

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

New York Independent System Operator, Inc.) Docket No. ER14-1822-000

**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 to Intervene and Protest of TC Ravenswood, LLC* (“TCR Protest”) regarding the NYISO’s submission of an unexecuted service agreement (the “April 30 Filing”)² in accordance with Section 4.1.9.3 of its Market Administration and Control Area Services Tariff (“Services Tariff”). This filing also responds to the *Motion for Leave to Answer and Answer* (“TCR Answer”) that TC Ravenswood filed on May 29 in response to comments supporting the April 30 Filing.

As discussed below, this Limited Answer reiterates that the April 30 Filing was authorized under the Services Tariff and by the settlement between TCR, the NYISO, and other parties in Docket No. EL10-70-000.³ The Commission should recognize, as the NYISO stated in the April 30 Filing and recently re-emphasized in Docket No. ER14-1711-000, that “the underlying dispute over the level of compensation” that TCR should receive for producing

¹ 18 C.F.R. § 385.213 (2012).

² 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 (April 30, 2014) (the “April 30 Filing”).

³ See *TC Ravenswood, LLC v. New York Independent System Operator, Inc.*, 135 FERC ¶ 61,215 (2011) (letter order accepting the Offer of Settlement submitted by TC Ravenswood, the NYISO, and other parties in Docket No. EL10-70-000).

Energy when burning fuel oil is “relatively small” but has potentially important reliability implications.⁴ The Commission should help the parties to work together to resolve the real world dispute without being diverted by an abstract debate over TCR’s legal theories. It can achieve this end by accepting the April 30 Filing while encouraging TCR and other parties to work collaboratively towards a more permanent solution.

I. REQUEST FOR LEAVE TO ANSWER

The Commission has discretion⁵ to accept answers to protest and to answers and has done so when such filings 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 TCR’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 Protest or the TCR Answer, including those that are directed against arguments advanced by other parties in support of the April 30 Filing. The NYISO’s silence on these matters should not be interpreted as agreement with, or acquiescence to, TCR’s views.

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). See also *Request for Leave to Answer and Limited Answer of the New York Independent System Operator, Inc.*, Docket No. ER14-1711-000 (June 3, 2014) at 1-2 (the “June 3 Answer.”)

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).

II. ANSWER

The TCR Protest wrongly asserts that the NYISO has sought to “usurp”⁷ TCR’s filing rights and “rewrite”⁸ or “pervert”⁹ the Federal Power Act by submitting an unexecuted agreement via the April 30 Filing. In reality, the NYISO had done nothing of the kind. Nor is it seeking, and as an independent not-for-profit entity it has no incentive to seek, to use the April 30 Filing to prevent TCR from recouping costs genuinely incurred in furtherance of reliability.¹⁰

As the April 30 Filing explained, the NYISO has simply exercised its right to file an unexecuted agreement under Section 4.1.9.3 of the Services Tariff, which states that either the NYISO or a generator may make such a filing in the circumstances that exist in this proceeding.¹¹ Section 4.1.9.3 was adopted as part of the settlement in Docket No. EL10-70-000. TCR voluntarily supported that settlement without reservation and should not be permitted to challenge it now.¹² There is thus no reason to consider the TCR Protest’s various arguments

⁷ TCR Protest at 5, 17.

⁸ TCR Protest at 17.

⁹ TCR Protest at 7.

¹⁰ TCR Protest at 7.

¹¹ See April 30 Filing at 4.

¹² TCR cites to a single case for the proposition that a seller may not contractually convey its filing rights to a purchaser. See TCR Protest at 13, citing *United Gas Pipeline Co.*, 48 FERC ¶ 61,115 at 61,409 (1989). But that case is distinguishable because it involved a provision in a service agreement that the Commission did not believe was intended to transfer filing rights. See *United Gas Pipeline Co.*, 47 FERC ¶ 61,285 at 62,007 (1989) (“While it is arguable that a natural gas company might be able to assign to a customer the power to make a rate or change a rate in a contract, ANR Storage has not done so here. The Commission declines to find that the parties intended to convey such rights to United.”) By contrast, Section 4.1.9.3 is an unambiguous filed tariff provision adopted pursuant to a settlement that TCR unequivocally supported. Section 4.1.9.3 does not provide for a complete transfer of filing rights from a generator to the NYISO, it simply authorizes the generator and the NYISO to each submit unexecuted agreements for the Commission’s consideration if they were unable to reach a negotiated agreement. TCR’s interpretation of *United Gas Pipeline Co.* is also inconsistent with the United States Court of Appeals for the District of Columbia Circuit’s much more recent decision in *Atlantic City Electric Co. v. FERC*, 295 F.3d 1 (2002). *Atlantic City* noted that “utilities may choose to voluntarily

regarding the lawfulness of purchasers submitting filings (or unexecuted agreements) under Section 205 of the Federal Power Act as a general matter. The April 30 Filing is specifically authorized by a Commission-accepted tariff provision that TCR itself endorsed, thereby rendering TCR's generic arguments irrelevant.

The TCR Answer makes the puzzling assertion that the language of Section 4.1.9.3 is somehow overridden by other language from the Docket No. EL10-70-000 settlement. TCR points to Section 6 of the settlement agreement which says that "the Parties may file an unexecuted agreement" ¹³ It claims that this language means that "the only permissible means for an Unexecuted Agreement to be filed with the Commission is if the Parties, a term that includes TC Ravenswood, join together in the filing." ¹⁴ But it is far more natural and reasonable to construe Section 6 as being consistent with, not in conflict with, Section 4.1.9.3. Even if Section 4.1.9.3 did not exist, TCR's interpretation of Section 6 would not be plausible. It should be self-evident that language providing for the submission of an unexecuted agreement is applicable to and intended for circumstances where the parties cannot agree. But TCR's interpretation would only allow the parties to file an unexecuted agreement if they all accepted the agreement's terms. Of course, if there was such a consensus there would be no need to submit an unexecuted agreement, as opposed to an executed document, in the first place. Consequently, the Commission should not accept the TCR Answer's view that the settlement in Docket No. EL10-70-000 somehow invalidates the April 30 Filing.

give up, by contract, some of their rate-filing freedom under section 205." It also acknowledged that arrangements under which utilities and ISOs/RTOs shared filing rights were permissible.

¹³ TCR Answer at 4.

¹⁴ TCR Answer at 4.

In addition, contrary to the TCR Protest, the NYISO has not attempted to “play on fears”¹⁵ that the April 30 Filing must be accepted to prevent TCR from acting irresponsibly by refusing to generate electricity in an emergency if it were not satisfied with the level of compensation that it would receive. The April 30 Filing clearly indicated that the NYISO had submitted the unexecuted agreement in order to address TCR’s “stated concern” that it “have a “lawful arrangement in place to compensate it for compliance with Local Reliability Rule I-R3 after April 30, 2014 without needlessly entangling the issue with the others raised in Docket No. ER14-1711.”¹⁶ To be clear, the NYISO does not share TCR’s “stated concern” that it might face some legal risk if it does not have an accepted agreement or rate schedule in addition to the Services Tariff and its own market-based rate tariff on file. Nevertheless, the NYISO took TCR at its word and made the April 30 Filing in a good faith attempt to ameliorate TCR’s concern and, hopefully, facilitate a return to negotiations. The NYISO’s position, as its filings in Docket No. ER14-1711 demonstrate, is that TCR already has authority to sell Energy generated by burning Fuel Oil under the Services Tariff and its own market-based rate schedule and that TCR has not proposed a service distinct from its sales of Energy.¹⁷ Again, the NYISO prefers to focus on working to resolve the actual, “relatively small,” compensation dispute with TCR rather than engaging in unnecessary legal debates.

¹⁵ TCR Protest at 5, 22-23.

¹⁶ April 30 Filing at 3.

¹⁷ *See, e.g.*, June 3 Answer at 2-6.

III. CONCLUSION

WHEREFORE, the NYISO respectfully requests that the Commission accept this Limited Answer and renews its request that the Commission accept the April 30 Filing.

Respectfully submitted,

/s/ Ted J. Murphy
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June 5, 2014

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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 5th day of June, 2014.

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