UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

TC Ravenswood, LLC	**)**	**Docket No. ER10-1359-001**

REQUEST FOR LEAVE TO ANSWER AND ANSWER OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure,[1] the New York Independent System Operator, Inc. ("NYISO") submits this request for leave to answer, and its answer to, the request for rehearing of TC Ravenswood, LLC ("TCR") in the above-captioned proceeding ("Rehearing Request"). The Commission's October 27 Order[2] in this proceeding was soundly reasoned and correctly rejected TCR's unprecedented attempt to file duplicative rate schedules to govern the recovery of the same costs that are already governed by the NYISO's Market Administration and Control Area Services Tariff ("Services Tariff").[3] The Rehearing Request is replete with specious arguments that try to obscure this reality, but is devoid of any merit. It should therefore be rejected.

I. REQUEST FOR LEAVE TO ANSWER

The Commission has discretion[4] to accept answers to rehearing requests and to responsive pleadings, and has done so when such answers help to clarify complex issues, provide

[1] 18 C.F.R. §§ 385.212 and 385.213 (2010).

[2] *TC Ravenswood, L.L.C.*, 133 FERC ¶ 61,087 (2010) ("October 27 Order").

[3] Capitalized terms that are not otherwise defined herein shall have the meaning specified in Section 2 of the Services Tariff.

[4] *See* 18 C.F.R. § 385.213(a)(2).

additional information, or are otherwise helpful in the Commission's decision-making process.[5] The Commission should follow its precedent and accept the NYISO's answer in this instance. The answer identifies the most gross distortions in TCR's rehearing request in order to clarify the record and help the Commission reach an informed decision. The fact that the NYISO has not responded to every distortion in detail reflects its respect for the Commission's preference that answers to rehearing requests be limited in scope. The NYISO's silence should not be construed as an implicit acceptance of any of TCR's claims.

II. ANSWER

A. The October 27 Order Correctly Concluded that "Minimum Oil Burn Service" Is Nothing More than the Generation of Electricity

The October 27 Order rightly rejected TCR's proposed rate schedules to govern its so-called "Minimum Oil Burn Service." As the Commission observed, the proposed service was really nothing more than the "generation of electricity which is a jurisdictional Market Service that already falls under the exclusive purview" of the Services Tariff.[6] The truth of this proposition is, and ought to be, obvious. Nevertheless, the Rehearing Request contains an abbreviated claim, which appears only in its "Statement of Issues," that "Minimum Oil Burn Service" is somehow distinct from other forms of electric generation. TCR suggests that this is because Minimum Oil Burn Service involves a different fuel source, has a different cost

[5] *See Black Oak Energy, L.L.C. v. PJM Interconnection, L.L.C.*, 125 FERC ¶ 61,042, at P 14 (2008) (accepting answer to rehearing request because the Commission determined that it has "assisted us in our decision-making process"); *FPL Energy Marcus Hook, L.P. v. PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,289, at P 12 (2008) (accepting "PJM's and FPL's answers [to rehearing requests], because they have provided information that assisted us in our decision-making process"); *New York Independent System Operator, Inc.*, 123 FERC ¶ 61,044, at P 39 (2008) (accepting answers to answers because they provided information that aided the Commission's decision-making process); *Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.*, 93 FERC ¶ 61,017, at 61,036 (2000) (accepting an answer that was "helpful in the development of the record. . . .").

[6] October 27 Order at PP 24-25.

structure, and is associated with the New York State Reliability Council's Local Reliability Rule I-R3 ("Rule I-R3").[7]

In reality these attempts at distinctions are overwhelmingly outweighed by the similarities between the provision of "Minimum Oil Burn Service" and the supply of electricity produced using all other fuels, or renewable resources. The mere fact that TCR is sometimes required by New York State rules to produce electricity using fuel oil instead of natural gas does not mean that it is not producing electricity. All electricity produced by TCR and other Suppliers is used to meet Load without reference to how it was produced. All generators receive a NYISO-calculated Locational Based Marginal Price ("LBMP") Energy that is calculated using the same inputs and algorithms regardless of the "cost structure" associated with its production. Market-based Energy costs are recovered from NYISO customers using the same NYISO tariff mechanisms. Sellers, including TCR, obtain market-based rate authority to sell Energy in the NYISO-administered markets and that authorization encompasses electricity produced from all fuels. Indeed, if TCR were correct that Minimum Oil Burn Service were somehow a distinct product then it would presumably not be entitled to sell the Energy it generates while complying with Rule I-R3 since TCR's current market-based rate tariff encompasses only the sale of Energy, Capacity, and Ancillary Services in New York and does not include provisions for the sale of a distinct "Minimum Oil Burn" service.[8]

[7] Rehearing Request at 8.

[8] *See TC Ravenswood, LLC*, Market Based Rate Tariff, Docket No. ER10-2860-000 (filed September 22, 2010), accepted *TC Ravenswood, LLC*, Letter Order, Docket No. ER10-2860-000 (issued November 17, 2010).

B. The October 27 Order Correctly Rejected TCR's Proposed Rate Schedules Because They Were Needlessly Duplicative of, and Inconsistent with, the Services Tariff

The October 27 Order also correctly concluded that TCR's rate schedules were duplicative of and prohibited by the existing provisions of the NYISO Services Tariff. Section 4.1.2 expressly states that any Market Participant that sells Energy, Capacity, or Ancillary Services in the NYISO-administered markets is utilizing Market Services provided by the NYISO which must be the "sole point of Application for all Market Services." When TCR generates electricity for sale in the NYISO-administered markets it is selling Energy regardless of whether it produces that electricity using natural gas or fuel oil. As the October 27 Order recognized, TCR therefore must sell that Energy under the terms and conditions of the Services Tariff using NYISO-provided Market Services. Those Market Services include the NYISO's determination of, payment for, and recovery of, the cost of "Minimum Oil Burn" compensation.[9]

The Rehearing Request concedes that Market Participants that choose to sell Energy in the NYISO-administered markets, as TCR freely chooses to do even at times when it is required to burn fuel oil by Rule I-R3, are utilizing Market Services under the Services Tariff.[10] TCR does not, and cannot, challenge the October 27 Order's conclusion that the Services Tariff exclusively governs sales of Energy in the NYISO-administered markets. Instead, TCR must rely on its theory that "Minimum Oil Burn" service is somehow not the production of electricity and is separate from its sale of Energy in those markets.

[9] Thus, notwithstanding TCR's assertions to the contrary, the October 27 Order was correct to state that "the production of wholesale energy by burning fuel oil to comply with NYSRC Rule I-R3 is a Market Service as defined by the Services Tariff." October 27 Order at P 25.

[10] *See* Rehearing Request at 18.

As the NYISO has previously noted in this proceeding, however, TCR's proposed rate schedules are wholly duplicative of Section 4.1.9 of the Services Tariff.[11] Section 4.1.9 already supplements the market-based compensation that TCR receives for generating electricity, which includes both the relevant LBMP and a Day-Ahead Margin Assurance Payment.[12] Section 4.1.9 already provides for the recovery of the "but for" variable costs of generating Energy while burning fuel oil in response to Rule I-R3. The Commission has recently clarified its view that this is a form of cost-based compensation and initiated hearing procedures to address disputed issues regarding its scope.[13] Generators like TCR receive that compensation as a supplement to the market-based revenues that they earn from generating electricity in compliance with Rule I-R3 and then voluntarily selling it in the NYISO-administered markets. TCR's proposed rate schedules would have covered the same categories of variable costs that are encompassed by Section 4.1.9. The October 27 Order's conclusion that the rejected rate schedules were duplicative is thus unquestionably correct, notwithstanding TCR's claims to the contrary.

In addition, as is also clear from the record in this proceeding, TCR has not proposed abandoning the compensation scheme of Section 4.1.9 of the Services Tariff and the Day-Ahead Margin Assurance payments it makes available. Moreover, it is clear from the record that TCR could not have effectuated its rejected rate schedules without using the NYISO tariffs' cost compensation and recovery arrangements. The Rehearing Request reiterates TCR's prior admissions that it intends to process the costs identified by its duplicative Rate Schedule

[11] *See TC Ravenswood, LLC*, Protest of the New York Independent System Operator, Inc. at 7-9 (filed July 2, 2010) ("NYISO Protest").

[12] The Day-Ahead Margin Assurance Payment ensures that generators subject to Rule I-R3 may maintain their Day-Ahead Energy margins calculated using natural gas based energy and reference bids.

[13] *See TC Ravenswood, LLC v. New York Independent System Operator, Inc.*, 133 FERC ¶ 61,205, at P 48 (2010).

"through Section [4.1.9] of the NYISO's existing Tariff . . . ."[14] and that, at the very least, it would need to use the NYISO's administrative services for billing,[15] which are themselves a type of Market Service. More generally, the variable costs that TCR's rate schedules sought to recover were integrally related to its sales of Energy in the NYISO-administered markets which, pursuant to Section 4.1.2, must be governed solely by the Services Tariff. The October 27 Order was therefore correct to determine that TCR's rejected rate schedules were not consistent with Section 4.1.2 of the Services Tariff.

C. The October 27 Order is Entirely Consistent with the *Atlantic City* Decision and Has Not Deprived TCR of Any Filing Rights Under Section 205 of the Federal Power Act

The Rehearing Request contends at length that the October 27 Order is inconsistent with the *Atlantic City* decision's holding that the Commission may not compel utilities to involuntarily cede their filing rights under Section 205 of the Federal Power Act.[16] In fact, the October 27 Order is entirely consistent with *Atlantic City* insofar as it has the effect of requiring TCR to abide by an agreement that it voluntarily made governing Section 205 filings to amend the Services Tariff.

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 ("ISOA").[17] TCR voluntarily became a signatory and thus

[14] Rehearing Request at 6.

[15] *See* Rehearing Request at 18. *See also TC Ravenswood, LLC*, Application of TC Ravenswood, LLC to implement a Minimum Oil Burn Service Cost of Service Recovery Rate Schedule at 1,14, Docket No. ER10-1359-000 (filed May 27, 2010) ("TCR Application").

[16] Rehearing Request at 7-8, 11-14.

[17] *See* New York Independent System Operator, Inc., Independent System Operator Agreement (dated June 22, 2007), *available at* http://www.nyiso.com/public/webdocs/documents/regulatory/agreements/nyiso_agreement/iso_agreement.pdf

voluntarily accepted its requirements.[18] Article 19 of the ISOA establishes that the terms and conditions of the NYISO Services Tariff may only be amended when the NYISO's independent Board of Directors and a 58% or greater super-majority of its stakeholder Management Committee approve a proposed amendment. It prohibits unilateral Section 205 filings to amend the Services Tariff by any Market Participant. As the NYISO previously explained,[19] TCR's proposed rate schedules were the practical equivalent of a unilateral filing to amend the Services Tariff without going through the NYISO's "shared governance" process.[20] TCR would have effectively revised the Services Tariff to: (i) establish alternative variable cost recovery provisions; and (ii) require the NYISO to perform Market Services to support a third party rate schedule. TCR has voluntarily agreed that such changes should only be made through the ISOA's Article 19 process. The October 27 Order was right to prevent TCR from undermining that process by rejecting its proposed rate schedules.[21] None of the Commission precedent cited by TCR is to the contrary, or even relevant.[22]

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[18] TCR is the voting affiliate of TransCanada Power Marketing, the entity which signed the ISO Agreement.

[19] NYISO Protest at 11-12.

[20] 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 York Independent System Operator, Inc.*, 122 FERC ¶ 61,209 at PP 24, 26 (2008) (declining to direct requested revisions without "giving other stakeholders an opportunity for comment" because it "would inappropriately circumvent [the] stakeholder process"); *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").

[21] Indeed, if the Commission had accepted TCR's rate schedules it would have empowered other Market Participants to achieve unilateral tariff revisions in the guise of stand-alone rate filings.

[22] *See Atlantic City Electric Co. v. FER*C, 329 F.3d 856, 859 (D.C. Cir. 2003) (finding that the Commission could not require transmission owners in PJM to revise the ISO agreement to give up their rights to file changes in tariff rates, terms, and conditions, as provided under § 205 of the Federal Power Act); *California Independent System Operator, Corp*., 124 FERC ¶ 61,271, P 370 (2008) (finding that the CAISO had the right to file revisions to its tariff under section 205 and that FERC did not need to consider alternate proposals where the CAISO's proposal was just and reasonable); *American Electric Power Service Corp* ., 118 FERC ¶ 61,041, P 36 (2007) (finding that

Even if TCR's filing were not a prohibited unilateral attempt to amend the Services Tariff the October 27 Order would nevertheless still be consistent with *Atlantic City* and the other cases referenced in the Rehearing Request. Public utilities have the right to make Section 205 filings but the Commission need not accept them when they are wholly and unnecessarily duplicative of previously accepted tariff provisions governing the same service. In this case, the Commission has accepted the Services Tariff and made the NYISO the sole-administrator of the jurisdictional bid-based markets for Energy, Capacity, and Ancillary Services, and the sole provider of related Market Services, in New York. Despite TCR's efforts to define "Minimum Oil Burn" service as a separate product outside the scope of the NYISO-administered markets and tariffs it is really just an incident of generating electricity for sale in those markets. It has no existence independent of the NYISO-administered Energy market. The October 27 Order therefore did not deprive TCR of its rights to make Section 205 filings to establish rates for services beyond the scope of the NYISO-administered markets. It merely prevented TCR from filing rates for a fictitious service that was intended all along to be, and is actually, an integral component of products and Market Services that are provided exclusively under the Services Tariff. None of the precedent cited by TCR addresses this situation or supports its claims.[23]

Finally, the Rehearing Request asserts in its Introduction and in its Statement of Issues, but not in the Discussion section that the October 27 Order should be overturned because it would allow a "Customer" to set a seller's rate.[24] TCR appears to be implying that the NYISO is

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FERC could not restrict AEP's right to make a section 205 filing for future rate changes, as recommended by another party to the proceeding, because sections 205 provides utilities with the power to file to make such changes); *Cross-Sound Cable Co., LLC*, 109 FERC ¶ 61,223, PP 17-19 (2004) (same). None of these cases involved a public utility that had voluntarily accepted restrictions on Section 205 filings. Nor did they involve attempts to file wholly duplicative tariffs or schedules.

[23] *Id.*

[24] Rehearing Request at 3, 7.

TCR's customer in this case, when of course the NYISO is not. TCR acknowledges elsewhere in the Rehearing Request that the NYISO is not a market participant.[25] Unlike a traditional customer, the NYISO is not purchasing services from TCR and thus has no incentive, despite TCR's insinuations, to under-compensate it. Moreover, to the extent that TCR is alleging that its compensation under Section 4.1.9 of the Services Tariff is unjust and unreasonable that question is both beyond the scope of this proceeding and already pending before the Commission in Docket No. EL10-70-000.

D. The October 27 Order Had No Need to Reach the Question of Whether TCR's Proposed Rates Were Just and Reasonable

TCR contends that the Commission erred because it "failed to assess" whether TCR's cost-based rate schedule was just and reasonable.[26] TCR's argument is based on inapplicable precedent. In this case, the Commission never, and need not have, reached the question of whether TCR's proposed rates were just and reasonable because they were wholly duplicative of accepted rates under the Services Tariff. It was just and reasonable for the Commission to reject the rate schedules for this reason alone. None of the cases cited by TCR address a public utility's attempt to supersede another public utility's tariff governing the same service in violation of both Commission-accepted tariff provisions, and an executed agreement, prohibiting it from doing so.[27]

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[25] *Id.* at 17 and fn. 36 (noting that the NYISO tariffs' definition of "Market Participant" which explicitly excludes the NYISO).

[26] Rehearing Request at 23-24.

[27] *Kansas Cities v. FERC*, 726 F.2d 82, 87 (D.C. Cir. 1983) (considering a rate schedule filed by the utility to which it applied stating that rates proposed under Section 205 "must be approved if 'just and reasonable.'"); *California Independent System Operator Corp*., 119 FERC ¶ 61,076 at P 14 (2007) (when considering modifications filed by the CAISO to its tariff the Commission found that "the [Section 205] proposal under consideration will be selected unless it is found unjust and unreasonable."); *California Independent System Operator, Corp.*, 124 FERC ¶ 61,271, at P 370 (2008) (finding that the CAISO had the right to file revisions to its tariff under section 205 and that FERC did not need to consider alternate proposals where the CAISO's proposal was just and reasonable); *New York Independent System Operator, Inc*., 124 FERC ¶ 61,301, at P 67 (2008) (when considering modifications filed by

Commission precedent holding that a just and reasonable proposal will be accepted under Section 205 even in the face of potentially reasonable alternative proposals[28] is equally irrelevant. TCR's proposed rate schedules were not being judged against an "alternative proposal." Instead, they would have inappropriately modified previously accepted tariff provisions.

E. The October 27 Order Did Not Preclude Other Entities from Offering Complementary Services, Create a NYISO "Franchise," or Authorize Undue Discrimination

Finally, the Rehearing Request contains assorted claims that the October 27 Order somehow wrongly prevents entities from offering services that complement the NYISO's. TCR even goes so far as to contrive an argument that the Commission has implicitly "created an exclusive service territory" for the NYISO and sanctioned undue discrimination.[29] The NYISO would respectfully submit that the speciousness of these claims is largely self-evident.

The NYISO would note, however, that TCR is wrong to claim that the Commission has previously allowed entities to offer Market Services in "direct competition" with the NYISO, and thus in direct contravention of Section 4.1.2 of the Services Tariff. Specifically, the Automated Power Exchange, Inc. ("APX") offered products and services that complemented, instead of replicating or supplanting, those provided by the NYISO. APX's markets used NYISO-determined LBMPs as inputs and offered participants an opportunity to achieve price certainty.[30] APX's example lends no support to TCR's attempt to displace NYISO tariff provisions.

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the NYISO to its own tariff the Commission found that its obligation was to determine whether the proposal was just and reasonable). Again, none of these cases involved wholly duplicative rate filings.

[28] *See* Rehearing Request at fn. 12, pp. 23-24 *citing California Independent System Operator Corp.*, 124 FERC ¶ 61,271, P 370 (2008); *American Electric Power Service Corp.*, 118 FERC ¶ 61,041, P 36 (2007); *Cross-Sound Cable Co., LLC*, 109 FERC ¶ 61,223, PP 17-19 (2004).

[29] Rehearing Request at 27-30.

[30] *See Automatic Power Exchange*, Filing Letter at 3, Docket No. ER01-736-000 (filed December 20, 2000).

Similarly, TCR itself acknowledges that the *Otter Tail* case[31] involved the provision of Control Area services that "would work in tandem with, and not conflict with the Midwest ISO's tariff."[32] For the reasons set forth above, that is not the case here. TCR has not shown that the Commission has previously authorized public utilities to duplicate services that are exclusively governed by ISO/RTO tariffs.

Similarly, there is no merit to TCR's claim that it will be the victim of undue discrimination if the NYISO's supposed "exclusive franchise" prevents it "from offering Minimum Oil Burn Service on its own terms."[33] TCR may offer whatever service it wishes that is genuinely outside the scope of the NYISO-administered markets and sell it to any willing customers. It may not set its own terms under which the NYISO's customers would be forced to pay for service that is actually being provided under the auspices of the NYISO-administered markets.

[31] *Otter Tail Power Company*, 99 FERC ¶ 61,019 (2002) (In 2002 the Midwest ISO was not a Control Area Operator and the conditionally accepted Control Area Tariff for Otter Tail was applicable only to non-Midwest ISO transactions, unless Midwest ISO provided otherwise).

[32] Rehearing Request at 22.

[33] *Id.* at 28.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc. respectfully requests that the Commission grant it leave to answer and reject TCR's request for rehearing.

Respectfully Submitted,

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

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cc: Michael A. Bardee
Gregory Berson
Connie Caldwell
Anna Cochrane
Lance Hinrichs
Jeffrey Honeycutt
Michael Mc Laughlin
Kathleen E. Nieman
Daniel Nowak
Rachel Spiker

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 9th day of December, 2010.

/s/ Ted J. Murphy

Hunton & Williams LLP
1900 K Street, NW
Suite 1200
Washington, DC 20006
(202) 955-1500