UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Application of TC Ravenswood, LLC to	**)**	
Implement a Reliability Oil Burn Service	**)**	**Docket No. ER14-1711-000**
Cost of Service Rate Schedule	**)**	

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

In accordance with Rule 213 of the Commission's Rules of Practice and Procedure,[1] the NYISO respectfully submits this request for leave to answer and limited answer to the *Motion for Leave to Answer and Answer of TC Ravenswood, LLC* ("TCR Answer") in this proceeding. The TCR Answer responded to, among other pleadings, the *Motion to Intervene and Protest* that the NYISO filed on May 3 ("Protest")[2] regarding the April 11 *Application of TC Ravenswood, LLC to Implement a Reliability Oil Burn Service Cost of Service Rate Schedule* ("Application"). This Limited Answer is confined to addressing the TCR Answer's: (i) inaccurate characterization that selling Energy[3] generated while burning fuel oil, pursuant to Local Reliability Rule I-R3 or for other reasons, is a separate "service," from the sale of Energy and (ii) misplaced reliance on the Commission's rulings in *Dominion Energy Mktg., Inc.* and *National Grid Generation, LLC*.

The NYISO therefore renews the Protest's request that the Commission reject the Application. The NYISO also re-emphasizes, as it stated in the Protest and in Docket No. ER14-1822-000 that "the underlying dispute over the level of compensation" that TCR should receive for producing Energy when burning fuel oil is "relatively small" but has potentially important

[1] 18 C.F.R. § 385.213 (2012).

[2] *Motion to Intervene and Protest of the New York Independent System Operator, Inc.* (filed May 3, 2014).

[3] Capitalized terms not otherwise defined in this Limited Answer shall have the meaning specified in the NYISO's Market Administration and Control Area Services Tariff ("Services Tariff").

reliability implications.[4] The Commission should help the parties work together to resolve the real world dispute without being diverted by an abstract debate over TCR's legal theories.

I. REQUEST FOR LEAVE TO ANSWER

The Commission has discretion[5] to accept answers to answers and has done so when they help to clarify complex issues, provide additional information, or are otherwise helpful to its decision-making process.[6] The Commission should accept the NYISO's Limited Answer in this instance because it will clarify the record and correct the TCR Answer's misleading statements and characterizations.

In deference to the Commission's procedural rules, the NYISO is not responding to all of the assertions in the TCR Answer,[7] including those aimed at arguments advanced by other protestors that are not made in the NYISO's Protest. The NYISO's silence should not be interpreted as agreement with or acquiescence to TCR's views.

II. ANSWER

A. TC Ravenswood's "Reliability Oil Burn Service" Is Nothing More Than Selling Energy

The TCR Answer offers numerous and lengthy objections to the Protest. All fail because of the same fundamental flaw. Namely, as the Protest clearly established, the supposed

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[4] *See* New York Independent System Operator, Inc., *Filing of Unexecuted Minimum Oil Burn Agreement with TC Ravenswood, LLC, Request for Waiver of 60-Day Notice Period, Request for Expedited Action, and Request for Settlement Judge or Other Dispute Resolution Services*, Docket No. ER14-1822 at 2 (filed April 30, 2014) *and* Protest at 7.

[5] *See* 18 C.F.R. § 385.213(a)(2).

[6] *See, e.g., PJM Interconnection, L.L.C.,* 119 FERC ¶ 61,318 at P 36 (2007) (answer to answer accepted that "provided information that assisted . . . decision-making process") and *California Independent System Operator Corporation,* 110 FERC ¶ 61,007 (2005) (answer to answer permitted to assist Commission in decision-making process).

[7] In particular, the NYISO strongly disagrees with the TCR Answer's baseless attacks on the NYISO's shared governance stakeholder process, TCR Answer at 11-13, and reiterates that TCR should not be permitted to effectively amend the Services Tariff without working through that process. *See* Protest at 11-13.

"Reliability Oil Burn service" ("ROB service") for which TCR is seeking cost-of-service compensation is not a distinct service from selling Energy and TCR is already authorized to sell Energy at market-based rates under the Services Tariff and its own market-based rate authorization.[8] Therefore, TCR is seeking FERC authorization to offer a service it already has the authority to provide. Moreover, Section 4.1.9 of the Services Tariff already provides for the additional compensation to generators that burn fuel oil to produce Energy that the Application seeks to duplicate. The Commission should not be distracted or misled by the TCR Answer's attempts to obscure these facts.

In an analogous proceeding, concerning TCR's previous efforts to have a separate rate schedule for "Minimum Oil Burn service," the Commission correctly reasoned that the "service Ravenswood proposes to provide is the generation of electricity, which is a jurisdictional Market Service that already falls under the exclusive purview of the NYISO tariff."[9] As the Protest explained, this same rationale is applicable to all of the scenarios for which TCR seeks non-market-based compensation for "ROB service."[10]

The Commission should not allow the various "creative" arguments set forth in the TCR Answer to distract it from the facts stated above. Specifically, the NYISO has never sought, and a Commission order rejecting the Application could not plausibly be construed as, providing the NYISO with an "exclusive wholesale service territory for the purchase or sale of" ROB

[8] *Letter Order Re: TransCanada Companies' Updated Market Power Analysis in Compliance with Order No. 697, Federal Energy Regulatory Commission*, Docket No. ER10-2780-001, *et al.* (December 19, 2011).

[9] *TC Ravenswood, LLC*, 133 FERC ¶ 61,087 at PP 24-25 (2010). The NYISO acknowledges that the Commission and the United States Court of Appeals for the District of Columbia Circuit agreed that this decision is not a "precedent" given that TCR's request for rehearing was properly dismissed as moot. Nevertheless, the Commission's original rationale regarding "Minimum Oil Burn service" was both sound and directly applicable to this proceeding.

[10] Protest at 8.

service.[11] Nor has the NYISO ever claimed that parties may not enter into transactions without using the NYISO-administered organized markets, which renders TCR's reliance on the *Automated Power Exchange* cases irrelevant.[12] The NYISO simply objects to TCR's attempt to partially re-classify the sale of Energy produced by burning fuel oil at market-based rates as a purported cost-based service which it allegedly needs new legal authority to provide.

The TCR Answer's claims regarding its filing rights under Section 205 of the Federal Power Act fail[13] because it has not proposed anything like a new service and is simply duplicating Services Tariff provisions governing sales of Energy, including Section 4.1.9, as well as its own market-based rate tariff. Nor is there any basis for the suggestion that the Protest somehow proposed a radical reinterpretation of the standard of review under FPA Section 205.[14] The Protest simply pointed out that nothing in the applicable judicial and Commission precedent requires the Commission to irrationally ignore the fact that "ROB service" is not a truly new or distinct service, is duplicative of the NYISO's accepted tariff provisions, and has not been justified.[15] The NYISO is certainly not asserting that its own filings should be subject to a different legal standard of review than TCR's or any other entity's,[16] except to the extent, as noted previously, that Commission policy disfavors filings (such as TCR's) that needlessly bypass the NYISO stakeholder process.[17]

[11] TCR Answer at 32.

[12] *Id*. at 29-31.

[13] *Id*. at 37-40.

[14] *Id*. at 40.

[15] Protest at 8-11.

[16] *See id*. at 12-13.

[17] *See id*. at 11-12.

TCR attempts to rehabilitate its position by claiming that "ROB service" is distinct from selling Energy because the steps that it takes to provide its "service" makes it impossible to price based on Megawatt hours. Such a distinction, however, is meaningless. Opportunities to recover the actual cost of providing Energy in response to a reliability rule, when the market-based energy payment alone does not cover those costs, are a long-standing feature of the NYISO's market rules governing the provision of energy services.[18] The NYISO and its stakeholders have already responded to the concerns regarding compensating TCR for the transport and storage costs it incurs in burning fuel oil to produce Energy when TCR raised them in 2010.[19] Specific amendments were added to the *Market Services* Section[20] of the NYISO Services Tariff to compensate units responsible for responding to the minimum oil burn rule for these additional costs. As these examples show, there is no basis for TCR's argument that "ROB service" cannot be the sale of Energy because Energy must be priced solely on a megawatt hour basis; complete compensation for the costs of providing Energy, generating using fuel oil for reliability purposes, are already available to TCR under the Services Tariff.

Finally, the Commission should not allow the TCR Answer's narrow interpretation[21] of the Services Tariff definition of "Market Services" to blind it to the fact that TCR is proposing to

[18] The NYISO's Bid Production Cost Guarantee ("BPCG") guarantees suppliers that if a unit is committed, the unit will not incur a net loss for the day, provided the unit's operation and schedule meets the qualifying criteria set out in Attachment C to the Services Tariff.

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

[20] *See* Section 4.1.9.3.

[21] In contrast to this narrow interpretation, TCR's expansive view of the Local Reliability Rules of the New York State Reliability Council ("NYSRC") in support of its argument that it is offering a separate "service" also fails. The Local Reliability Rules do not support its argument. In describing the Local Reliability Rule I-R3 ("Rule I-R3"), the NYSRC does not characterize compliance with Rule I-R3 as a "service," nor does the NYSRC state that generating Energy to comply with Rule I-R3 is a service. *See* NYSRC Reliability Rules, April 10, 2014, Section II. I. I-R3, *available at*

sell Energy and not a separate service.[22] TCR argues that ROB service "does not fall within" the definition of "Market Services" because the ROB service is not Energy,[23] nor is it "related to" the market administered by the NYISO.[24] TCR's interpretation is incorrect, and its arguments unsupported, because, notwithstanding its efforts to obscure the fact that it is generating Energy, the sale of Energy within the framework of the NYISO-administered markets is governed by the Services Tariff. Under Section 4.1.9.3 of the Services Tariff, the NYISO provides generators like TCR the opportunity to recover costs when they generate Energy to comply with reliability rules. As a signatory to the Services Tariff, TCR has consented to this arrangement.[25] Moreover, contrary to TCR's assertion, it has not proposed a rate schedule "for a separate purpose"[26] – it has proposed a rate schedule whose purpose is clearly related to selling Energy.

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http://www.nysrc.org/pdf/Reliability%20Rules%20Manuals/RR%20Manual%2033%20April%2010%202014%20Final.pdf.

[22] TCR Answer at 20-23.

[23] The NYISO notes that because TCR is selling Energy in the NYISO-administered markets, Section 4.1.2 is of course not "wholly irrelevant" to this proceeding. TCR Answer at 25.

[24] TCR Answer at 20-21.

[25] Incidentally, the NYISO notes that the TCR Answer and the Application are factually incorrect when they assert that the NYISO does not take title to energy, capacity or ancillary services. *See, e.g.,* TCR Answer at 21-22. Subsequent to the issuance of the Commission's Order 741 *Credit Reforms in Organized Wholesale Electric Markets*, the NYISO takes title to all products and services bought and sold in the markets that it administers. *New York Independent System Operator, Inc.,* 140 FERC ¶ 61,110 at P 19 (2012). Section 7.1.1 of the Services Tariff specifies that "[t]he ISO shall be for all purposes the contracting counterparty, in its own name and right, to each Customer for any purchase or sale of any product or service, or for any other transaction, that is financially settled by the ISO under the ISO Tariffs."

[26] TCR Answer at 37.

B. *Dominion Energy* and *National Grid* Are Readily Distinguishable

The TCR Answer cites two Commission orders in an attempt to support its assertion that denying the Application would be "inconsistent with the Commission's orders in analogous circumstances."[27] In reality, both of the cited orders are readily distinguishable.

TCR characterizes the *Dominion Energy* proceeding as one in which the Commission granted a generator's Section 205 filing for the recovery of costs associated with compliance with a reliability directive issued by ISO-NE. But the order that TCR cites[28] and the order that follows it[29] do not support giving generators an unlimited right to seek cost-of-service based recovery of costs incurred while complying with reliability directives through separately filed rates outside of an ISO/RTO tariff. To the contrary, these orders allowed exceptions to market-based compensation for generators operating under market-based rate tariffs under the provisions of ISO/RTO tariffs.[30]

The order cited by the TCR Answer accepted Dominion Energy's Section 205 filing and ordered the ISO-NE to amend its tariff to allow for recovery of the type of costs that Dominion Energy sought. The Commission subsequently accepted an ISO-NE's compliance filing that provided for the recovery of costs incurred in "extraordinary circumstances" and rejected

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[27] TCR Answer at 18-19.

[28] *Dominion Energy Mktg., Inc.,* 143 FERC ¶ 61,233 (2013).

[29] *ISO New England Inc. and Dominion Energy Marketing,* 145 FERC ¶ 61,110 at PP 27, 32 (2013) ("ISO-NE Compliance Order").

[30] Moreover, the Commission has repeatedly stressed that generators should not be able to "toggle" between market-based and cost-based rates. When entering the competitive marketplace, generators exchange the certainty of cost recovery provided under traditional regulation in exchange for the possibility of realizing grater profits. In the competitive marketplace, generators are only guaranteed the opportunity to recover their costs: the Commission is not required to guarantee recovery. *Blumenthal v. ISO-New England, Inc.,* 118 FERC ¶ 61, 205 at P 5 (2007); *Southwest Power Pool, Inc*., 121 FERC ¶ 61,196 at P 21 (2007). Exceptions to these principles are, and should be, narrowly drawn. TCR's proposals are inconsistent with these precedents.

arguments raised by generators that ISO-NE's compliance revisions were too narrow and that cost-of-service based recovery should be more broadly available.[31]

Dominion Energy argued for changes to the ISO-NE tariff under established ISO-NE tariff rules, not, like TCR, for approval of its own rate schedule for recovery in circumstances that it alone defines. The *Dominion Energy* precedent thus supports the NYISO's position that the exceptions to market-based rates should be defined under ISO/RTO tariffs, not in "stand alone rate schedules" that duplicate ISO/RTO tariff provisions. The NYISO's approach will ensure that the circumstances in which non-market cost recovery is triggered are limited to those "situations involving critical reliability needs and extraordinary circumstances."[32] As discussed above, the NYISO has already made changes to the Services Tariff to ensure that its generators are compensated for costs to comply with reliability directives in extraordinary circumstances, and TCR has not shown that those provisions are unjust and unreasonable or that the Commission must accept its proposed rate schedule.

TCR also cites to a proceeding that considered a power supply agreement ("PSA") between National Grid Generation LLC and the Long Island Power Authority,[33] but that order is irrelevant here. It merely established settlement judge procedures that culminated in a settlement.[34] Thus, by definition it has no precedential value.[35] The facts that National Grid's Northport generating facility has dual-fuel capability, is subject to the Long Island version of

[31] *ISO-NE Compliance Order* at PP 35-37.

[32] *Id.* at P 36.

[33] TC Answer at 19, *citing National Grid Generation LLC,* 130 FERC ¶ 61,274 (2010).

[34] *Id*. at 26-28.

[35] *See, e.g., Bridgeport Energy, LLC*, 118 FERC ¶ 61,243 at n 51 (2007) (noting that the acceptance of an uncontested settlement does not constitute Commission precedent) *and Berkshire Power Company, LLC*, 116 FERC ¶ 61,311 at P 2 (2006).

Rule I-R3,[36] and entered into a bilateral energy and capacity sales arrangement lend no support to TCR's attempt to file its own special cost-based compensation mechanism, in its own tariff, when it burns fuel oil (whether in compliance with Rule I-R3 or for other reasons). The opportunity to make bilateral Energy and capacity arrangements, which is contemplated by the Services Tariff, does not recast the services provided as anything other than sales of Energy or capacity and certainly does not make them anything other than "Market Services."

III. CONCLUSION

WHEREFORE, the NYISO respectfully requests that the Commission accept this limited Answer and renews its request that the Commission reject TC Ravenswood's Application.

Respectfully submitted,

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

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cc: Michael A. Bardee
Gregory Berson
Anna Cochrane
Jignasa Gadani
Morris Margolis
David Morenoff
Michael McLaughlin
Daniel Nowak

[36] TCR Answer at 19-20.

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 compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Commission Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2013).

Dated at Washington, D.C. this 3rd day of June, 2014.

/s/ Catherine Karimi

Catherine Karimi
Sr. Professional Assistant
Hunton & Williams LLP
2200 Pennsylvania Ave., NW
Washington, DC 20037
Tel: (202) 955-1500
Fax: (202) 778-2201