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April 30, 2014

By Electronic Delivery

Ms. Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: *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-____

Pursuant to Section 205 of the Federal Power Act (“FPA”),¹ Section 35 of the Commission's regulations,² and Section 4.1.9.3 of the New York Independent System Operator, Inc.'s (“NYISO”) Services Tariff,³ the NYISO respectfully submits an unexecuted Minimum Oil Burn Agreement (“Unexecuted Agreement”) between the NYISO and TC Ravenswood, LLC (“TC Ravenswood”). The NYISO is submitting this Unexecuted Agreement because the parties have, to date, been unable to agree on the rate to be paid to TC Ravenswood to recover certain costs it incurs in connection with its compliance with the New York State Reliability Council's Local Reliability Rule I-R3 — Loss of Generator Gas Supply (New York City) (“Local Reliability Rule I-R3”). The Unexecuted Agreement contains terms and conditions that are acceptable to the NYISO, which, except for pricing, are identical to those in the currently effective TCR Minimum Oil Burn Agreement (“Existing Implementation Agreement”) between the NYISO and TC Ravenswood that expires on April 30, 2014.⁴ The NYISO is making this filing now to ensure that there will be a lawful mechanism on file after April 30, 2014 for

¹ 16 U.S.C. § 824d (2013).

² 18 C.F.R. § 35 (2013).

³ Capitalized terms used herein but not otherwise defined herein shall have the meanings given to them in Section 2 of the NYISO's Market Administration and Control Area Services Tariff.

⁴ The Commission accepted the Existing Implementation Agreement as part of the settlement in Docket No. EL10-70. See *TC Ravenswood, LLC v. New York Independent System Operator, Inc.*, 135 FERC ¶ 61,125 (2011).

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TC Ravenswood to receive compensation for costs associated with compliance with Local Reliability Rule I-R3 that are not otherwise expressly addressed by the Services Tariff. The NYISO envisions that the Unexecuted Agreement could be supplanted in the near future by a negotiated agreement between the NYISO and TC Ravenswood.

For the reasons specified below, the NYISO requests a May 1, 2014 effective date for this filing and waiver of the Commission's 60-day notice requirement. The NYISO also requests that the Commission act expeditiously on this filing so that it may issue an order no later than the date that it issues an order in Docket No. ER14-1711-000 (which is discussed below). Finally, the NYISO asks that the Commission appoint a settlement judge, or other neutral from the Office of Administrative Law Judges and Dispute Resolution ("OALJDR"), to facilitate a negotiated solution to the underlying dispute regarding the level of compensation that TC Ravenswood should receive for future compliance with Local Reliability Rule I-R3. At a minimum, the Commission should strongly urge TC Ravenswood, and other interested parties (including the parties to the settlement in Docket No. EL10-70) to utilize OALJDR's services. As stated below, the underlying dispute over the level of compensation that should be paid is relatively small but resolving the issue is important given the reliability implications for New York City. The NYISO believes that this dispute could be resolved quickly if it were addressed separately from TC Ravenswood's pending proposal in Docket No. ER14-1711-000.

I. LIST OF DOCUMENTS SUBMITTED

The NYISO respectfully submits the following documents:

1. This filing letter; and
2. A clean version of the Unexecuted Agreement ("Attachment I").

II. BACKGROUND

In 2010, TC Ravenswood initiated a proceeding under section 206 of the FPA asserting that the NYISO failed to properly compensate TC Ravenswood for certain costs it incurred to meet its obligations under Local Reliability Rule I-R3. This rule requires certain generators, including TC Ravenswood, to switch from burning natural gas to burning a mix of natural gas and fuel oil in order to produce energy under specified conditions. After numerous technical discussions and settlement conferences involving Commission staff and the parties, a settlement was reached. That settlement was accepted by the Commission in 2011.

The settlement included, in pertinent part, (i) the Existing Implementation Agreement, which specifies the facilities to be used by, and compensation to be paid to, TC Ravenswood for certain costs related to its compliance with Local Reliability Rule I-R3 from May 1, 2011

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through April 30, 2014, and (ii) revisions to Section 4.1.9 of the NYISO's Services Tariff to provide that generators subject to Local Reliability Rule I-R3 will be allowed to enter into agreements with the NYISO to specify the facilities to be used and compensation to be paid for complying with the rule.⁵

The NYISO has engaged in good faith, robust discussions with TC Ravenswood about the rates, terms, and conditions of a new agreement.⁶ The last of these discussions occurred in person at the NYISO on April 28, 2014. Consistent with the Services Tariff, the NYISO also consulted with the Consolidated Edison Company of New York, Inc., the relevant Transmission Owner for purposes of Local Reliability Rule I-R3, and the New York State Public Service Commission. The NYISO fully expected to reach agreement on the terms of a new agreement prior to the expiration of the Existing Implementation Agreement.

The NYISO was surprised, however, when TC Ravenswood unilaterally filed a rate schedule for what it describes as "Reliability Oil Burn Services" a few weeks ago in Docket No. ER14-1711-000.⁷ TC Ravenswood's proposal raises problematic legal issues that the NYISO will address in its protest in that docket. For purposes of this proceeding, it is sufficient to state that the resolution of a relatively small disagreement over the level of compensation to be paid for compliance with Local Reliability Rule I-R3 should not be dependent upon the resolution of a larger disagreement over the extent of TC Ravenswood's unilateral filing rights under the FPA given the reliability implications for New York City if the narrower dispute is not resolved. Accordingly, the NYISO is filing the Unexecuted Agreement to address TC Ravenswood's stated concern in that it have a lawful arrangement in place to compensate it for compliance with Local Reliability Rule I-R3 after April 30, 2014⁸ without needlessly entangling that issue with the others raised in Docket No. ER14-1711-000.

Prior to making this filing, the NYISO proposed to TC Ravenswood that the parties pursue resolution of the issues with the assistance of the Commission's Dispute Resolution Division. TC Ravenswood, however, did not show interest in this option.

⁵ *TC Ravenswood, LLC v. New York Independent System Operator, Inc.*, 135 FERC ¶ 61,125 (2011).

⁶ TC Ravenswood has acknowledged that "the parties have made significant progress toward a new agreement" See TCR Application at 3.

⁷ *Application of TC Ravenswood, LLC to Implement a Reliability Oil Burn Service Cost of Service Rate Schedule*, Docket No. ER14-1711-000 (April 11, 2014) ("TCR Application").

⁸ See, e.g., TCR Application at 2.

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III. THE PROPOSED UNEXECUTED AGREEMENT IS JUST AND REASONABLE

The NYISO respectfully requests that the Commission accept the rates, terms, and conditions of the Unexecuted Agreement. The purpose of the Unexecuted Agreement is to provide a mechanism for compensating TC Ravenswood for certain costs it incurs pursuant to Local Reliability Rule I-R3 upon the expiration of the Existing Implementation Agreement to the extent that those costs are not otherwise expressly addressed by the Services Tariff. Section 4.1.9.3 of the Services Tariff provides that if the parties have not executed an agreement prior to the start of the Capability Period that the agreement is intended to cover, *i.e.*, in this context by May 1, 2014, the parties may request the assistance of the Commission's Dispute Resolution Division. It also provides that if the parties remain without an agreement "four months prior to the beginning of the relevant Capability Period then the [generator] and the ISO may each file an unexecuted [agreement] for the Commission's review and acceptance."⁹

The terms and conditions of the Unexecuted Agreement are identical to those in the Existing Implementation Agreement that the Commission previously accepted as just and reasonable with two exceptions. First, the NYISO is proposing to increase payments for On-Site Tank O&M by 12.5%, *i.e.*, from \$0.40 bbl to \$0.45/bbl. Second, the NYISO is proposing to increase the rates paid to TC Ravenswood for predetermined costs and (non-On-Site Tank-related) O&M expenses by approximately 3.5% over the currently effective rates. Under the terms of the Existing Implementation Agreement, the rates paid to TC Ravenswood for those costs have escalated each year by less than 3%. The increase proposed in the Unexecuted Agreement is therefore just and reasonable because the proposed rates for the three-year term are

⁹ The NYISO understands the "at least" four month language to establish a target for filing unexecuted agreements that would allow for orderly Commission review in advance of the expiration of an existing agreement. It is certainly reasonable for the target date to be no earlier than four months from the Capability Period in order to ensure the most recent cost data and oil usage expectations would be reflected in any unexecuted agreement. As such, the NYISO does not read the provision as precluding it from filing an unexecuted agreement within the last four months preceding the expiration of an existing agreement. This understanding is also consistent with the Section 6 of the Existing Implementation Agreement which holds that all parties retain all of their rights under the Federal Power Act, which implicitly includes the NYISO's right to file an unexecuted service agreement. Nevertheless, if the Commission were to determine that a literal reading of Section 4.1.9.3 of the Services Tariff or Section 6 of the Existing Implementation Agreement somehow restricts the NYISO's ability to file the Unexecuted Agreement at this time, the NYISO respectfully requests that the Commission waive that restriction. Granting a waiver would be appropriate because, as noted in Section II, above, the NYISO had reasonably anticipated until a few weeks ago that there would be a negotiated extension to the Existing Implementation Agreement. Moreover, as stated in this filing letter, the Unexecuted Agreement is intended to facilitate further negotiations by ensuring that there is a lawful mechanism on file for TC Ravenswood to be compensated for certain costs that are not expressly addressed by other NYISO tariff provisions.

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greater than the currently effective rates and in line with the rate escalation accepted under the Existing Implementation Agreement. There have been no market changes since 2011 that would suggest those rates are no longer appropriate. If anything, given the decrease in fuel prices since 2011, the proposed rates are arguably generous to TC Ravenswood. Because the other terms of the Unexecuted Agreement are identical to the Existing Implementation Agreement accepted by the Commission, the terms of the Unexecuted Agreement are similarly just and reasonable.

The NYISO recognizes that TC Ravenswood will likely object to the Unexecuted Agreement. As noted above, it has attempted to link the question of its compensation for compliance with Local Reliability Rule I-R3 to other issues, including broad claims regarding its filing rights under the FPA in Docket No. ER14-1711-000. It has also attempted to raise those legal issues before the United States Court of Appeals for the District of Columbia Circuit¹⁰ where it has effectively sought an advisory ruling.¹¹ The Commission should not allow TC Ravenswood's desire for such a ruling to interfere with the NYISO's implementation of a reasonable and practicable solution to the New York City reliability need addressed by Local Reliability Rule I-R3.

At a minimum, the Commission should conclude that the Unexecuted Agreement is a just and reasonable temporary transition mechanism, at least for the six-month duration of the 2014 Summer Capability Period.¹² TC Ravenswood itself has indicated in Docket No. ER14-1711-000 that a short-term continuation of the rates under the Existing Implementation Agreement could be acceptable to it under certain conditions¹³ (although the NYISO recognizes that those statements do not constitute TC Ravenswood's consent to the proposal in this filing and emphasizes that it does not accept TC Ravenswood's conditions). As noted above, accepting the

¹⁰ *TC Ravenswood, LLC v. Federal Energy Regulatory Commission*, D.C. Cir. No. 12-1434 (filed Oct. 31, 2012).

¹¹ *Id.*

¹² The TCR Application contends that TC Ravenswood expects to face materially increased costs related to compliance with federal environmental regulations in the future but acknowledges that compliance with those regulations will not be required until April 2015. *See, e.g.*, TCR Application at 3. It therefore appears, at a minimum, that those future environmental compliance considerations will not be relevant for the Summer Capability Period commencing on May 1.

¹³ *See TC Ravenswood, LLC's Answer to Consolidated Edison of New York Inc.'s Motion to Intervene and for an Extension of Time to File an Answer and Request for Expedited Consideration*, Docket No. ER14-1711-000 (April 16, 2014) at 2 ("TC Ravenswood would not oppose Con Ed's requests concerning the comment and notice periods if: i) Con Ed and the [NYISO] will agree to continue to pay, post-April 30, 2014 the rates for Min Oil Service that were set by the Settlement Agreement, subject to a later true-up, until such time that the rate schedule filed in this docket is accepted and goes into effect; and ii) the Commission agrees to fill the rate gap in this manner.").

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Unexecuted Agreement would address both New York City's reliability need, and TC Ravenswood's stated concern about the legality of continuing to provide service. It would do so without unnecessarily entangling negotiations over the costs of compliance with Local Reliability Rule I-R3 with the broader legal issues in Docket No. ER14-1711-000.

IV. REQUEST FOR THE APPOINTMENT OF A SETTLEMENT JUDGE OR FOR OTHER APPROPRIATE DISPUTE RESOLUTION SERVICES

Although the NYISO believes that the Unexecuted Agreement is just and reasonable it would greatly prefer to extend or renew the arrangements under the settlement in Docket No. EL10-70-000 through voluntary negotiations with TC Ravenswood and other interested parties. It also believes that a negotiated solution should be achievable in the near-term. Accordingly, the NYISO respectfully requests that the Commission appoint a settlement judge, or direct TC Ravenswood to work with other components of the OALJDR and the NYISO, to resolve the relatively narrow remaining differences concerning the appropriate level of compensation for compliance with Local Reliability Rule I-R3. In the alternative, the Commission should at least urge TC Ravenswood to use those processes. The Commission ought to encourage all parties not to make reliability in New York City subordinate to their positions in Docket No. ER14-1711-000 and appellate court.

V. EFFECTIVE DATE, REQUEST FOR WAIVER OF THE 60-DAY NOTICE PERIOD, AND REQUEST FOR EXPEDITED ACTION

The NYISO requests an effective date for the Unexecuted Agreement of May 1, 2014, which is the first day following the expiration of the Existing Implementation Agreement and the first day of the Summer Capability Period. The NYISO, therefore, respectfully requests waiver of the 60-day notice requirement set forth in 18 C.F.R. § 35.3. Waiver is appropriate to establish a lawful mechanism for compensating TC Ravenswood for its services pursuant to Local Reliability Rule I-R3 to the extent that they are not otherwise expressly addressed by the Services Tariff, as of May 1, 2014. Doing so should eliminate any possibility that TC Ravenswood would take actions incompatible with maintaining reliability in New York City based on the concerns it has expressed regarding the legality of providing such service beyond April 30, 2014. The Commission has previously granted waivers in order to allow unexecuted agreements to become effective the day after their submission.¹⁴

The NYISO also requests expedited Commission action on this filing. Prompt action would allow the parties to know as soon as possible the terms and conditions that will apply to

¹⁴ See *Southwest Power Pool, Inc. v. Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC 61,231 (2014) (accepting the filing of an unexecuted service agreement, subject to refund, with an effective date one day after the filing date).

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TC Ravenswood's provision of services pursuant to Local Reliability Rule I-R3. The NYISO therefore asks that the Commission adopt abbreviated comment procedures and act expeditiously to the extent that it deems necessary for it to issue an order in this proceeding no later than concurrent with its issuance of an order in Docket No. ER14-1711-000.

VI. REQUEST FOR WAIVER OF CERTAIN COST-OF-SERVICE FILING REQUIREMENTS UNDER 35.13 OF THE COMMISSION'S REGULATIONS

The NYISO believes that it has provided sufficient support demonstrating that the Unexecuted Agreement is just and reasonable in Section III, particularly if it is replaced in the near future by a voluntarily negotiated agreement. The NYISO therefore requests that the Commission waive any other applicable cost of service filing requirements contained in Section 35.13 of its regulations.

VII. COMMUNICATIONS

Communications regarding this proceeding should be addressed to:

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¹⁵ 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.

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VII. SERVICE

The NYISO will send a copy of this filing to TC Ravenswood. The NYISO will also send an electronic link to this filing to the official representative of each of its customers, to each participant on its stakeholder committees, to the New York Public Service Commission, and to the New Jersey Board of Public Utilities. In addition, the complete filing will be posted on the NYISO's website at www.nyiso.com.

VIII. CONCLUSION

Wherefore, for the foregoing reasons, the NYISO respectfully requests that the Commission accept the Unexecuted Agreement as requested herein.

Respectfully submitted,

/s/ Ted Murphy

Ted Murphy

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