UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

TC Ravenswood, LLC	**)**	**Docket No. ER10-1359-000**

PROTEST OF
THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

In accordance with Rule 211 of the Commission's *Rules of Practice and Procedure* and with the Commission's June 17, 2010 *Notice of Extension of Time*, the New York Independent System Operator, Inc. ("NYISO") respectfully submits this protest against the *Application of TC Ravenswood LLC to Implement a Minimum Oil Burn Service Cost of Service Recovery Rate Schedule* ("Application"). TC Ravenswood LLC ("TCR") filed the Application to provide for the prospective recovery of variable costs that it has prematurely concluded that the NYISO would not pay under Section 4.1.7a of its Market Administration and Control Area Services Tariff ("Services Tariff"). The Commission should reject the Application because it unlawfully and unnecessarily duplicates a provision that already exists in the NYISO's Market Administration and Control Area Services Tariff ("Services Tariff"). The Application also attempts to unilaterally amend that provision in violation of Article 19 of the NYISO's *Independent System Operator Agreement* ("ISO Agreement").[1] Moreover, the precedent cited by TCR with respect to non-market based compensation for generators that provide "reliability services" is distinguishable.[2]

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[1] *See* <http://www.nyiso.com/public/webdocs/documents/regulatory/agreements/nyiso_agreement/iso_agreement.pdf>.

[2] The NYISO filed a motion seeking to intervene in this proceeding on June 10.

I. BACKGROUND

A. The Minimum Oil Burn Rule

The New York State Reliability Council ("NYSRC")[3] establishes reliability rules for the New York State Power System, and the NYISO complies with them in its operations and in its administration of the electricity markets. Certain rules require the NYISO, the Transmission Owners,[4] 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, I-R3, the "Minimum Oil Burn Rule," states that:

> 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.[5]

Under this rule, 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.

TCR owns and/or leases three large steam units (Units 10, 20, and 30) at the Ravenswood complex that have the ability to burn both natural gas and oil, normally No. 6 fuel oil ("Fuel Oil"). TCR anticipate being subjected to the Minimum Oil Burn Rule during

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[3] The NYSRC was created simultaneously with the NYISO, by the then six investor-owned New York Transmission Owners, the New York Power Authority and the Long Island Power Authority. Section 2.1 of the *Agreement between the NYISO and the NYSRC* requires the NYSRC to "develop Reliability Rules which shall he complied with by the ISO and all entities engaged in transactions on the NYS Power System."

[4] Capitalized terms that are not otherwise defined herein shall have the meaning specified in Article II of the Services Tariff.

[5] Local Reliability Rule I-R3 codified an existing operating protocol of the New York Power Pool that was originally instituted as a result of a construction accident in 1989 near the Hellgate Station (Bronx, NY). The accident disrupted gas supplies to the New York City power generating stations and caused the loss of electricity to New York City consumers. All of the NYSRC's reliability rules, including l-R3, were adopted as NYS regulations by the New York Public Service Commission in February 2006.

the Summer 2010 period at times when New York City load is forecasted to exceed 9000 MW.[6]

B. Prior Commission Proceedings Addressing Minimum Oil Burn Costs

In February 2007, KeySpan-Ravenswood, LLC ("KSR"), the former owner of TCR's facilities, filed a Section 206 complaint against the NYISO demanding compensation for profits during the 2006 Summer Capability Period allegedly lost as a consequence of its compliance with the Minimum Oil Burn Rule. The NYISO explained that the requested compensation was not available under the then-effective version of its Services Tariff but added that it was developing tariff revisions to address the potential under-compensation of dual fuel generators. The Commission denied KSR's complaint.[7]

In April 2007, the NYISO submitted proposed tariff revisions establishing a supplemental payment mechanism to compensate Generators like TCR for higher cost fuel, burned in compliance with the Minimum Oil Burn Rule, and to allow them to maintain their Day-Ahead Market Energy margins calculated using natural gas-based energy and reference bids.

Crafted in the NYISO's stakeholder process, Section 4.1.7a of the Services Tariff created a special compensation rule under which generators would be eligible to recover the "variable operating costs" of burning an alternate fuel in compliance with the Minimum Oil Burn Rule when: (i) such costs are not reflected in the unit's reference level; (ii) the indexed alternate fuel cost, being burned pursuant to the Minimum Oil Burn Rule (typically Fuel Oil) is more than the indexed variable operating costs for natural gas; (iii) the Minimum Oil Burn

[6] *See NYISO Technical Bulletin #159* <http://www.nyiso.com/public/webdocs/documents/tech_bulletins/tb_159.pdf> (September 2009). The NYISO's Technical Bulletin notes that during the Summer Capability Period, one of TCR's three dual-fuel ready units is required to burn Fuel Oil when Con Edison system forecasted loads exceed 9000 MW. When those forecasts exceed 10,500 MW then all three TCR units must burn Fuel Oil.

[7] *KeySpan-Ravenswood, LLC v. New York Independent System Operator, Inc.*, 119 FERC ¶61,089, at P 14 (2007), *reh'g denied*, 119 FERC ¶ 61,319 (2007).

was activated; and (iv) the variable operating costs would not have been incurred but for the requirement to burn the required alternate fuel for Minimum Oil Burn purposes. The NYISO explained that Section 4.17a did not compensate generators "for the storage and delivery infrastructure required to be able to burn an alternative fuel at any given time." As the transmittal letter recounted:

> The NYISO and its stakeholders are still pursuing a design mechanism to capture these costs. Complicating this effort is that the capability to operate a unit using an alternative fuel provides economic opportunities when the primary fuel is unavailable or less economic than the alternative fuel. Design options such as compensating only the cost to maintain this equipment have been explored but no final solutions have been reached. The NYISO is committed to bringing this unresolved issue back to its stakeholders for further work over the next several months. The NYISO continues to consider this request in stakeholder meetings and will propose a recovery mechanism for fixed costs if and when it and its stakeholders agree on its necessity and its design.[8]

KSR protested the exclusion of both: (i) "storage and deliverability" costs incurred, as a result of being capable upon instruction, "to burn an alternative fuel at any given time.......... "; and (ii) fixed costs associated with maintaining and investing in equipment required to enable a Minimum Oil Burn generator to switch to "an alternative fuel at any given time."[9] Among other things, KSR argued that its recoverable incremental storage and deliverability costs should include costs associated with "barge transportation." The Commission denied the protest and found Section 4.1.7a to be just and reasonable, notwithstanding the exclusion of these additional costs.[10]

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[8] *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) ("NYISO MOB Rule Tariff Filing").

[9] *New York Independent System Operator, Inc.,* 119 FERC ¶ 61,130 at P 14 (2007).

[10] *Id.* at P 17.

KSR sought rehearing making essentially the same claims, which were once again rejected by the Commission.[11] The rehearing order clarified that there were "concerns that arise with respect to the costs of oil storage and delivery infrastructure . . . not present with respect to the incremental variable costs of burning oil .... "[12] that would best be addressed through the NYISO stakeholder process because [that process] had the potential to "formulate ways of answering these questions and addressing these concerns."[13]

On appeal, the United States Court of Appeals for the District of Columbia Circuit upheld all of the Commission's rulings.[14]

C. TCR's Complaint in Docket No. EL10-70-000

On May 27, 2010, TCR filed a complaint against the NYISO ("Complaint") seeking $2,437,121.48 (plus interest) for oil delivery and storage costs, and other miscellaneous expenses, that it incurred during the Summer of 2009 and that it claimed should have been compensated under Section 4.1.7a.[15] The lion's share of those costs involved payments made under Fuel Oil barge transportation and storage leases arranged by TCR or its affiliate and shared between TCR and Con Edison.

The NYISO's Answer[16] explained that the Complaint should be denied for two principal reasons. First, the NYISO cited the precedent establishing that oil delivery and storage costs would not be recoverable under Section 4.1.7a until after the NYISO stakeholder process had an opportunity to distinguish costs that would not be incurred but for Minimum

[11] *See New York Independent System Operator, Inc.*, Request for Rehearing of KeySpan Ravenswood, at 7-12, Docket No. ER07-748-000 (filed June 11, 2007).

[12] *New York Independent System Operator, Inc.*, 121 FERC ¶ 61,039 at P 22 (2007).

[13] *Id.* at P 23.

[14] *KeySpan-Ravenswood v. FERC*, No. 07-1278 Consolidated with 07-1517, 2009 U.S. App. LEXIS 10014, at 3 (D.C. Cir. May 7, 2009).

[15] *TC Ravenswood LLC*, Complaint of TC Ravenswood, LLC and Request for Confidential Treatment, Docket No. EL10-70-000 (May 27, 2010) ("Complaint").

[16] *TC Ravenswood, LLC v. New York Independent System Operator, Inc.,* Answer of the New York Independent System Operator, Inc., Docket No. EL10-70-000 (June 28, 2010) ("Answer").

Oil Burn Rule compliance from those related to preserving the economic advantages associated with dual fuel capability.[17] Second, the NYISO explained that TCR's clamed costs for Summer 2009 were not truly "variable operating costs" because their variations were driven not by the number of barrels of Fuel Oil that TCR burned for Minimum Oil Burn Rule compliance *per se* but by TCR's usage relative to Con Edison's steam operations.

D. TCR's Application

TCR submitted the Application on the same day that it filed its Complaint. The Application includes alternative versions[18] of a "Minimum Oil Burn Service Cost of Service Recovery Rate Schedule" ("Rate Schedule") apart from the NYISO Tariff Section 4.1.7a that would implement a so-called "Variable Cost of Service Recovery Rate." The Rate Schedule would provide for the prospective recovery of costs incurred by TCR under "I-R3 Contracts" for the "just in time" procurement and delivery of Fuel Oil for Minimum Oil Burn Rule Compliance (which TCR refers to as "Minimum Oil Burn Service"). I-R3 Contracts would be arranged with unaffiliated third parties selected through a competitive bidding process. Unlike the fixed-cost lease arrangements for storage and delivery entered into by TCR or its affiliate that were at issue in the Complaint, "the I-R3 Order service, physical inventory and cost could not be commingled with service, physical inventory or costs associated with providing Fuel to [Con Edison]."[19] TCR asserts that it would pass its costs under the I-R3 Contracts directly to the NYISO, without any mark-up.

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[17] These advantages include: (i) the ability to burn Fuel Oil instead of natural gas when it was economic to do so; (ii) eligibility to obtain less expensive non-firm retail gas transportation service and interruptible commodity service; and (iii) recovery of capital costs incorporated into the NYISO's New York City capacity market demand curve.

[18] TC Ravenswood's first proposed rate schedule would allow it to make an informational filing when it enters into new I-R3 Contracts, instead of submitting a new Section 205 filing every time a new I-R3 Contract is executed. Alternatively, TC Ravenswood's second proposed rate schedule would require a new Section 205 filing every time a new I-R3 Contract is executed.

[19] TCR-1 at 4.

The Rate Schedule is proposed as a stand-alone TCR tariff, structurally not a part of the NYISO Tariffs. The NYISO would, however, be the sole "Customer" under the Rate Schedule and would be expected to pay TCR based on invoices served upon it and to collect the money used to pay these charges directly from NYISO customers. The NYISO's payment obligations would be governed by the billing and settlement provisions of its Services Tariff.[20]

The Application notes that the Rate Schedule is not intended to recover fixed costs associated with Minimum Oil Burn Rule compliance.[21] Fixed cost compensation issues are therefore outside the scope of the proceeding.

II. PROTEST

A. TCR's Rate Schedule Impermissibly Duplicates Section 4.1.7a of the Services Tariff

The Application should be rejected because the proposed Rate Schedule addresses the same subject, namely the compensation of variable operating costs that would not be incurred "but for" compliance with the Minimum Oil Burn Rule, as does Section 4.1.7a of the NYISO Services Tariff. The NYISO is the sole transmission provider and market administrator for the New York Control Area ("NYCA"). 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 NYCA. 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.

[20] *See* Article 7.4.3 of the NYISO's Market Administration and Control Area Services Tariff.

[21] The NYISO stands ready to work with TCR and other interested parties to develop, expeditiously if necessary, provisions that fairly and equitably provide for recovery of fixed costs, the occurrence of which are necessary to support Minimum Oil Burn Rule compliance.

TCR is a participant in the NYISO-administered energy, capacity, and ancillary services markets. Its so-called "Minimum Oil Burn Service" does not pertain to a distinct product that is somehow beyond the scope of the existing NYISO tariffs. "Minimum Oil Burn Service" actually involves nothing more than the production of energy using Fuel Oil instead of natural gas and the sale of that energy in the NYISO-administered markets. There is no reason for such a 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.[22] The fact that the proposed Rate Schedule incorporates the Services Tariff 's billing and settlement provisions only confirms the obvious overlap between it and the Services Tariff.

The NYISO is aware of only one previous attempt by a generator to file a separate rate schedule to govern a service that properly fell within the scope of the NYISO tariffs. In 2002, Astoria Generating Company, L.P. ("Astoria") unilaterally submitted a proposed stand-alone "Quick Start Service Tariff." 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.[23] The Commission rejected Astoria's tariff and directed that Astoria instead work through the NYISO stakeholder process to resolve its issues.[24] 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 tariff structure. In the context of this proceeding, NYISO tariff provisions corresponding to Rate Schedule 6 already exist in the form of Section 4.1.7a.

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[22] *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.)

[23] By comparison, TCR's case for a stand-alone rate schedule is weaker than Astoria's because it is seeking additional compensation for providing services that are already covered by the NYISO Services Tariff.

[24] *Astoria Generating Company, L.P.*, 101 FERC ¶ 61,275 (2002).

The Commission has likewise rejected attempts by generators to unilaterally file stand-alone rate schedules in other markets.[25] 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.[26]

Finally, the NYISO is aware of no precedent authorizing TCR to compel the NYISO, or any other third party, to involuntarily pay the cost of a service that it does not use itself, or to collect those costs from its own customers.

For all of these reasons, the proposed Rate Schedule should be rejected[27] as impermissibly duplicative of Section 4.1.7a of the Services Tariff.

B. TCR's Rate Schedule is Unnecessary Because Section 4.1.7a Already Provides for the Recovery of Legitimate Variable Operating Costs

The Application should also be rejected because the proposed Rate Schedule is wholly unnecessary. Section 4.1.7a already authorizes TCR to recover genuine variable operating costs that would not have been incurred but for compliance with the Minimum Oil Burn Rule. By contrast, TCR's separately filed Complaint, which asks the Commission to clarify that Section 4.1.7a encompasses oil delivery and storage-related fixed costs incurred by TCR and

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[25] *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.

[26] *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).

[27] Section 35.5 of the Commission's regulations states that the Commission will summarily reject a rate filing that "patently fails" to comply with Commission regulations. The NYISO respectfully submits that summary rejection is warranted here because the Rate Schedule impermissibly and unnecessarily duplicates Section 4.1.7a of the Services Tariff.

its affiliates during Summer 2009, raises distinct issues that are independent of the question of whether IR-3 Contract costs are recoverable under the current version of Section 4.1.7a.

Whether the Commission denies TCR's Complaint, or not, a new recovery mechanism for "variable operating costs," separate and apart from the Section 4.1.7a, is unnecessary. A ruling in that proceeding would not drive the outcome here because the costs at issue in the two proceedings are inherently different.

Based on the information presented in the Application, the NYISO believes that the IR-3 Contract costs, unlike TCR's Summer 2009 costs, would qualify as variable operating costs because they would vary directly with TCR's Minimum Oil Burn Rule uses. It also appears that the IR-3 Contract costs satisfy Section 4.1.7a's requirement that they be incurred only because of the Minimum Oil Burn Rule. The NYISO does not believe that IR-3 Contract costs implicate the "but for" policy concerns that were present in earlier proceedings because of the clear separation between them and costs supporting the preservation of an economically advantageous dual fuel capability. A Commission order concerning the proper categorization of TCR's Summer 2009 costs would not determine recovery under Section 4.1.7a of the variable operating costs for Minimum Oil Burn Rule purposes that are at issue in this proceeding. The proposed Rate Schedule thus serves no purpose.

TCR itself appears to be aware of the NYISO's view that the costs covered by the proposed Rate Schedule are genuine variable operating costs. Its witness notes that the IR-3 Contracts were deliberately structured to avoid the NYISO's objection to the recoverability of its Summer 2009 lease costs[28] and "concurrent with the most recent NYISO commitment to pay for the service."[29] The NYISO is puzzled by TCR's decision to file a Rate Schedule that

[28] *See* TCR-1 at 4.

[29] *Id.* at 5.

it appears to recognize is not necessary. TCR's effective acknowledgement that it is not, however, is clearly another reason why the Rate Schedule should be rejected.

C. TCR's 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. Management Committee approval may only be obtained if at least 58% of the NYISO's stakeholders approve an amendment.[30] This "shared governance" system, which TCR is part of, has successfully balanced stakeholder interests, resolved controversies that would otherwise have been litigated before the Commission, and enjoys broad stakeholder support.

The Application attempts to bypass the shared governance system by imposing a unilateral amendment to Section 4.1.7a of the Services Tariff, adding provisions not present in Section 4.1.7a, but relying on the Services Tariff's cost collection mechanisms to operate. Moreover, although the proposed Rate Schedule would technically only apply to TCR, its acceptance by the Commission would establish a clear precedent that would entitle other dual fuel generators to seek compensation in a similar fashion. The Application is therefore the practical equivalent of a formal tariff amendment filed in contravention of Article 19 of the ISO Agreement.

The Commission has previously rejected attempts by individual entities to make "endruns" around ISO stakeholder processes.[31] It should do the same here. Otherwise, the

[30] *See* NYISO, *Independent System Operator Agreement*, at Article 7.10(b), *available at* <http://www.nyiso.com/public/webdocs/documents/regulatory/agreements/nyiso_agreement/iso_agreement.pdf>.

[31] *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

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 an anomalous situation in which individual NYISO stakeholders would have a unilateral right to file tariff amendments that the NYISO itself lacks.

The Application should therefore be rejected because it violates Article 19 of the ISO Agreement, a contract that is on file with the Commission and which TCR has executed.

D. Commission and Judicial Precedent Do Not Entitle TCR to Receive Cost-Based Compensation for Any and All Costs that it May Incur

Finally, TCR's suggestion[32] that it is entitled to cost-based compensation for any and all costs that it may incur is not supported by precedent. Given the NYISO's view that the costs that the Application is seeking to recover are already subject to Section 4.1.7a, this question is not central to the outcome in this proceeding (and thus need not be addressed by the Commission). Nevertheless, the NYISO respectfully offers the following brief response in order to avoid any possible confusion.

As the NYISO explained in its answer to the Complaint, applicable precedent requires only that independent generators have an opportunity to recover their costs. In the context of organized wholesale power markets, this requirement is normally satisfied when the markets are deemed to be workably competitive.[33] The Commission has been clear that there can be

(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").

[32] *See, e.g.,* Application at 10.

[33] See, e.g.,. *ISO New England, Inc.*, 130 FERC ¶61,108, at P 32 (2010) (finding that "*Hope* reflects 'a superseded cost-of-service paradigm' that 'envisioned neither competition among service providers nor any opportunity for them to earn market-based rates.' … where there is a competitive market for capacity … 'unlike the regulated markets addressed in *Hope* …, competitive markets do not guarantee the opportunity for return of/on investment through cost-based rates. That opportunity is provided through authority to charge market-based rates for services."); *citing Pacific Gas and Electric Co.*, 91 FERC ¶63,008, at 65,111 (2000); *Bridgeport Energy, LLC*, 113 FERC ¶61,311 at P 29 (2005); *see also, Bridgeport Energy, LLC*, 113 FERC ¶61,311 at P 47 (2005) (finding that "[i]t is reasonable and expected in a competitive market that there will be periods where full cost recovery is not realized. In a competitive market, the Commission does not have an obligation to guarantee cost recovery, especially for a highly efficient merchant generator, capable or earning a significant portion of

"no basis for a generator operating under market-based rate authority to claim that for it to remain available in a competitive market, it must receive energy revenues equivalent to a full cost of service."[34] As the Commission has explained, "in a competitive market, the Commission is responsible only for assuring that [a resource] is provided the *opportunity* to recover its costs."[35]

The NYISO-administered markets have consistently been found to be workably competitive.[36] Generators normally recover their marginal costs, and if they are infra-marginal, may recover a contribution to their fixed costs, from their sales in the energy markets. They also have the opportunity to recoup their legitimate going forward fixed costs through revenues received from the markets for Installed Capacity, Operating Reserves and Regulation Service as well as from non-market revenue earned from providing Voltage Support Service.[37] In addition, as was noted above:[38] (i) capacity market payments to New York City generators like TCR include a component that helps them to recover the fixed costs associated with having and maintaining dual fuel capability; and (ii) compensation under 4.1.7a allows TCR to retain any Day-Ahead margin it may earn in the Energy market even when required to burn more expensive Fuel Oil.

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available market revenues. Instead the Commission is responsible for assuring that … [an entity] is provided the opportunity to recover its costs."); *Blumenthal v ISO New England, Inc.*, 117 FERC ¶61,038 at P 69 (2006) ("[t]he Commissions' standard for RMR approval is the concern that absent an RMR contract, the facility will be unable to continue operation and that the Commission is responsible only for assuring that a generator seeking an RMR agreement is provided the *opportunity* to recover its costs.").

[34] *ISO New England Inc. and New England Power Pool Participants Committee*, 128 FERC ¶ 61,023 at P 34 (2009) (internal citations omitted).

[35] *NYISO 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).

[36] *See, e.g.,* David B. Patton, Market Monitoring Unit, 2009 State of the Market Report New York ISO Electricity Markets (April 2010) *available at* <http://www.potomaceconomics.com/uploads/nyiso_presentations/2009_NYISO_SOM_Final_4-30-2010.pdf>.

[37] *See, e.g., New York Independent System Operator, Inc.*, Filing Requesting Authority to Prospectively Apply New Mitigation Rules to Three Specifically Identified Generators, at Attachment B - Affidavit of Dr. David B Patton at PP 36-37, Docket No. ER09-1682-000 (filed September 4, 2009).

[38] *See supra* n. 17.

In short, the NYISO is under no legal obligation to develop non-market-based mechanisms to ensure that TCR will recover any and all costs that it may incur in the course of its operations. By administering competitive electricity markets the NYISO is fulfilling its obligation to ensure that generators have a "reasonable opportunity" to recover their costs. The fact that the NYISO previously concluded that a supplemental compensation mechanism was appropriate to ensure that generators could recover genuine variable operating costs that would not have been incurred but for the Minimum Oil Burn Rule does not alter this analysis. The cases cited by TCR are not to the contrary.[39]

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc., respectfully requests that the Commission reject TC Ravenwsood, LLC's proposed Variable Cost of Service Recovery Rate for all of the reasons specified above.

Respectfully submitted,

/s/Ted J. Murphy
Ted J. Murphy
Counsel to
the New York Independent System Operator, Inc.

[39] The cases cited by TC Ravenswood address the: (1) ability of entities to pass-through variable costs to third parties (*see, e.g., Xcel Energy Services, Inc.*, 119 FERC ¶ 61,256 (2007) (accepting a rate schedule to pass-through costs to third parties, under the provisions of the Southwest Power Pool, Inc.'s OATT); *Wyoming Interstate Company Ltd.*, 127 FERC ¶ 61,236 (2009) (allowing a pipeline to pass through additional costs of off-system capacity to third parties)); and (2) Commission's acceptance of formula rates (*see, e.g.*, *Missouri River Energy Services*, 130 FERC ¶ 63,014 at P 66 (2010); *PJM Interconnection, LLC*, 110 FERC ¶ 61,053 at P 120 (2005); *PUC of California v. FERC*, 254 F.3d, 250, 254 (D.C. Cir. 2001); *Idaho Power Company*, 120 FERC ¶ 63,014 at P 249 (2007)).

CERTIFICATE OF SERVICE

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

Dated at Washington, DC this 2nd day of July, 2010.

By: *\/s/Vanessa A. Colón*_______
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