide the same generation service already governed exclusively by the NYISO Services Tariff.<sup>28</sup> Commission precedent is

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<sup>27</sup> See Services Tariff Section 4.1.9.

<sup>28</sup> October 2010 Order at P 25. In the past, TC Ravenswood has relied on *Automated Power Exchange, Inc.*, 94 FERC ¶ 61,094 (2001) to support its position that duplicative rate schedules are permissible. In that case, the Automated Power Exchange, Inc. (“APX”) had a Commission-approved rate schedule to conduct business in the New York Control Area, Ravenswood’s reliance on APX’s situation is misplaced as APX’s service was not duplicative of the services provided for under the Services Tariff. See *Request for Leave to Answer and Answer of the New York Independent System Operator* at 10, Docket No. ER10-1359-001 (filed Dec. 9, 2010).

clear that services that impact ISO/RTO markets and transmission systems must be governed by the applicable NYISO tariffs.<sup>29</sup>

In addition, Ravenswood's legal authority to sell Energy, whether produced by burning natural gas or oil, is predicated on its participation in the NYISO-administered markets. In order to lawfully make wholesale Energy sales, suppliers such as Ravenswood must secure permission to do so from the Commission. To obtain authority to make sales at unregulated negotiated or "market-based" rates, including bilateral sales, sellers must demonstrate to the Commission that they lack market power. Ravenswood could not make this showing with respect to the highly concentrated Energy market in New York City. Nevertheless, the Commission, consistent with its established policy granted Ravenswood market-based rate authority because the NYISO has market power monitoring and mitigation measures that are sufficient to ameliorate Ravenswood's market power.<sup>30</sup>

Finally, the fact that the Services Tariff affords TC Ravenswood an opportunity to recover costs associated with burning oil to produce Energy beyond those that it includes in its market-based Energy Bids does not mean that TC Ravenswood's sales of Energy are somehow outside the scope of its market based rate authority. The Services Tariff provides in the context of Rule I-R3, and in certain other situations, all of which have been accepted by the Commission, for the recovery of the costs of producing Energy when such costs exceed the revenues that Generators selling Energy at "market-based" rates would otherwise recover.<sup>31</sup>

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<sup>29</sup> See, e.g., *California Independent System Operator, Corp.*, 129 FERC ¶ 61,241 at P 102 (2009).

<sup>30</sup> *Letter Order Re: TransCanada Companies' Updated Market Power Analysis in Compliance with Order No. 697, Federal Energy Regulatory Commission*, Docket Nos. ER10-2780-001, et al. (December 19, 2011).

<sup>31</sup> In addition to the provisions of Section 4.1.9, *see also*: Section 4.1.8:

Suppliers with generating units committed by the ISO for service to ensure NYCA reliability or local system reliability will recover startup and minimum generation costs

Accordingly, Ravenswood's Proposed Rate Schedule should be rejected because it provides for duplicative cost recovery related to matters that are already covered by the Services Tariff.

**B. TC Ravenswood Should Not be Permitted to Effectively Amend the NYISO Services Tariff Without Working Through the Stakeholder Process**

The Application represents a renewed attempt by TC Ravenswood to effectively revise compensation rules that are properly part of the NYISO Services Tariff at its own initiative. It has once again done so without following rules governing revisions to the Services Tariff that it voluntarily accepted when it became a party to the ISO Agreement. With certain narrow exceptions that are not implicated here, Article 19 of the ISO Agreement requires the NYISO's independent Board of Directors and its stakeholder Management Committee to approve jointly proposed amendments to the Services Tariff. Management Committee approval may only be obtained if at least 58% of the NYISO's stakeholders approve an amendment.<sup>32</sup> This "shared governance" system is designed to balance competing stakeholder interests and more efficiently resolve controversies that would otherwise be litigated before the Commission.

The Commission has consistently and strongly discouraged parties from attempting "end-runs" around the stakeholder governance processes of Independent System Operators and Regional Transmission Organizations ("ISOs/RTOs") since ISOs/RTO first commenced operations.<sup>33</sup> Accepting unilateral tariff revisions that have not been vetted through stakeholder

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that were not bid, that were not known before the close of the Real-Time Scheduling Window, and that were not recovered in the Dispatch Day.....

<sup>32</sup> See Independent System Operator Agreement at Article 7.10(b).

<sup>33</sup> See, e.g., *ISO New England Inc.*, 130 FERC ¶ 61,145, at P 34 (2010) ("we encourage parties to participate in the stakeholder process if they seek to change the market rules..."); *ISO New England Inc.*, 125 FERC ¶ 61,154 at P 39 (2008) (directing that unresolved issues be addressed through the stakeholder process); *ISO New England*, 128 FERC ¶ 61,266 at P 55 (2009) (declining to grant a party's specific request for relief because the Commission "will not ... circumvent that stakeholder process"); *New York*

processes is contrary to Commission policy because it creates harmful incentives for stakeholders to avoid collaboration and compromise. TC Ravenswood has made no effort to raise its compensation concerns, let alone address them through the NYISO stakeholder process. Nor has it provided any legitimate justification for its refusal to do so, relying instead on asserting its claimed statutory filing rights (which are addressed below in Section IV.C).

**C. Rejecting the Proposed Rate Schedule Would Not Be Inconsistent With the *Atlantic City* Decision or Section 205 of the Federal Power Act**

As it has done in prior proceedings, TC Ravenswood invokes the D.C. Circuit’s *Atlantic City* decision<sup>34</sup> in an attempt to support its sweeping claim of a statutory right to unilaterally file new rate schedules that duplicate, effectively amend, overlap, and/or conflict with provisions of the Services Tariff. The NYISO believes, however, that *Atlantic City* is not implicated in this proceeding because its holding only protects public utilities from being involuntarily deprived of their filing rights under Section 205 of the FPA. It does not prevent public utilities from voluntarily ceding all, or a portion of, their FPA 205 rights. In this case, TC Ravenswood is a public utility that voluntarily participates in the NYISO-administered markets and voluntarily executed the ISO Agreement (including the stakeholder governance provisions of Article 19). As discussed above, the Proposed Rate Schedule is the practical equivalent of a unilateral filing to amend the Services Tariff without going through a governance process that TC Ravenswood voluntarily accepted. Thus, it would not be a violation of *Atlantic City* or Section 205 of the

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*Independent System Operator, Inc., New York Transmission Owners*, 126 FERC ¶ 61,046, at PP 53-54 (2009) (directing that a proposal be “presented to and discussed among ... stakeholders and filed as a section 205 proposal, not unilaterally presented to the Commission”); *New England Power Pool*, 107 FERC ¶ 61,135 at PP 20, 24 (2004) (declining to accept changes proposed for the first time in a FERC proceeding by an entity that participated in the stakeholder process because the “suggested revisions have not been vetted through the stakeholder process and could impact various participants”).

<sup>34</sup> 295 F. 3d 1, 9 (D.C. Cir. 2002).

FPA to reject TC Ravenswood's attempt to effectively modify the Services Tariff by filing duplicative alternative arrangements in the form of a supposedly new "service."

Moreover, even assuming *arguendo* that TC Ravenswood had a right to file a duplicative rate schedule under *Atlantic City* the Commission would not be obliged to accept it as just and reasonable. It is well-established that the just and reasonable standard is very broad<sup>35</sup> and leaves the Commission with considerable discretion to reject a rate filing that is not just and reasonable. While TC Ravenswood is correct to note that a filing party need not demonstrate that its proposed rate is more reasonable than other alternatives,<sup>36</sup> it must still demonstrate that the proposal is just and reasonable in the first place. The FPA does not require the Commission to consider the Proposed Rate Schedule in complete isolation from the Services Tariff or to act as if the Services Tariff did not exist. The Commission would be acting well within the lawful scope of its authority if it were to reject the Proposed Rate Schedule on policy grounds including: (i) its duplicative nature and inconsistency with Services Tariff provisions that govern sales of Energy (including Energy produced from burning oil) in the NYISO-administered markets, (ii) its inconsistency with the Commission's clearly stated preference that stakeholders not make end-runs around ISO/RTO stakeholder processes, and (iii) the potential disruption and inefficiency that could be introduced into all Commission-jurisdictional ISO/RTO-administered markets if any public utility stakeholder had an unlimited right to make its own filings, and invent its own services, that duplicated, effectively altered, overlapped, or conflicted with the terms of accepted ISO/RTO tariffs.

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<sup>35</sup> See e.g. *New England Power Generators Assoc'n, Inc. v. FERC*, 707 F.3d 364, 366 (D.C. Cir. 2013); See also *Morgan Stanley Capital Grp., Inc. v. Pub. Util. Dist. No. 1 of Snohomish Cnty.*, 554 U.S. 527, 532 (2008), citing *FPC v. Texaco Inc.*, 417 U.S. 380, 389 (1974) and *Permian Basin Area Rate Cases*, 390 U.S. 747, 767 (1968).

<sup>36</sup> Application at 8.

**D. TC Ravenswood Is Incorrect to Claim that It's Proposed Rate Schedule Must Be on File for It to Lawfully Provide Service to the NYISO**

Finally, TC Ravenswood's assertion that the Proposed Rate Schedule is somehow necessary because TC Ravenswood cannot lawfully provide service (or comply with its reliability obligations) unless the Proposed Rate Schedule is accepted<sup>37</sup> is inaccurate and misleading. The claim fails because, as noted above, TC Ravenswood would not actually provide a separate "Reliability Oil Burn Service." Instead, it would simply provide Energy produced from an alternative fuel. TC Ravenswood already has authority to sell Energy from any fuel source in the NYISO-administered markets, and bilaterally, pursuant to the terms of its own market-based rate tariff and the Services Tariff. Thus, there is nothing preventing it from selling Energy produced by burning oil into the NYISO-administered markets, or through bilateral arrangements, notwithstanding April 30 expiration of the agreement under the settlement in EL10-70-000.

To the extent that TC Ravenswood is really saying that the Proposed Rate Schedule is needed to ensure that it is compensated for producing Energy using fuel oil, its argument is also invalid. As discussed above, the Services Tariff already contains the rules that govern TC Ravenswood's compensation for selling Energy in the NYISO-administered markets, including rules that provide substantial compensation for burning fuel oil in compliance with Rule I-R3. The compensation may be less than under the Proposed Rate Schedule but that does not mean that TC Ravenswood would go uncompensated. The FPA protects TC Ravenswood against having to provide service at confiscatory rates but the Commission has never found that it would be confiscatory for TC Ravenswood to burn fuel oil to produce Energy for market-based compensation (inside or outside of the NYISO-administered market). Like other Commission-

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<sup>37</sup> Application at 8-9.

jurisdictional sellers with market-based rate authority, TC Ravenswood is not entitled to full cost recovery, it is only guaranteed an opportunity to recover its costs.<sup>38</sup> It is unclear whether TC Ravenswood's attempt to obtain additional cost-based compensation for selling Energy under its Proposed Rate Schedule beyond the market-based compensation it would receive for such sales under the Services Tariff and its own market-based rate tariff is consistent with Commission policy but it such recovery clearly is not required.

In any event, whatever concern TC Ravenswood might have regarding the level of compensation it would receive if the Proposed Rate Schedule were rejected (or the legality of providing its proposed "service" without it) should be eliminated by the NYISO's filing in Docket No. ER14-1822-000. As noted above, that filing provides for TC Ravenswood to continue to receive compensation for costs associated with complying with Rule I-R3 that are not otherwise provided for by the Services Tariff.

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<sup>38</sup> *ISO New England Inc. and New England Power Pool Participants Committee*, 128 FERC ¶ 61,023 at P 34(2009), *citing Bridgeport Energy, LLC*, 113 FERC ¶61,311 at P 29 (2005) (holding that "in a competitive market, the Commission is responsible only for assuring that [a resource] is provided the opportunity to recover its costs").

**V. CONCLUSION**

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc. respectfully requests that the Commission reject the Application for the reasons specified above.

May 2, 2014

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Commission Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2013).

Dated at Washington, D.C. this 2<sup>nd</sup> day of May, 2014.

/s/ Catherine Karimi

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