

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

TC Ravenswood, LLC

)

Docket No. ER12-1418-000

**REQUEST FOR REHEARING OF
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rule 713 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.713, the New York Independent System Operator, Inc. (“NYISO”) requests rehearing of the Commission’s May 24, 2012, *Order Accepting and Suspending Proposed Rate Schedule, Subject to Conditions, and Establishing Settlement Judge Procedures* in the above-captioned docket (“May 24 Order”).¹

In its May 24 Order, the Commission declined to address the NYISO’s objections that TC Ravenswood, LLC’s (“Ravenswood’s”) use of a stand-alone rate schedule to provide black start service outside of the NYISO tariffs (“TCR Rate Schedule”) is unlawful, is inconsistent with Commission precedent, unnecessarily duplicates current tariff requirements, and circumvents the NYISO’s requirements for amending its tariffs.² The NYISO, therefore, respectfully requests that the Commission grant rehearing to address the NYISO’s objections and, upon further consideration, to reject the TCR Rate Schedule.

¹ TC Ravenswood, LLC, *Order Accepting and Suspending Proposed Rate Schedule, Subject to Conditions, and Establishing Settlement Judge Procedures*, 139 FERC ¶ 61,151 (May 24, 2012) (“May 24 Order”).

² May 24 Order at P 40.

I. Communications

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II. Specification of Errors/Statement of Issues

In accordance with Rule 713(c), 18 C.F.R. § 385.713(c), the NYISO submits the following specifications of error and statement of the issues on which it seeks rehearing of the May 24 Order:

1. The May 24 Order is arbitrary and capricious and is not the product of reasoned decision making because the TCR Rate Schedule is unlawful, unnecessarily duplicates the black start requirements already established in the NYISO tariffs, is inconsistent with Commission precedent, and circumvents the NYISO's requirements for amending its tariffs.

2. The May 24 Order is arbitrary and capricious and is not the product of reasoned decision making because it fails to address the objections raised in the NYISO's protest that the

³ 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 Richmond, VA.

TCR Rate Schedule is unlawful, unnecessarily duplicates the black start requirements already established in the NYISO tariffs, is inconsistent with Commission precedent, and circumvents the NYISO's requirements for amending its tariffs.⁴

3. The May 24 Order is arbitrary and capricious and is not the product of reasoned decision making because it departs without explanation from the Commission's precedent of rejecting generators' use of stand-alone rate schedules to provide services that fall within the exclusive purview of the NYISO tariffs.⁵

III. Background

The Ravenswood steam turbine units 10, 20, and 30 ("Ravenswood Units") play an important role in the Consolidated Edison Company of New York, Inc. ("Con Edison") local portion of the statewide program administered by the NYISO for restoring electric service in New York following an unplanned outage ("New York Restoration Program").⁶ Due to their size (approximately 1,800 MW) and location, the Ravenswood Units provide significant benefits to New York City by enhancing the robustness and effectiveness of the Con Edison portion of New York Restoration Program.

Rate Schedule 5 of the NYISO Market Administration and Control Area Services Tariff ("Services Tariff") establishes specific terms for generators' provision of black start and system restoration service in the Con Edison portion of the New York Restoration Program. Section 15.5.3.1 of Rate Schedule 5 includes specific terms for the commitment, testing, and

⁴ See *Canadian Ass'n of Petroleum Producers v. FERC*, 254 F.3d 289, 299 (D.C. Cir. 2001) ("Unless the Commission answers objections that on their face seem legitimate, its decision can hardly be classified as reasoned."); see also *Tesoro Alaska Petroleum Co. v. FERC*, 234 F.3d 1286, 1294 (D.C. Cir. 2000).

⁵ See *Williams Gas Processing-Gulf Coast Company, L.P., et al. v. FERC*, 475 F.3d 319, 326 (D.C. Cir. 2006) ("Reasoned decision making necessarily requires consideration of relevant precedent.").

⁶ The New York Restoration Program is composed of two separate, coordinated programs: (i) the NYISO statewide restoration program, which provides for the restoration of electric service to New York by means of the 345 kV transmission backbone of New York, and (ii) Con Edison's local restoration program, which provides for

compensation of generators providing black start service in the Con Edison service territory. Specifically, a generator must commit to participate for a three-year period and must perform an annual black start capability test pursuant to test requirements set forth in Appendix I of Rate Schedule 5. The NYISO is responsible for paying a generator a set black start amount if it has committed to provide black start service for the three-year period and has successfully completed its annual test. The NYISO is also responsible for recovering the costs associated with these payments from load serving entities located in Con Edison's service territory.

Ravenswood withdrew the Ravenswood Units from the black start program set forth in the NYISO Services Tariff at the conclusion of the most recent three-year commitment period on September 30, 2011, citing testing and financial concerns.⁷ The NYISO has worked diligently with Con Edison, Ravenswood, and other generators to develop enhancements to the NYISO's black start program that address generators' concerns regarding testing protocols and compensation to encourage generators, such as Ravenswood, to continue to participate in the program.

On March 30, 2012, Ravenswood filed with the Commission the TCR Rate Schedule under which it would provide black start service outside of the NYISO tariffs.⁸ Pursuant to the TCR Rate Schedule, Ravenswood will provide the entirety of its black start service from its steam turbine units to a customer on a month-to-month basis.⁹ Ravenswood will conduct certain tests of its critical black start facilities, but will not perform the full black start capability tests set

the restoration of electric service to its service territory by means of gas and steam turbine generators located there.

⁷ TC Ravenswood, LLC, 136 FERC ¶ 61,213 (September 27, 2011).

⁸ TC Ravenswood, LLC, Application of TC Ravenswood, LLC to implement a Black Start Service Rate Schedule, Docket No. ER12-1418-000 (March 30, 2012) ("Ravenswood Rate Schedule Application").

⁹ *Id.* at pp. 18-19.

forth in Rate Schedule 5 of the NYISO Services Tariff.¹⁰ Ravenswood has asserted that the commitment and testing terms in the TCR Rate Schedule are the only material differences between the TCR Rate Schedule and Rate Schedule 5 of the NYISO's Services Tariff.¹¹

In an April 12, 2012, filing, the NYISO expressed its support for the underlying substance of Ravenswood's proposal as a means for Ravenswood to provide black start service on an interim basis while the NYISO and its stakeholders completed the development and implementation of enhancements to its black start program.¹² The NYISO, however, objected to Ravenswood using a stand-alone rate schedule that addresses the same subject matter - the provision of black start service in Con Edison's service territory - that is already governed by Rate Schedule 5 of the NYISO Services Tariff.¹³ In addition, Ravenswood's use of a stand-alone rate schedule circumvents the NYISO's shared governance system by unilaterally revising the terms under which it provides black start service in violation of the tariff amendment process set forth in Article 19 of the NYISO's Independent System Operator Agreement ("ISO Agreement"), which Ravenswood voluntarily executed.¹⁴ The Commission has, for these reasons, consistently rejected attempts by generators to file stand-alone rate schedules to provide services that fall within the exclusive purview of the NYISO tariffs.¹⁵ The NYISO requested that the Commission reject the TCR Rate Schedule, and instead grant certain waivers of the NYISO

¹⁰ *Id.* at p. 18.

¹¹ *Id.* at p. 17.

¹² TC Ravenswood, LLC, Motion to Intervene, Comments, Request for Limited Tariff Waivers, and Alternative Protest of the New York Independent System Operator, Inc., Docket No. ER12-1418-000 at pp. 2, 9 (April 12, 2012) ("NYISO Protest").

¹³ *Id.* at pp. 13-15.

¹⁴ *Id.* at pp. 15-19.

¹⁵ *Id.* at pp. 14-15.

Services Tariff that would permit Ravenswood to provide black start service under the same substantive terms as its proposal, but within the framework of the NYISO tariffs.¹⁶

In its May 24 Order, the Commission departed from its precedent without explanation and accepted the TCR Rate Schedule, subject to refunds and further order of the Commission, and established settlement judge procedures.¹⁷ The Commission acknowledged that the NYISO and other parties had raised procedural and substantive objections to the TCR Rate Schedule, but expressly declined to address these objections or consider the alternatives raised by the NYISO and other parties.¹⁸ Rather, the Commission accepted the filing “as an interim solution subject to further orders of the Commission to allow the parties an opportunity to work in the stakeholder process toward a mutually agreeable resolution under the NYISO Services Tariff.”¹⁹

The NYISO is participating in the settlement process initiated by the Commission to assist the parties in resolving disputed issues and developing enhancements to the NYISO’s black start program. In addition, the NYISO will, by separate filing, seek certain waivers to allow it to procure black start service from Ravenswood under the TCR Rate Schedule as an interim measure while it works with its stakeholders to develop long-term enhancements to its black start program. The NYISO believes that procuring black start service under the TCR Rate Schedule on an interim basis provides the greatest certainty at this time that Ravenswood will provide black start service that is important for the effectiveness and robustness of the Con Edison portion of the New York Restoration Program. However, the NYISO’s willingness to procure this service to ensure near-term reliability does not represent, and should not be

¹⁶ *Id.* at pp. 2-3, 9-12.

¹⁷ May 24 Order at P 37.

¹⁸ *Id.* at P 40.

¹⁹ *Id.* at P 38.

construed as, an acceptance of the legality of the TCR Rate Schedule or a waiver of the NYISO's rights to challenge the TCR Rate Schedule through this request for rehearing.

IV. Request for Rehearing

The Commission should grant the NYISO's request for rehearing to address its objections and, upon further consideration, reject the TCR Rate Schedule for the reasons described below.

The Commission is required to address a party's legitimate objections.²⁰ As described above, the Commission did not address the NYISO's objections, nor did it articulate a basis for departing from its precedent.

A. The TCR Rate Schedule Is Unlawful, Impermissibly Duplicates Rate Schedule 5 of the Services Tariff, and Is Inconsistent with Commission Precedent

The Commission should reject the TCR Rate Schedule because it seeks to provide a Market Service - black start service in Con Edison's service territory - that falls under the exclusive purview of the NYISO tariffs. Section 4.1.2 of the Services Tariff provides 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 ISO Administered Markets utilizes Market Services and must take service as a Customer under the Tariff.

Pursuant to Section 4.1.2., the NYISO is the sole provider of Market Services in the New York Control Area in accordance with the terms of its tariffs and agreements. Among the Market Services are Ancillary Services, which include black start service. Section 4.1.2, therefore, bars

²⁰ See *Mo. Pub. Serv. Comm'n v. FERC*, 601 F.3d 581, 586 (D.C. Cir. 2010) ("This court has noted, however, that FERC must fully articulate the basis for its decision, and that a passing reference to relevant factors . . . is not sufficient to satisfy the Commission's obligation to carry out reasoned and principled decision making.") (quoting *Am. Gas Ass'n v. FERC*, 593 F.3d 14 at 19) (internal quotation marks and citations omitted); see also *Canadian Ass'n of Petroleum Producers v. FERC*, 254 F.3d 289, 299 (D.C. Cir. 2001) ("Unless the Commission answers objections that on their face seem legitimate, its decision can hardly be classified as reasoned.").

Ravenswood from establishing a separate, stand-alone rate schedule to provide a service already provided by the NYISO.

Ravenswood has argued that the term “Market Services” does not “include the actual provision of Energy, Capacity, Demand Reductions or Ancillary Services,” such as black start service, but rather refers to administrative services (e.g., market modeling, scheduling, billing, settlements, etc.) provided by the NYISO that are related to the provision of energy, capacity, and ancillary services by market participants.²¹ The Commission, however, has previously found that the term “Market Services” as used in Section 4.1.2 does include the actual provision of the services established in the NYISO tariffs.²² Specifically, in 2010, Ravenswood submitted a proposed stand-alone rate schedule seeking compensation for certain variable costs that it incurred in providing what it called “Minimum Oil Burn Service,” which it contended it was unable to recover under the NYISO tariffs.²³ Relying on Section 4.1.2, the Commission rejected Ravenswood’s rate schedule finding that:

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 Services as defined in the Services Tariff, the NYISO Services Tariff bars Ravenswood from proposing its own duplicate rate schedule to provide the same generation service already governed exclusively by the NYISO Services Tariff.²⁴

²¹ TC Ravenswood, LLC, Motion for Leave to Answer, and Answer of TC Ravenswood, LLC to Comments and Protests Regarding TC Ravenswood, LLC Proposed Spot Black Start Rate Schedule, Docket No. ER12-1418-000 at pp. 6-7 (April 16, 2012) (“Ravenswood Answer”).

²² See TC Ravenswood, LLC, *Order Rejecting Proposed Rate Schedules*, 133 FERC ¶ 61,087 at PP 24-25 (October 27, 2010) (“Commission Min Oil Burn Order”).

²³ *Id.* at P. 4.

²⁴ *Id.* at P 25.

The Commission, therefore, clearly established that Market Services as used in Section 4.1.2 refers to the actual provision of energy, capacity, and ancillary services, such as “generation service” and black start service, and not simply related administrative services.²⁵

The NYISO is responsible under its Commission-approved tariffs and the New York State Reliability Council’s reliability rules for administering the provision of black start service in New York. Rate Schedule 5 of the Services Tariff establishes a black start service product with commitment, testing, and compensation requirements for generators providing black start service in Con Edison’s service territory. The TCR Rate Schedule does not provide a distinct product beyond the scope of the existing NYISO tariffs. The fact that the TCR Rate Schedule provides the same compensation as that established in Rate Schedule 5 highlights the overlap between it and the Services Tariff. There is no reason for black start service to be provided anywhere other than under the NYISO Services Tariff.

Indeed, Commission precedent is clear that it must be provided under NYISO tariffs.²⁶ The Commission has rejected previous attempts by generators to file stand-alone rate schedules in New York. As described above, the Commission previously rejected Ravenswood’s proposed rate schedule to provide “Minimum Oil Burn Service,” as it sought to provide service already governed under the NYISO tariffs. In addition, the Commission rejected a 2002 proposal by Astoria Generating Company, L.P. (“Astoria”) to establish a stand-alone “Quick Start Service

²⁵ Similarly, the services agreement executed by NYISO market participants, including Ravenswood, establishes that the NYISO is the party providing actual energy, capacity, and ancillary services under its tariffs, stating that: “The ISO agrees to provide and the Customer agrees to take and pay for, or supply to the ISO, Energy, Capacity and Ancillary Services in accordance with the provision of the ISO Services Tariff and this Service Agreement.” NYISO Services Tariff, Attachment A § 5.0.

²⁶ See, e.g., *California Independent System Operator, Corp.*, 129 FERC ¶ 61,241 at P 102 (2009) (affirming that even non-Commission-jurisdictional utilities that choose to participate in an ISO-administered market do so pursuant to the terms of the ISO’s tariff).

Tariff.”²⁷ That schedule would have compensated Astoria for a new ancillary service that it was contractually obliged to provide to Con Edison but which did not then exist in the NYISO markets.²⁸ The Commission rejected Astoria’s tariff and directed that Astoria instead work through the NYISO stakeholder process to resolve its issues.²⁹ Ultimately, the NYISO added a new Rate Schedule 6 to the Services Tariff to govern sales of “Quick Start Reserves” within the framework of the NYISO tariffs.

The Commission has similarly rejected attempts by generators to file stand-alone rate schedules in other markets.³⁰ Although the Commission has sometimes authorized the filing of rate schedules to provide supplemental compensation for generators in market environments, such filings are invariably made by the Independent System Operator (“ISO”) itself or, at a minimum, pursuant to the terms and conditions of an existing ISO tariff.³¹

B. The TCR Rate Schedule Is an Impermissible Unilateral Attempt to Amend the Services Tariff

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 jointly approve proposed amendments to the NYISO tariffs that are

²⁷ *Astoria Generating Company, L.P.*, 101 FERC ¶ 61,275 at P 3 (2002).

²⁸ *See id.* at P 4. By comparison, Ravenswood’s case for a stand-alone rate schedule is weaker than Astoria’s because it is seeking to provide services that are already covered by the NYISO Services Tariff.

²⁹ *See id.* at PP 14, 17.

³⁰ *See, e.g., USGen New England, Inc.*, 90 FERC ¶ 61,323 (2000), *reh’g denied*, 92 FERC ¶ 61,020 (2000) (rejecting a proposed SRS agreement because the ISO should be “the first instance for stakeholders to work out their differences on issues such as costs and recovery of costs...”); *Sithe New England Holdings, LLC and Sithe New Boston, LLC v. New England Power Pool and ISO New England, Inc.*, 86 FERC ¶ 61,283 (1999) (rejecting a proposed cost-based rate schedule finding that changes to such compensation mechanisms should be pursued through the stakeholder process); *but cf. Otter Tail Power Co.*, 99 FERC ¶ 61,019 at 61,091 (2002) (“*Otter Tail*”). The Commission’s finding in *Otter Tail* is distinguishable from the current situation, because the customer tariff applied only to non-ISO transactions and services. *Otter Tail* at 61,091.

³¹ *See ISO New England Inc. and New England Power Pool*, 129 FERC ¶ 61,008 at P 18 (2009) (allowing certain generators to file individual cost-based rate schedules pursuant to FPA Section 205, but only under the rubric of an ISO Tariff).

submitted to the Commission pursuant to Section 205 of the Federal Power Act. Management Committee approval requires that at least 58% of the NYISO's stakeholders approve an amendment.³² The ISO Agreement is on file with the Commission and has been executed by all NYISO market participants, including Ravenswood. The "shared governance" system established by the ISO Agreement, in which Ravenswood agreed to participate when it executed the ISO Agreement, enjoys broad stakeholder support and has successfully balanced stakeholder interests and resolved controversies that would otherwise have been litigated before the Commission. The NYISO and stakeholders may always unilaterally file under Section 206 of the Federal Power Act to amend the NYISO tariffs, but must in those instances meet the higher burden of demonstrating that the NYISO's current tariffs are unjust and unreasonable.³³

The NYISO tariffs currently establish specific requirements for generators' provision of black start service in the Con Edison service territory that were the product of extensive negotiations among the NYISO, Con Edison, generators, and load serving entities - all of whom have a direct interest in the provision of this service - and were accepted by the Commission.³⁴ The NYISO is in the middle of extensive discussions with the same parties that are intended to lead to amendments to these requirements in a manner that address the concerns indicated by the parties. Ravenswood's filing and the Commission's acceptance of a stand-alone rate schedule upsets this stakeholder process and, in effect, unilaterally amends terms for providing black start service in the Con Edison service territory already established in the NYISO tariffs, in

³² NYISO Independent System Operator Agreement ("ISO Agreement") at Article 7.10(b).

³³ *Id.* at Article 19.02.

³⁴ See New York Independent System Operator, Inc.'s Proposed Tariff Amendments to Revise Testing Criteria Applicable to Suppliers of Black Start and System Restoration Services and to Implement Agreed Upon Rate Changes for Suppliers of Such Services in the Consolidated Edison Transmission District Retroactive to October 1, 2005, Docket No. ER06-310-000 at p. 4 (December 9, 2005).

contradiction of the tariff amendment process established and accepted by the Commission in Article 19 of the ISO Agreement.

Although the TCR Rate Schedule technically would apply only to Ravenswood, its acceptance by the Commission would establish a troublesome precedent that would encourage other market participants to seek to adjust their tariff obligations in a similar fashion, rather than working through the NYISO stakeholder process or having to demonstrate in a Section 206 filing that the rate approved through the stakeholder process is unjust and unreasonable. Such an end-run around the NYISO's long-established stakeholder governance process would result in needless litigation before the Commission and a waste of resources that are better devoted to other matters.

The Commission has previously rejected attempts by individual entities to make “endruns” around the NYISO stakeholder processes.³⁵ It should do the same here. Otherwise, the Commission risks undermining the stakeholder process by creating incentives to avoid collaboration and compromise in favor of unilateral Section 205 filings. The Commission would also be creating a paradoxical situation in which individual NYISO stakeholders would have a unilateral right to file tariff amendments under Section 205 that the NYISO itself lacks due to its tariff commitment to seek amendments through the stakeholder process.

In support of its position that the Commission should accept the TCR Rate Schedule, Ravenswood cites only to the D.C. Circuit's *Atlantic City* decisions in which the court held that the Commission may not compel utilities to involuntarily cede their filing rights under

³⁵ 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 (2008) (directing that unresolved issues be addressed through the stakeholder process); *New York 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”).

Section 205 of the Federal Power Act.³⁶ To the contrary, denying the TCR Rate Schedule would be entirely consistent with *Atlantic City* insofar as it has the effect of requiring Ravenswood to abide by an agreement that it voluntarily entered into governing Section 205 filings to amend the terms of the Services Tariff pursuant to which Market Services are provided in New York. As the D.C. Circuit stated in its *Atlantic City* decision: “utilities may choose to voluntarily give up, by contract, some of their rate filing freedom under section 205.”³⁷ Specifically, all NYISO market participants who become members of the Management Committee in order to participate in the NYISO stakeholder governance process must become signatories to the ISO Agreement, which establishes the exclusive process for amending the terms of the NYISO tariffs.³⁸ Ravenswood voluntarily became a signatory of the ISO Agreement and thus voluntarily accepted its requirements. As described above, Ravenswood’s use of the TCR Rate Schedule is, in effect, a unilateral filing to amend the Services Tariff without going through the NYISO’s shared governance process or satisfying the standard required for a Section 206 filing.³⁹ Ravenswood is effectively amending the terms approved by the NYISO and its stakeholders and accepted by the Commission for providing black start service in Con Edison’s service territory. Ravenswood has voluntarily agreed that such changes should only be made through the ISO Agreement’s Article 19 process. The Commission should hold Ravenswood to its agreement.

³⁶ See *Atlantic City Electric Co. v. FERC*, 295 F.3d 1, 9 (D.C. Cir. 2002).

³⁷ See *id.* at 10-11.

³⁸ See ISO Agreement § 7.01.

³⁹ Commission precedent strongly disfavors attempts to make end-runs around ISO/RTO stakeholder processes. See, e.g., *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 Independent System Operator, Inc.*, 126 FERC ¶ 61,046 at PP 54 (2009) (stating that while a proposal “may have merit” the proposal should be “presented to and discussed among ... stakeholders”); *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”).

V. Conclusion

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc., respectfully requests that the Commission grant rehearing of the May 24 Order and reject the TCR Rate Schedule.

Respectfully submitted,

/s/ Michael J. Messonnier, Jr.

Michael J. Messonnier, Jr.

Counsel to

New York Independent System Operator, Inc.

Date: June 25, 2012

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC, this 25th day of June, 2012.

/s/ Catherine A. Karimi

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