

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

TC Ravenswood, LLC

)

Docket No. ER12-1418-000

**MOTION TO INTERVENE, COMMENTS, REQUEST FOR LIMITED
TARIFF WAIVERS, AND ALTERNATIVE PROTEST OF
THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

In accordance with Rules 211, 212, and 214 of the Commission’s Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. (“NYISO”) respectfully moves to intervene, provides comments, requests certain limited tariff waivers, and, in the alternative, protests certain elements of the *Application of TC Ravenswood, LLC to Implement a Black Start Service Rate Schedule* (“Application”) in the above-captioned proceeding.² As described below, the NYISO supports the substance³ of TC Ravenswood, LLC’s (“Ravenswood’s”) Application to provide black start service, but protests Ravenswood’s proposal to provide this service through a stand alone rate schedule outside of the NYISO tariffs (“Rate Schedule”).⁴

In its Application, Ravenswood requests that the Commission accept its proposed Rate Schedule for the provision of black start service by its steam turbine units 10, 20, and 30

¹ 18 C.F.R. §§ 385.211, 385.212, and 385.214.

² TC Ravenswood, LLC, *Application of TC Ravenswood, LLC to implement a Black Start Service Rate Schedule*, Docket ER12-1418-000 (March 30, 2012) (“Ravenswood Application”).

³ The NYISO’s support of the “substance” of the Application does not extend to its various misstatements and mischaracterizations concerning the NYISO’s markets (including the In-City Capacity market.) *See* Ravenswood Application at pp. 3, 9. These allegations are inaccurate but, because Ravenswood itself acknowledges that they are not relevant to this proceeding, *see* Ravenswood Application at 3, 18 (acknowledging that the proposal does not address any supposed market “problems”), and because they have already been fully addressed in other dockets, the NYISO will not comment further here. Similarly, as is discussed in Section V.B below, the NYISO does not support Ravenswood’s unsupported and inaccurate claims of supposed deficiencies in the NYISO’s stakeholder processes and shared governance system.

⁴ Terms with initial capitalization that are not otherwise defined herein shall have the meanings set forth in the Services Tariff, and if not defined therein, in the NYISO Open Access Transmission Tariff.

(“Ravenswood Units”) in the Consolidated Edison Company of New York, Inc. (“Con Edison”) portion of the statewide program administered by the NYISO for restoring electric service in New York following an unplanned outage (“New York Restoration Program”). Ravenswood previously withdrew the Ravenswood Units from the New York Restoration Program on September 30, 2011, citing its concern that the black start tests required by the NYISO tariffs could damage its units.

The Ravenswood Units play an important role in the timely restoration of electric service to New York City. For this reason, the NYISO has worked diligently with Ravenswood to address its testing concerns in a manner that would permit the Ravenswood Units to participate in the New York Restoration Program going forward. The NYISO is currently working with its stakeholders, including Ravenswood, to complete the development of revised black start requirements on an expedited schedule that, among other things, are intended to address Ravenswood’s testing concerns.

The NYISO believes that the underlying substance of Ravenswood’s proposal would provide a meaningful near-term contribution to reliability by enhancing the effectiveness of the New York Restoration Program. The NYISO, therefore, supports the substance of Ravenswood’s request and would welcome Commission action to permit the Ravenswood Units to provide black start service under terms consistent with those proposed in Ravenswood’s proposed Rate Schedule, but within the framework of the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”). Ravenswood has stated that the only material differences between its proposed Rate Schedule and the black start requirements in Rate Schedule 5 of the Services Tariff are the testing and term-of-service requirements.⁵ Accordingly, the NYISO requests that the Commission grant limited waivers

⁵ Ravenswood Application at p. 17.

of the testing and term-of-service requirements in Rate Schedule 5 to permit Ravenswood to provide black start service under the NYISO tariffs in a manner consistent with the substance of its proposal. The requested waivers would remain in place for an interim period while the NYISO, Ravenswood, and other stakeholders complete the ongoing process to revise the black start requirements for New York. This approach mirrors Ravenswood's previous request for waivers, which it developed and coordinated with the NYISO, but later withdrew. Ravenswood's requested waivers would have permitted the Ravenswood Units to continue to provide black start service under the NYISO tariffs for a limited period without having to perform a full black start test, while the NYISO worked to address Ravenswood's concerns through its stakeholder process.⁶

While the NYISO supports the substance of Ravenswood's proposal, it cannot support the specific procedural mechanism Ravenswood has proposed in its Application – a stand alone Rate Schedule for providing black start service outside of the NYISO tariffs. The Commission should reject this approach because it unlawfully and unnecessarily duplicates the requirements for the provision of black start service in New York already established in the NYISO Services Tariff. In addition, Ravenswood's Application is the practical equivalent of a unilateral amendment of Rate Schedule 5 in violation of Article 19 of the NYISO's Independent System Operator Agreement ("ISO Agreement"),⁷ an agreement that Ravenswood voluntarily executed.

⁶ See TC Ravenswood, LLC, *Motion of TC Ravenswood, LLC for Waiver of New York Independent System Operator, Inc.'s Tariff Provisions Regarding Black Start and System Restoration Procedures; and Request for Expedited Treatment*, Docket No. ER11-4200-000 at pp. 2-3, 8 (August 2, 2011) ("Ravenswood Waiver Request").

⁷ See Independent System Operator Agreement, available at: http://www.nyiso.com/public/webdocs/documents/regulatory/agreements/nyiso_agreement/iso_agreement.pdf ("ISO Agreement").

I. COMMUNICATIONS

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II. MOTION TO INTERVENE

The NYISO is a not-for-profit corporation responsible for providing open-access transmission service, maintaining reliability, and administering competitive wholesale markets for electricity, capacity, and ancillary services in New York State. Pursuant to its tariffs and the reliability rules of the New York State Reliability Council (“NYSRC”), the NYISO is responsible for administering the statewide black start and system restoration program to provide for the timely restoration of electric service in New York in the event of an unplanned outage. In addition, the NYISO’s Commission-approved tariffs establish the term-of-service, testing, and compensation requirements for generators that provide black start service in New York. As Ravenswood is requesting that the Commission accept a rate schedule for the provision of black start service in New York, the NYISO has a direct and

⁸ 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.

substantial interest in this proceeding. This interest cannot be adequately represented by any other party. The NYISO, therefore, should be permitted to intervene in this proceeding.

III. BACKGROUND

A. New York Restoration Program

The NYISO is responsible for maintaining the New York Restoration Program.⁹ The program is composed of two separate, coordinated programs: (i) the NYISO black start and system restoration program, which provides for the restoration of electric service to New York by means of the 345 kV transmission backbone of New York that is energized by large hydropower units located in northern and western New York, and (ii) Con Edison's local black start and system restoration program, which provides for the restoration of electric service to its service territory by means of gas and steam turbine generators located there.¹⁰

B. NYISO Tariff Requirements Regarding Generators' Provision of Black Start and System Restoration Service in New York

Rate Schedule 5 of the NYISO Services Tariff establishes the requirements for the provision of black start and system restoration service in New York. In particular, Section 15.5.3.1 of Rate Schedule 5 establishes the term-of-service, testing, and compensation requirements for generators providing black start service for the Con Edison portion of the New York Restoration Program.

Pursuant to these provisions, a generator with black start capability located in Con Edison's service territory commits to participate in the Con Edison portion of the New York Restoration Program for a minimum period of three years. A participating generator may withdraw from the program by providing one year's advance notice at the end of the second

⁹ NYSRC Reliability Rules G-R1, Measurement G-M1. The term "New York Restoration Program" as used in this submission is the same as "NYCA System Restoration Plan" in the NYSRC Reliability Rules.

¹⁰ NYSRC Reliability Rules G-R1, Measurement G-M1; *see also* NYISO System Restoration Manual § 2 (July 2010).

year of its three-year commitment period. If a generator does not provide this notice, it commits to participate in the program for a subsequent three-year commitment period.

A generator participating in the Con Edison portion of the New York Restoration Program is required to conduct an annual black start capability test in accordance with test criteria set forth in Appendix I of Rate Schedule 5 of the Services Tariff, which incorporates Con Edison's black start testing criteria. A participating generator is also responsible for performing operator training and for conducting annual tests and certification of certain equipment and critical components related to its black start capabilities.

So long as a generator complies with its tariff obligations, including its unit testing requirements, it receives a set annual amount for its participation based upon the voltage level at which the unit is interconnected – \$350,000 for 345 kV and \$300,000 for 138 kV. A generator may also recover additional verifiable costs associated with performing operator training and conducting annual black start capability tests, and may be reimbursed for certain equipment damage resulting from the provision of black start service. The NYISO is responsible for administering customer payments and charges in connection with the provision of black start service in Con Edison's service territory.¹¹

C. NYISO Actions to Retain the Ravenswood Units in the New York Restoration Program

The Ravenswood Units have provided black start and system restoration services in Con Edison's service territory both prior to the formation of the NYISO and since the NYISO established the current black start requirements in its tariffs. Due to their size (approximately 1800 MW) and location, the Ravenswood Units' inclusion in the Con Edison portion of the New York Restoration Program provides significant benefits to New York City by enhancing

¹¹ See NYISO Services Tariff § 15.5.3.1. ("[T]he ISO will make payments for such local services directly to the Generators that provide it, under the terms of this Rate Schedule. The LSEs in those local Transmission Owner areas will be additionally charged for those services by the ISO under the ISO OATT.").

the robustness of the Con Edison portion of New York Restoration Program.

In September 2010, Ravenswood notified the NYISO and Con Edison pursuant to Rate Schedule 5 that it intended to withdraw the Ravenswood Units from participation in the Con Edison portion of the New York Restoration Program at the end of the three-year commitment period on September 30, 2011, citing its concern that the additional cycling associated with the annual black start tests could cause serious damage to its units.

After receiving this notice, the NYISO initiated discussions with Con Edison and Ravenswood, along with other generators participating in the Con Edison portion of the New York Restoration Program, to review the NYISO's existing black start requirements and to develop program improvements. The purpose of these discussions was to address, among other things, Ravenswood's stated concerns regarding the testing requirements for steam turbine units and the NYISO's and Con Edison's concerns regarding the procurement and retention of black start resources for the New York Restoration Program going forward.

In July 2011, the NYISO and Ravenswood agreed that Ravenswood would temporarily extend its participation in the New York Restoration Program beyond September 30, 2011, to provide additional time to complete the development and implementation of enhancements to the NYISO's black start requirements that were intended to address the parties' concerns. The extension would enable Ravenswood to continue to provide black start service for several additional months without having to perform a full black start test of its units.¹² On August 2, 2011, Ravenswood requested that FERC waive certain black start requirements in the NYISO tariffs to provide for this temporary extension.¹³ However, on August 26, 2011, Ravenswood filed an amendment to its motion seeking to withdraw this

¹² See Ravenswood Waiver Request at pp. 2-3, 8.

¹³ See *id.* at p. 2.

waiver request and indicating that it would withdraw the Ravenswood Units from the New York Restoration Program on September 30, 2011.¹⁴ On September 27, the Commission issued an order permitting Ravenswood to withdraw its waiver request and withdraw its units from the New York Restoration Program.¹⁵

Notwithstanding the withdrawal of the Ravenswood Units from the New York Restoration Program, the NYISO continued to work with Con Edison, Ravenswood, and other generators, to develop improvements to the New York Restoration Program. Based on these discussions, the NYISO has developed a package of revisions to its black start requirements for its stakeholders' consideration. The stakeholder Black Start Task Force met on March 30, 2012, to discuss the proposed revisions, including changes to the test requirements for steam turbine units that are intended to address Ravenswood's concerns. At that meeting, generators generally reacted positively to the NYISO's proposed changes to the black start testing regime. The NYISO is continuing to make progress through an expedited stakeholder process in the further development of its proposed revisions and anticipates filing the resulting tariff revisions with the Commission this summer.

D. Ravenswood's Application for a Stand Alone Rate Schedule to Provide Black Start Service

On March 30, 2012, Ravenswood submitted its Application in this proceeding requesting that the Commission accept its proposed Rate Schedule to provide black start service in New York. Ravenswood indicated that the impetus for its filing was a March 16, 2012, draft report issued by NYSRC's Reliability Compliance Monitoring Subcommittee that

¹⁴ TC Ravenswood, LLC, *Amendment to Motion of TC Ravenswood, LLC*, Docket No. ER11-4200-000 (August 26, 2011). As grounds for its withdrawal, Ravenswood cited its financial concerns resulting from a drop in capacity prices for the New York City area, along with Con Edison's submission of a petition to the New York State Public Service Commission ("PSC") requesting that generators be required to obtain the PSC's consent prior to ceasing to provide black start service in New York.

¹⁵ TC Ravenswood, LLC, *Order on Waiver Requests and Request for Settlement Conference*, 136 FERC ¶ 61,213 at PP 44, 46.

concluded that the absence of the Ravenswood Units from the New York Restoration Program could delay by up to five hours the restoration of electric service to New York City.¹⁶

Ravenswood stated in its Application its intent to be of assistance in restoring electric service in the event of a blackout.¹⁷ It proposed to provide “Spot Black Start Service” under its own, stand alone Rate Schedule while continuing to work through the stakeholder process on testing, term of service, and compensation issues.¹⁸ Ravenswood asserted that “the only material differences [between its proposed Rate Schedule and] the black start provisions in NYISO’s Services Tariff are with respect to testing and term of service,”¹⁹ and that “[t]he rates under TC Ravenswood’s proposed rate schedule directly parallel the rates set forth in the NYISO Services Tariff.”²⁰

IV. COMMENTS AND WAIVER REQUESTS

The NYISO believes that an interim means should be found to permit Ravenswood to provide black start service in New York, while the NYISO, Ravenswood, and other stakeholders complete the ongoing process to revise the black start requirements in the Services Tariff. The NYISO supports the substance of Ravenswood’s request and would, therefore, welcome Commission action to permit the Ravenswood Units to provide black start service consistent with the term-of-service and test requirements proposed by Ravenswood, but only within the framework of the NYISO Services Tariff.

To accomplish this, the NYISO requests that the Commission grant the NYISO a limited waiver of certain black start requirements in Rate Schedule 5 of the Services Tariff.

¹⁶ Ravenswood Application at pp. 13-16.

¹⁷ *Id.* at pp. 1, 17.

¹⁸ *Id.* at p. 17.

¹⁹ *Id.* at p. 17.

²⁰ *Id.* at p. 19.

Ravenswood asserts in its Application that the only material differences between the NYISO's black start tariff requirements and its proposed Rate Schedule are the term-of-service and test requirements.²¹ The NYISO, therefore, requests that the Commission grant the NYISO a waiver of:

(i) the term-of-service requirements in Section 15.5.3.1 of Rate Schedule 5, so that the NYISO can permit Ravenswood to provide black start service within the framework of the NYISO tariffs without requiring Ravenswood to commit to a new three-year term-of-service, and

(ii) the test requirements in Section 15.5.3.1 and Appendix I of Rate Schedule 5, so that the NYISO can accept a successful test of the Ravenswood Units under Ravenswood's proposed testing regime to satisfy Ravenswood's requirement to conduct a successful black start test under Rate Schedule 5 and permit the NYISO to pay Ravenswood for its provision of black start service.

In effect, the NYISO's proposed waivers would achieve the substance of Ravenswood's proposal, but set its proposal within the proper framework of the NYISO tariffs. Aside from these specific changes, the NYISO would continue to administer its black start requirements pursuant to Rate Schedule 5. The NYISO requests that the waivers remain effective until the NYISO, Ravenswood, and other stakeholders complete the ongoing process to revise the black start requirements in New York.

The NYISO appreciates Ravenswood's willingness "to assist to the maximum extent to which it is capable in helping to restore service promptly in the event of an actual black out."²² The NYISO believes that its proposed waivers address Ravenswood's stated concerns.

²¹ Ravenswood Application at p. 17.

²² *Id.* at p. 1.

As described above, Ravenswood had previously agreed with the NYISO to request a waiver of Rate Schedule 5 that would have resulted in the substantially similar outcome of permitting Ravenswood to perform black start service for a limited period of time without having to perform a full black start test, while the NYISO worked with Ravenswood and other stakeholders to address their concerns.²³ Ravenswood withdrew that waiver request for reasons not at issue here.

The Commission has previously granted tariff waivers where: (i) a concrete problem needs to be remedied, (ii) the entity seeking the waiver acted in good faith, (iii) the waiver is of a limited scope, and (iv) the waiver will not have undesirable consequences, such as harming third parties.²⁴ The NYISO submits that its waiver requests satisfy these factors.

(i) A concrete problem exists in this instance. The Ravenswood Units play an important role in the Con Edison portion of the New York Restoration Program. Their inclusion in the program would contribute to the near-term reliability of the program, while the NYISO works with Con Edison, Ravenswood, and its other stakeholders to develop revised black start requirements. The NYISO is currently leading an expedited stakeholder process to complete the development of the revisions to Rate Schedule 5 that aim to address generator's concerns, including Ravenswood's testing concerns, while retaining black start resources in the New York Restoration Program going forward.

(ii) The NYISO has acted in good faith in this instance. The NYISO has proposed an approach for moving forward that addresses Ravenswood's stated term-of-service and test concerns, while also enabling the NYISO to satisfy its responsibilities for ensuring the reliable provision of black start service in New York.

²³ See Ravenswood Waiver Request at pp. 2-3, 8.

²⁴ See, e.g., ISO New England, Inc., 117 FERC ¶ 61,171 at P 21 (2006).

(iii) The scope of the waiver request is limited. The requested waivers do not require, but rather permit, Ravenswood to provide black start service within the New York Restoration Program, and provide that the requirements for this service are consistent with the term-of-service and test requirements set forth in Ravenswood's proposal. In addition, the requested waivers would only remain in effect until the NYISO, Ravenswood, and other stakeholders complete the ongoing process to revise the black start requirements in New York. This is consistent with Ravenswood's assertion that it is seeking to provide black start service, while continuing to work to resolve certain testing, term-of-service, and compensation issues.²⁵

(iv) The Commission's granting the requested waivers will not have undesirable consequences or harm third parties. Ravenswood is the only NYISO market participant that will be directly impacted by the requested waivers, and, as described above, it will not be harmed by the waiver. To the contrary, Ravenswood will be paid to provide a service that it already has indicated it is capable and willing to perform and under term-of-service and test requirements that are consistent with its proposal.

If, however, the Commission determines that a waiver is not appropriate in this instance and that the term-of-service and test requirements described in Ravenswood's proposal must be expressly set forth in a tariff, the Commission should reject Ravenswood's proposed Rate Schedule for the reasons described below and confirm that the NYISO tariff would be the appropriate vehicle for these requirements.

V. PROTEST

While the NYISO would support Commission action to permit Ravenswood to provide on an interim basis black start service under the Services Tariff consistent with the term-of-service and test requirements proposed by Ravenswood, the NYISO cannot support

²⁵ See Ravenswood Application at p. 17.

the specific mechanism Ravenswood has proposed in its Application – a stand alone Rate Schedule for providing black start service outside of the NYISO tariffs. The Commission should reject the Rate Schedule for the reasons described below.

A. Ravenswood’s Rate Schedule Impermissibly Duplicates Rate Schedule 5 of the Services Tariff

The Commission should reject Ravenswood’s Application because the proposed Rate Schedule addresses the same subject matter – the provision of black start service in Con Edison’s service territory – as does Rate Schedule 5 of the NYISO Services Tariff. The NYISO is responsible under its Commission-approved tariffs and NYSRC’s reliability rules for administering the provision of black start service in New York.

The service that Ravenswood is seeking to provide through its own Rate Schedule already falls under the exclusive purview of the NYISO tariffs. Section 4.1.2 of the Services Tariff provides that:

The ISO shall provide all Market Services in accordance with the terms of the ISO Services Tariff and the ISO Related Agreements. The ISO shall be the sole point of Application for all Market Services provided in the [New York Control Area]. Each Market Participant that sells or purchases Energy, including Demand Side Resources, sells or purchases Capacity, or provides Ancillary Services in the ISO Administered Markets utilizes Market Services and must take service as a Customer under the Tariff.

The NYISO is the sole provider of Market Services in the New York Control Area in accordance with the terms of its tariffs and agreements. Among these are ancillary services, which include black start service. Section 4.1.2 of the NYISO Services Tariff, therefore, bars Ravenswood from establishing a separate, stand alone rate schedule to provide the same service already provided by the NYISO.

Ravenswood’s proposed “Spot Black Start Service” does not pertain to a distinct product beyond the scope of the existing NYISO tariffs. Rather, Rate Schedule 5 of the Services Tariff already establishes term-of-service, testing, and compensation requirements

for a generator providing black start service in Con Edison's service territory. There is no reason for black start service to be provided anywhere other than under the NYISO Services Tariff. Indeed, Commission precedent is clear that it must be provided under NYISO tariffs.²⁶ The fact that the proposed Rate Schedule provides the same compensation as that established in Rate Schedule 5 highlights the overlap between it and the Services Tariff.

The Commission has denied the two previous attempts to file a separate rate schedule to govern a service that properly fell within the scope of the NYISO tariffs. Most recently, in 2010, Ravenswood submitted a proposed stand-alone rate schedule seeking compensation for certain variable costs that it incurred in providing what it called "Minimum Oil Burn Service," which it contended it was unable to recover under the NYISO tariffs.²⁷ The Commission rejected Ravenswood's proposed rate schedule finding that the service actually at issue was the generation of electricity, which is a Market Service that falls under the exclusive purview of the NYISO tariffs.²⁸ Because the NYISO is the sole provider of Market Services, the Commission found that the Services Tariff barred Ravenswood from proposing a duplicate rate schedule to provide a service exclusively governed by the Services Tariff.²⁹

In 2002, Astoria Generating Company, L.P. ("Astoria") submitted a proposed stand-alone "Quick Start Service Tariff."³⁰ That schedule would have compensated Astoria for a new ancillary service that it was contractually obliged to provide to Con Edison but which did

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

²⁷ See *TC Ravenswood, LLC, Order Rejecting Proposed Rate Schedules*, 135 FERC ¶ 61,087 at P 4 (October 27, 2010).

²⁸ See *id.* at P 24.

²⁹ See *id.* at P 25.

³⁰ *Astoria Generating Company, L.P.*, 101 FERC ¶ 61,275 at P 3 (2002).

not then exist in the NYISO markets.³¹ The Commission rejected Astoria’s tariff and directed that Astoria instead work through the NYISO stakeholder process to resolve its issues.³² 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.

The Commission has similarly rejected attempts by generators to file stand-alone rate schedules in other markets.³³ 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.³⁴

B. Ravenswood’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.³⁵ This “shared governance” system, which Ravenswood

³¹ See *id.* at P 4. By comparison, Ravenswood’s case for a stand-alone rate schedule is weaker than Astoria’s because it is seeking to provide services that are already covered by the NYISO Services Tariff.

³² See *id.* at PP 14, 17.

³³ 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.

³⁴ 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).

³⁵ See ISO Agreement at Article 7.10(b).

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 creating separate black start requirements outside of the NYISO tariffs. Moreover, although the proposed Rate Schedule would technically apply only to Ravenswood, its acceptance by the Commission would establish a troublesome precedent that would encourage other market participants to seek to adjust their tariff obligations in a similar fashion. The Application, therefore, is 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 “end-runs” around ISO stakeholder processes.³⁶ It should do the same here. Otherwise, the Commission risks undermining the stakeholder process by creating incentives to avoid collaboration and compromise in favor of unilateral Section 205 filings. The Commission would also be creating a paradoxical situation in which individual NYISO stakeholders would have a unilateral right to file tariff amendments that the NYISO itself lacks.

Ravenswood attempts to justify its proposed end-run by claiming that the NYISO’s shared governance system is inherently biased against suppliers. It also suggests that stakeholder processes should have no role in evaluating issues that, supposedly, only impact a single market participant.³⁷ Neither assertion has any basis in fact. The Commission has repeatedly found that the NYISO’s shared governance system complies with both its

³⁶ See, e.g., *ISO New England Inc.*, 130 FERC ¶ 61,145, at P 34 (2010) (“we encourage parties to participate in the stakeholder process if they seek to change the market rules...”); *ISO New England Inc.*, 125 FERC ¶ 61,154 (2008) (directing that unresolved issues be addressed through the stakeholder process); *New York Independent System Operator, Inc., New York Transmission Owners*, 126 FERC ¶ 61,046, at PP 53-54 (2009) (directing that a proposal be “presented to and discussed among ... stakeholders and filed as a section 205 proposal, not unilaterally presented to the Commission”).

³⁷ Ravenswood Application at pp. 16-17.

independence and stakeholder responsiveness requirements.³⁸ The shared governance system is not dominated by any one stakeholder or class of stakeholders. While the transmission owners as a sector constitute 20% of the vote, the generator owners as a sector constitute 21.5% of the vote.³⁹ Ravenswood offers no support for its claim that a coalition of multiple stakeholder classes is systematically working in concert to disadvantage generators. Nor is there any basis in Commission precedent for the proposition that stakeholder processes should not address controversial questions or issues related to the rates, terms, and conditions under which products will be sold.

The procedural aspect of 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 Ravenswood has executed.

C. Denying Ravenswood's Application Would Be Consistent with the D.C. Circuit's *Atlantic City* Decision

In support of its position that the Commission should accept its Rate Schedule, Ravenswood cites only to the D.C. Circuit's *Atlantic City* decision in which the court held that the Commission may not compel utilities to involuntarily cede their filing rights under Section 205 of the Federal Power Act.⁴⁰ However, denying Ravenswood's Application would be entirely consistent with *Atlantic City* insofar as it has the effect of requiring Ravenswood to abide by an agreement that it voluntarily entered into governing Section 205 filings to amend the Services Tariff. As the D.C. Circuit stated in its *Atlantic City* decision: "utilities may choose to voluntarily give up, by contract, some of their rate filing freedom under section

³⁸ See, e.g., *Central Hudson Gas & Electric Corp.*, 88 FERC 61,229 (1999) (accepting the NYISO's sector voting rules as compliant with Order No. 888's requirements and affording "fair representation across a broad spectrum of market participants"); *New York Independent System Operator, Inc.*, 133 FERC ¶ 61,072 (2010) (affirming that the NYISO "satisfies the RTO/ISO governance requirements of Order No. 719.")

³⁹ A 58% super-majority vote is required to adopt a measure under the shared governance system.

⁴⁰ See *Atlantic City Electric Co. v. FERC*, 295 F.3d 1, 9 (D.C. Cir. 2002).

205.”⁴¹ 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.⁴² Ravenswood voluntarily became a signatory and thus voluntarily accepted its requirements. As explained above, Ravenswood’s proposed rate schedule is the practical equivalent of a unilateral filing to amend the Services Tariff without going through the NYISO’s shared governance process.⁴³ Ravenswood would have effectively revised the Services Tariff to change the requirements for a black start provider in Con Edison’s service territory. Ravenswood has voluntarily agreed that such changes should only be made through the ISO Agreement’s Article 19 process.

Even if Ravenswood’s filing was not an impermissible, unilateral attempt to amend the Services Tariff, denying Ravenswood’s Application would still be consistent with the *Atlantic City* decision. 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 Rate Schedule 5 of the Services Tariff, including the term-of-service, testing, and compensation requirements for generators providing black start service in New York. Notwithstanding Ravenswood’s efforts to characterize “Spot Black Start Service” as a separate product outside the scope of the NYISO tariffs, it is really just black start service as addressed in Rate Schedule 5. The Commission may, therefore, reject the Application,

⁴¹ See *id.* at 10-11.

⁴² See ISO Agreement § 7.01.

⁴³ Commission precedent strongly disfavors attempts to make end-runs around ISO/RTO stakeholder processes. See, e.g., *ISO New England*, 128 FERC ¶ 61,266 at P 55 (2009) (declining to grant a party’s specific request for relief because the Commission “will not ... circumvent that stakeholder process”); *New York Independent System Operator, Inc.*, 126 FERC ¶ 61,046 at PP 54 (2009) (stating that while a proposal “may have merit” the proposal should be “presented to and discussed among ... stakeholders”); *New England Power Pool*, 107 FERC ¶ 61,135 at PP 20, 24 (2004) (declining to accept changes proposed for the first time in a FERC proceeding by an entity that participated in the stakeholder process because the “suggested revisions have not been vetted through the stakeholder process and could impact various participants”).

without depriving Ravenswood of its rights to make Section 205 filings to establish rates for services beyond the scope of the NYISO tariffs.

For all of these reasons, the proposed Rate Schedule should be rejected as impermissibly duplicative of Rate Schedule 5 of the Services Tariff.

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc., respectfully requests that the Commission take the actions specified above so that TC Ravenswood, LLC may continue to participate in the New York Restoration Program under the NYISO tariffs in a manner consistent with the terms it has proposed. The Commission, however, should reject Ravenswood's proposed duplicative, stand-alone rate schedule that would be inconsistent with Commission precedent and TC Ravenswood, LLC's own voluntary contractual commitment.

Respectfully submitted,

/s/Michael J. Messonnier, Jr.

Michael J. Messonnier, Jr.

Counsel to

the New York Independent System Operator, Inc.

April 12, 2012

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served 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 (2011).

Dated at Washington, DC this 12th day of April, 2012.

By: /s/Ted J. Murphy
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