SERVICE AGREEMENT NO. 2575

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

	)	
New York Independent System Operator, Inc.	)	**Docket No. ER21___**
	)	

IMPLEMENTATION AGREEMENT

Pursuant to Section 205 of the Federal Power Act ("FPA"), 16 U.S.C. § 824d, and Part 35 of the Federal Energy Regulatory Commission's ("Commission") regulations, 18 C.F.R. § 35, *et seq*., and Section 4.1.9.3 of the New York Independent System Operator Inc. ("NYISO") Market Administration and Control Area Services Tariff ("Services Tariff"), Helix Ravenswood, LLC ("Helix") and the NYISO (each individually, a "Party" and together, the "Parties") hereby submit this Implementation Agreement fully resolving issues related to the compensation and terms and conditions under which Helix constructed a new fuel oil storage tank in order to accommodate the conversion of the Ravenswood Generating Station[1] to fire No. 4 fuel oil in lieu of No. 6 fuel oil. The conversion of the Ravenswood Generating Station to No. 4 fuel oil is required in order to allow the Ravenswood Generating Station to be in compliance with Chapter 2 of Title 15 of the Rules of the City of New York, while also furthering its compliance with New York State Reliability Council's Local Reliability Rule G.2 (Loss of Generator Gas Supply - New York City) ("Rule G.2"). This Implementation Agreement establishes a mechanism whereby Helix and the Loads in the Consolidated Edison Transmission District (as described in the Services Tariff) will each pay approximately one-third of the prudently incurred capital costs

[1] The Ravenswood Generating Station units that provide services pursuant to Rule G.2 consist of Ravenswood ST 01, Ravenswood ST 02, and Ravenswood ST 03.

associated with constructing key elements of the new fuel oil storage tank and fuel oil system.[2] The total prudently incurred project cost was approximately $32 million (the "Total Fuel Oil Storage Tank Cost").

As this Implementation Agreement is fair, reasonable and in the public interest, the Parties urge prompt approval by the Commission of this Implementation Agreement without condition, modification or delay, to be effective as of November 5, 2020 ("Effective Date").

SECTION ONE

PROJECT IMPLEMENTATION AND COST RECOVERY

1.1 After consulting with the NYISO, Consolidated Edison Company of New York, Inc. ("Consolidated Edison"), and other interested parties, Helix proceeded with the construction of a new fuel oil storage tank. The new fuel oil storage tank supports phasing out the use of No. 6 Fuel Oil to comply with New York City regulations. The new tank was placed into commercial operation on November 1, 2019. Helix demonstrated its actual project costs in good faith by providing project invoices and other supporting information documenting costs directly related to the construction of its new fuel oil storage tank.

1.2 "Recoverable Project Costs" are those amounts to be recovered by NYISO from all load withdrawals in the Consolidated Edison Transmission District (other than withdrawals to supply station power) and paid by NYISO to Helix pursuant to this Section 1. The Recoverable Project Costs shall be paid monthly as follows:

1.2.1 An initial November 2020 payment of $732,897.98; and

1.2.2 A monthly payment in each month from December 2020 through and including

[2] Pursuant to a separate agreement, Consolidated Edison Company of New York, Inc.'s steam business ("Con

Edison Steam") will reimburse Helix for approximately one-third of the prudently incurred capital costs associated with constructing key elements of the new fuel oil storage tank and fuel oil system.

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September 2025 of $216,448.99.

1.3 The term of this Implementation Agreement is November 5, 2020 through September 30, 2025 ("Term"). The total Recoverable Project Cost paid by the NYISO will not exceed $13,286,939.40.

1.4 In the event Helix ceases usage of the new fuel oil storage tank and related equipment to operate one or more of Ravenswood ST 01, Ravenswood ST 02 and Ravenswood ST 03 within the first 24 months after the tank was placed in commercial operation, then:

1.4.1 Helix shall notify NYISO and Consolidated Edison immediately if it determines or learns that it will no longer use, or that it will no longer be able to use, the new fuel oil storage tank and related equipment to operate one or more of Ravenswood ST 01, Ravenswood ST 02 and Ravenswood ST 03 for any reason;

1.4.2 Except as set forth in Section 1.6 of this Implementation Agreement, the NYISO will cease making payments to Helix as of the first month after usage ceased; and

1.4.3 Except as set forth in Section 1.6 of this Implementation Agreement, Helix shall refund to the NYISO all amounts paid by the NYISO for the project within 30 calendar days after Helix ceases using the new fuel oil storage tank and related equipment to operate one or more of Ravenswood ST 01, Ravenswood ST 02 and Ravenswood ST 03. If payment is not rendered within 30 calendar days, interest on any monies not yet paid to the ISO shall be calculated in accordance with the methodology specified for interest on refunds in the Commission's regulations at 18 C.F.R. § 35.19a (a)(2)(iii).

1.5 In the event Helix ceases usage of the new fuel oil storage tank and related equipment to

operate one or more of Ravenswood ST 01, Ravenswood ST 02, and Ravenswood ST 03

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at any time during the 60-month term of this Implementation Agreement, starting with the 25th month after the tank was placed in commercial operations, then:

1.5.1 Helix shall notify NYISO and Consolidated Edison immediately if it determines or learns that it will no longer use, or that it will no longer be able to use, the new fuel oil storage tank and related equipment to operate one or more of Ravenswood ST 01, Ravenswood ST 02 and Ravenswood ST 03 for any reason;

1.5.2 Except as set forth in Section 1.6 of this Implementation Agreement, the NYISO will cease making payments to Helix as of the first month after NYISO receives notice from Helix, or should have received notice from Helix consistent with Section 1.5.1 of this Implementation Agreement, and shall not be required to make any further payments to Helix under this Implementation Agreement;

1.5.3 If the NYISO has paid more than $5,711,224.75 to Helix then, except as set forth in Section 1.6 of this Implementation Agreement, Helix shall refund to the NYISO all amounts paid by the NYISO in excess of $5,711,224.75 within 30 calendar days after Helix ceases using the new fuel oil storage tank and related equipment to operate one or more of Ravenswood ST 01, Ravenswood ST 02 and Ravenswood ST 03. If payment is not rendered within 30 calendar days, interest on any monies not yet paid to the ISO shall be calculated in accordance with the methodology specified for interest on refunds in the Commission's regulations at 18 C.F.R. § 35.19a (a)(2)(iii).

1.6 Throughout the Term of this Implementation Agreement, the provisions of paragraphs 1.4 and 1.5 will not apply, and the NYISO will continue to make monthly payments, if Helix's

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cessation of all usage of the new fuel oil storage tank and related equipment to operate one or more of Ravenswood ST 01, Ravenswood ST 02 and Ravenswood ST 03 is due to:

1.6.1 A catastrophic equipment failure affecting all of Ravenswood ST 01, Ravenswood ST 02 and Ravenswood ST 03, and Helix decides not to rebuild or replace the equipment. For purposes of this Section "catastrophic" has the meaning set forth in Section 23.2.1 of the Services Tariff; or

1.6.2 A change in law or regulation, issuance of an administrative order, or other governmental action (collectively referred to as "governmental action" in this paragraph) after the Effective Date of this Implementation Agreement that prevents the economic operation of all of Ravenswood ST 01, Ravenswood ST 02 and Ravenswood ST 03. For purposes of this Section, Helix must demonstrate to the NYISO that the cost to continue operation of Ravenswood ST 01, Ravenswood ST 02 and/or Ravenswood ST 03, including any risk-adjusted cost of capital, could not reasonably be expected to be recouped over the reasonably anticipated remaining life of the generator(s). The elements of such demonstration may include, as appropriate, the historical revenue and maintenance cost data for the purpose of the baseline, the cost of necessary repairs or modifications, the costs (including, but not limited to, capital expenditures) necessary to comply with a governmental action that must be met in order to operate, anticipated capacity, energy and ancillary services revenues following the governmental action, the projected costs of operating following the governmental action, and other relevant data.

1.7 For purposes of this Agreement, cessation of all usage of the new fuel oil storage tank and related equipment means that Helix no longer uses the tank to provide fuel to produce

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electricity at any of Ravenswood ST 01, Ravenswood ST 02 or Ravenswood ST 03. For avoidance of doubt, Helix will not be considered to have completely ceased use of the tank and the NYISO's payment obligation will continue so long as Helix continues to use the tank to serve at least one generating unit.

1.8 In the event there is a catastrophic failure of the fuel oil tank and/or related equipment, and Helix decides to rebuild the tank and/or equipment, Helix will not be entitled to recover more than Total Fuel Oil Storage Tank Cost. To the extent Helix receives combined payments from NYISO, Consolidated Edison Steam, and insurance proceeds that exceed the Total Fuel Oil Storage Tank Cost, any excess proceeds will first be applied equally to reduce each of NYISO's and Consolidated Edison Steam's obligation to pay any remaining unrecovered portion of the Total Fuel Oil Storage Tank Cost. In the event that such excess is greater than the NYISO's and Consolidated Edison Steam's remaining payment obligations, Helix shall next pay one-third of the proceeds in excess of the Total Fuel Oil Storage Tank Cost to the NYISO.

1.9 In the event there is a catastrophic failure of the fuel oil tank and/or related equipment, and Helix decides *not* to rebuild the facility, the insurance proceeds will be applied first to compensate Helix for any portion of the Total Fuel Oil Storage Tank Cost it had not recovered from the NYISO or Consolidated Edison Steam. If the insurance proceeds exceed the amount necessary to compensate Helix for the portion of the Total Fuel Oil Storage Tank Cost not recovered from the NYISO or Consolidated Edison Steam, then one-third of the balance of such excess insurance proceeds shall be paid to the NYISO.

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SECTION TWO

PAYMENT

2.1 The NYISO will pay Helix the Recoverable Project Costs monthly using the NYISO's normal billing cycle described in Section 2.7.3 of the NYISO Open Access Transmission Tariff ("OATT"), commencing with the Effective Date of this Implementation Agreement.

2.1.1 The NYISO's obligation to pay Helix is conditioned on the NYISO's continuing authority to obtain the Recoverable Project Costs from all load withdrawals in the Consolidated Edison Transmission District (other than withdrawals to supply station power) under this Implementation Agreement, the OATT and the Services Tariff.

2.2 The NYISO will allocate Recoverable Project Costs paid to Helix pursuant to this Implementation Agreement, in accordance with the provisions of Section 6.1.7 of the NYISO OATT that are in effect at the time this Implementation Agreement is executed, to all load withdrawals in the Consolidated Edison Transmission District (other than withdrawals to supply station power) based on each Load Serving Entity's ("LSE's") load ratio share. Payments to the NYISO and Refunds issued by the NYISO will utilize the NYISO's normal billing cycle, as described in Section 2.7.3 of the NYISO OATT.

2.2.1 Recoverable Project Costs, paid pursuant to Section 2.1 of this Implementation Agreement, will be allocated based on each LSE's load ratio share for each month during which the NYISO is obligated to pay Recoverable Project Costs under this Implementation Agreement.

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2.2.2 Refunds and insurance proceeds paid to the NYISO in accordance with this Implementation Agreement shall be refunded to all load withdrawals in the Consolidated Edison Transmission District (other than withdrawals to supply station power) based on each LSE's load ratio share. Refunds shall be allocated based on each LSE's load ratio share for the period during which refunds are issued, using the same load ratio share basis that the NYISO uses to allocate the Recoverable Project Costs.

SECTION THREE

EXPIRATION/AMENDMENT

3.1 Except for outstanding payment obligations under Section 2 hereof, this Implementation Agreement shall expire on September 30, 2025.

3.2 The Parties shall retain all rights under the FPA, Section 4.1.9 of the Services Tariff, and all other provisions in the Services Tariff, to the extent applicable, as described in Sections 6 and 7 of this Implementation Agreement.

SECTION FOUR

SECTION 4.1.9 OF THE NYISO SERVICES TARIFF

4.1 This Implementation Agreement constitutes the full and complete agreement of the Parties with respect to the new fuel oil storage tank addressed herein, and supersedes all prior negotiations, understandings, and agreements, whether written or oral, between the Parties with respect to the subject matter described herein. The Parties also agree that this Implementation Agreement does not affect or change any provisions of the Services Tariff, including Section 4.1.9, or any other implementation agreement between the Parties related

to Helix's costs to generate electric energy using fuel oil in lieu of natural gas in furtherance of New York State Reliability Council ("NYSRC") Local Reliability Rule G.2.

4.2 Where there are differences between Section 4.1.9 of the Services Tariff and the terms of this Implementation Agreement, the terms of this Implementation Agreement shall govern.

4.3 All references within this Implementation Agreement to Section 4.1.9 of the Services Tariff refer to the provisions of Section 4.1.9 as they exist as of the date this Implementation Agreement is executed.

SECTION FIVE

COMMISSION ORDER

5.1 To the extent the Commission accepts this Implementation Agreement subject to a condition or modification, each Party shall have the right to withdraw from this Implementation Agreement, which withdrawal may be exercised in such Party's sole discretion but subject to the provisions of Section 7.2.

SECTION SIX

FILING RIGHTS

6.1 No Party will make a Section 205 filing or a Section 206 filing seeking to amend the terms of this Implementation Agreement, or seeking a rate or a revised rate to compensate Helix for construction of a new fuel oil storage tank in order to accommodate the conversion of the Ravenswood Generating Station to fire No. 4 fuel oil in lieu of No. 6 fuel oil during the term of this Implementation Agreement, unless the Parties, by mutual consent, agree to modify the terms and conditions of this Implementation Agreement. This Implementation Agreement has been negotiated at arm's-length by Parties of equal bargaining power, and it is the intent of the Parties that this Implementation Agreement is subject to the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service*

Corp., 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) ("Mobile Sierra doctrine") to the full extent legally permissible and

as interpreted in *Morgan Stanley Capital Group Inc. v. Pub. Util District No. 1*, 128 S. Ct. 2733 (2008), *NRG Power Marketing LLC v. Me. Pub. Utils, Comm'n*, 130 S. Ct. 693 (2010) and *Dominion Transmission Inc. v. FERC*, 533 F.3d 845 (D.C. Cir. 2008).

6.2 For the sole purpose of settling the compensation matters described herein, this Implementation Agreement represents a fair and reasonable negotiated settlement that is in the public interest. The term of this Implementation Agreement shall not limit or restrict the arguments that the Parties may put forth or the positions that the Parties may take in any future proceeding before the Commission that are not specifically agreed to herein.

SECTION SEVEN

EFFECTIVE DATE AND GENERAL RESERVATIONS

7.1 This Implementation Agreement shall become effective on November 5, 2020, subject to the Commission issuing an order accepting the Implementation Agreement. If the Commission accepts the Implementation Agreement without modification, no Party will request rehearing or otherwise appeal or support rehearing requests or appeals by others. If the Commission does not accept the Implementation Agreement for filing, then Helix will refund to the NYISO all amounts paid by the NYISO within 30 days of the Commission's order. The NYISO will then refund the money to all load withdrawals in the Consolidated Edison Transmission District in accordance with Section 2.2.2 of this Implementation Agreement.

7.2 This Implementation Agreement is an integrated whole and is expressly conditioned on the Commission's acceptance of all provisions herein without modification or condition. Notwithstanding the foregoing, if the Commission's approval of this Implementation

Agreement is conditioned on a modification of this Implementation Agreement or on any other condition, such modification or condition shall be considered to be accepted unless a

Party objecting to such condition or modification serves written notice on the other Party of its intent to seek rehearing of the order approving the Implementation Agreement as modified or conditioned within a period of 10 calendar days from the date of such order. Should Commission approval be subject to condition or modification of this Implementation Agreement, each Party shall then have the right, as determined in its sole discretion, to withdraw as a signatory of the Implementation Agreement.

7.3 Commission approval of this Implementation Agreement shall constitute the requisite prospective waiver of any and all otherwise applicable Commission regulations, to the extent necessary, to permit implementation of the provisions of this Implementation Agreement.

7.4 This Implementation Agreement is made upon the express understanding that it constitutes a negotiated agreement and, except as otherwise expressly provided for herein, no Party shall be deemed to have approved, accepted, agreed to, or consented to any principle or policy relating to rate design, rate calculation, or any other matter affecting or relating to any of the compensation, charges, classifications, terms, conditions, principles, or issues associated with this Implementation Agreement. This Implementation Agreement shall not be deemed to be a "settled practice" as that term was interpreted and applied in *Public Service Commission of New York v. FERC*, 642 F.2d 1335 (D.C. Cir. 1980), and shall not be the basis for any decision with regard to the burden of proof in any future litigation. This Implementation Agreement shall not be cited as precedent, nor shall it be deemed to bind either Party in any future proceeding including, but not limited to, any Commission proceeding, except in any proceeding to enforce this Implementation Agreement.

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7.5 The discussions among the Parties and other entities that have produced this Implementation Agreement have been conducted on the explicit understanding, pursuant to Rules 602(e) and 606 of the Commission's Rules of Practice and Procedures, that all offers and any comments on these offers are privileged and not admissible as evidence against any participant who objects to their admission and that any discussions of the Parties and other entities with respect to offers of settlement is not subject to discovery or admissible in evidence.

7.6 Headings in this Implementation Agreement are included for convenience of reference only and are not intended to have any significance in interpretation of this Implementation Agreement.

7.7 This Implementation Agreement may be executed in separate counterparts, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. For purposes of this Implementation Agreement, facsimile or electronic signatures shall be deemed originals.

SECTION EIGHT

SUPPORT OF FULL SETTLEMENT

8.1 The Parties agree that this Implementation Agreement resolves all issues related to the manner in which Helix will be compensated for conversion of the Ravenswood Generating Station to fire No. 4 fuel oil in lieu of No. 6 fuel oil.

IN WITNESS WHEREOF, the Parties hereto have caused this Implementation Agreement to be signed by their duly authorized representatives on the date written below.

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Clinton Plummer, Authorized Signatory

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Respectfully submitted,

HELIX RAVENSWOOD, LLC

By: _____

Dated: _____

NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

By: Wesley Yeomans : cn=Wesley Yeomans, o=NYISO, ou=VP, _____ Date: 2020.10.29 15:40:58 -04'00' nyiso.com, c=US

Dated: 10/29/2020 _____

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gitally signed by Wesley Yeomans