

UNEXECUTED

TCR MINIMUM OIL BURN AGREEMENT

PURSUANT TO NYISO MARKET ADMINISTRATION AND CONTROL AREA SERVICES TARIFF

THIS AGREEMENT (“TCR Minimum Oil Burn Agreement”) is made and entered into this day of 2014, by and between TC Ravenswood, LLC (“TC Ravenswood” or “TCR”), and New York Independent System Operator, Inc. (“NYISO” each individually a “Party” and collectively, “Parties”), pursuant to the following recitals and representations:

RECITALS

WHEREAS, NYISO operates the New York State’s high voltage transmission grid and administers New York State’s organized wholesale electricity markets; and

WHEREAS, TCR is obligated by New York State Reliability Council (“NYSRC”) Local Reliability Rule I-R3 to burn an alternate fuel pursuant to procedures established by Consolidated Edison Company of New York, Inc. (“Con Edison”); and

WHEREAS, the Parties have agreed to enter into this TCR Minimum Oil Burn Agreement pursuant to the provisions of the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”); and

WHEREAS, the Parties have agreed to enter into this TCR Minimum Oil Burn Agreement for the purpose of memorializing the facilities to be used by and compensation to be paid to TCR to be ready to burn and for burning an alternate fuel pursuant to NYSRC Rule I-R3 for the term specified herein;

NOW, THEREFORE, in consideration of, and subject to FERC acceptance and the mutual covenants contained herein, it is agreed:

Section 1. Scope of Agreement. This TCR Minimum Oil Burn Agreement is entered into pursuant to the authority granted by the Federal Energy Regulatory Commission (“Commission” or “FERC”) in Section 4.1.9 of the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”) for the purpose of memorializing the facilities to be used by and compensation to be paid to TC Ravenswood for being ready to burn, and for burning, an alternate fuel pursuant to NYSRC Local Reliability Rule I-R3 and Con Edison’s procedures for operating its system in accordance with Rule I-R3 as required by the NYSRC (“Minimum Oil Compliance”) for the term specified herein. Pursuant to NYSRC Rule I-R3, Minimum Oil Compliance shall be provided by TC Ravenswood when Zone J loads reach certain predetermined levels. The NYISO shall pay TC Ravenswood certain costs incurred by

TC Ravenswood that are associated with its procurement, delivery and storage of fuel oil for Minimum Oil Compliance, as set forth in Sections 3 and 4 hereof. The NYISO shall recover those costs from the Loads in Load Zones H, I and J (the “Con Edison Transmission District”) in accordance with Section 5.

Section 2. Effective Date/Term of Agreement. This TCR Minimum Oil Burn Agreement shall become effective on May 1, 2014, shall remain effective for three years through April 30, 2017, and shall be applicable to three separate service periods (“Capability Years”) as follows:

Initial Capability Year	May 1, 2014 through April 30, 2015
Second Capability Year	May 1, 2015 through April 30, 2016
Third Capability Year	May 1, 2016 through April 30, 2017

Section 3. Costs Per Capability Year.

A. Predetermined Costs. The NYISO shall pay to TC Ravenswood the amounts indicated below (“Predetermined Costs”) in five monthly installments for the relevant Capability Year, which reflect: (i) a portion of the costs to lease one and one half (1½) off-site storage tanks which the Parties understand will provide approximately 240,000 barrels of working capacity of 0.30 percent Sulfur No. 6 fuel oil (“Fuel Oil”) storage; (ii) a portion of the costs TC Ravenswood incurs to lease one large time-chartered barge, which the Parties understand will provide approximately 40,000 barrels of working capacity of Fuel Oil transportation, and the Lemon Creek dockside storage barge or an equivalent replacement of approximately 50,000 barrels of working capacity; (iii) a charge for the use of on-site storage tanks at the Ravenswood Facility; and (iv) certain ancillary fuel oil fees (*e.g.*, labor, barge heating, tank heating, booming, testing, taxes, and carrying charges). The NYISO shall pay TC Ravenswood for Predetermined Costs irrespective of the costs actually incurred by TC Ravenswood or the amount of Fuel Oil burned in each Capability Year:

Initial Capability Year	\$3,607,243
Second Capability Year	\$3,607,243
Third Capability Year	\$3,607,243

TC Ravenswood shall have no claim for additional payments and neither the NYISO nor its customers shall have a claim for a refund or abatement if TC Ravenswood’s actual costs associated with any of the items identified in this Section 3.A are more or less, respectively, than the Predetermined Costs set forth herein.

B. Costs Per Barrel. In addition to the payment of predetermined costs established in Section 3.A, the NYISO shall pay to TC Ravenswood: (i) the commodity costs of Fuel Oil burned in compliance with I-R3 to the extent they exceed the commodity costs of burning natural gas as provided in Section 4.1.9 of the NYISO Services Tariff including applicable taxes and emission allowance fees not included in TCR’s reference bid; and (ii) operations and maintenance (“O&M”) expenses, which shall be calculated by multiplying a fixed rate defined for each Capability Year times the number of barrels of Fuel Oil burned in each

month to provide Minimum Oil Service. The rates for O&M expenses under this TCR Minimum Oil Burn Agreement are as follows:

Initial Capability Year	\$0.45/bbl
Second Capability Year	\$0.45/bbl
Third Capability Year	\$0.45/bbl

Section 4. Additional Spot Barge Costs. In the event that TC Ravenswood determines during the term of this TCR Minimum Oil Burn Agreement that additional Fuel Oil must be obtained *via* a spot barge for any fuel oil usage at the Ravenswood site, TC Ravenswood will provide the NYISO and Con Edison with as much notice as possible and the NYISO shall pay to TC Ravenswood one-third of the costs of such barge in the billing cycle following TC Ravenswood's submittal of an appropriate invoice.

Section 5. Billing Arrangements. The NYISO shall pay to TC Ravenswood, through the billing procedures set forth in the NYISO's Services Tariff, the appropriate monthly share of the Predetermined Costs for the months May through September for the relevant Capability Year commencing with May 2014 and shall allocate such payment through the billing procedures set forth in the NYISO's Services Tariff to all load withdrawals, other than withdrawals to support third party station power, in the Con Edison Transmission District (Load Zones H, I and J) based on load ratio shares for each Load Serving Entity ("LSE") for the month for which the payment is made. All other costs to be paid pursuant to this TCR Minimum Oil Burn Agreement shall be billed to the NYISO by TC Ravenswood as soon as reasonably practicable after they are incurred, paid by the NYISO in accordance with the billing procedures set forth in the NYISO Services Tariff and allocated to all load withdrawals, other than withdrawals to support third party station power, in the Con Edison Transmission District based on load ratio shares for each LSE for the month for which the payment is made.

Section 6. Termination/Amendment. This TCR Minimum Oil Burn Agreement shall terminate on April 30, 2015. The NYISO and TC Ravenswood will use reasonable commercial efforts to enter into another agreement and file it with the Commission at least six months prior to the termination date. As part of this effort, TC Ravenswood and the NYISO shall work together to negotiate an amendment or replacement agreement which shall define the terms and conditions applicable to the subsequent Capability Year(s) using the Commission's Dispute Resolution Service as necessary, pursuant to Section 4.1.9 of the NYISO Services Tariff. To the extent confidential materials are adequately protected, Con Edison and the NYPSC will be included in the discussions. Upon filing of such an amendment or replacement agreement, the Parties shall request an effective date for the amendment or agreement of May 1, 2017.

In the event the Parties are unable to reach agreement at least four months prior to April 30, 2017, the Parties may file an unexecuted agreement for the Commission's review, resolution of open issues and acceptance of one binding agreement pursuant to Section 4.1.9 of the NYISO Services Tariff. The Parties shall retain all rights under the Federal

Power Act, as applicable, under Section 4.1.9 of the NYISO Services Tariff, and under all other provisions in the NYISO Services Tariff to the extent applicable.

Section 7. Primary Jurisdiction. This TCR Minimum Oil Burn Agreement is entered into pursuant to Section 4.1.9 of the NYISO Services Tariff and all terms and conditions of this TCR Minimum Oil Burn Agreement are entered into pursuant to the rates, terms, and conditions of the NYISO Services Tariff on file with the Commission, including the limitation of liability and indemnification provisions of the NYISO Services Tariff, except that, to the extent Section 4.1.9 of the NYISO Services Tariff may be modified prior to the Termination Date of this TCR Minimum Oil Burn Agreement, as such date may be extended by subsequent amendment or replacement, this TCR Minimum Oil Burn Agreement shall remain in full force and effect. The Parties agree that the Commission shall have primary jurisdiction over any dispute arising under this TCR Minimum Oil Burn Agreement and that they will not institute any civil action related to this TCR Minimum Oil Burn Agreement without first seeking Commission relief. The NYISO shall have no liability in excess of any amount found due and owing in a final Commission order after judicial review. Pursuant to the provisions of Section 4.1.9 of the NYISO Services Tariff, the NYISO shall file subsequent agreements, including amendments and modifications to currently effective TCR Minimum Oil Burn Agreement, with the Commission and seek Commission approval of the agreement. The TCR Minimum Oil Burn Agreement and any subsequent amendment, extension or new agreement pursuant to Section 4.1.9 shall be subject to the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*¹ and *Federal Power Commission v. Sierra Pacific Power Co.*² (“Mobile Sierra doctrine”) to the full extent legally permissible.³

Section 8. Limitation on Liability and Indemnification. The provisions of Services Tariff Section 12.3, Limitation on Liability, and Section 12.4, Indemnification are expressly incorporated by reference into this TCR Minimum Oil Burn Agreement.

Section 9. Law of Agreement. The interpretation and performance of this TCR Minimum Oil Burn Agreement shall be in accordance with and controlled by the laws of the State of New York and without regard to doctrines governing choice of law.

Section 10. Regulation. This TCR Minimum Oil Burn Agreement shall be subject to all applicable and lawful governmental statutes, orders, rules and regulations and is contingent upon the receipt and continuation of all necessary approvals or authorizations from the Commission upon terms acceptable to TC Ravenswood and the NYISO. This TCR Minimum Oil Burn Agreement shall be void and of no force and effect if such Commission approval is not so obtained or continued. The Parties hereto

¹ 350 U.S. 332 (1956).

² 350 U.S. 348 (1956).

³ *Morgan Stanley Capital Group Inc. v. Public Utility District No. 1*, 128 S. Ct. 2733 (2008); *NRG Power Marketing LLC v. Maine Public Utilities Commission*, 130 S. Ct. 693 (2010); *Dominion Transmission Inc. v. FERC*, 533 F.3d 845 (2008).

shall cooperate to obtain or continue all necessary approvals or authorizations, but no Party shall be liable to any other party for failure to obtain or continue such approvals or authorizations.

Section 11. Authority. Each Party represents that it has full power and authority to enter into and perform this TCR Minimum Oil Burn Agreement and the person signing this TCR Minimum Oil Burn Agreement on behalf of each party has been properly authorized and empowered to sign this TCR Minimum Oil Burn Agreement.

Section 12. Binding Effect. This TCR Minimum Oil Burn Agreement shall be binding upon the Parties hereto, their administrators, successors and assigns.

Section 13. Headings. The headings used in this TCR Minimum Oil Burn Agreement are for convenience only and shall not be construed as a part of the TCR Minimum Oil Burn Agreement or as a limitation on the scope of the particular paragraphs to which they refer.

Section 14. Notices. Any notice or request made to or by either Party regarding this TCR Minimum Oil Burn Agreement to the representatives of the other as indicated below:

TC Ravenswood

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Section 15. Force Majeure and New Regulations. In the event there is an occurrence resulting from an Act of God, act of war, act of public enemies, rulers or people, or stoppage or restraint of labor or trade from whatsoever cause, or riot or civil commotion that prevent either Party from performing in accordance with the TCR Minimum Oil Burn Agreement, or there is a material non-FERC jurisdictional regulatory change that materially alters the ability of TCR to provide Minimum Oil Service, Minimum Oil Service ceases to be required pursuant to NYSRC Local Reliability Rule I-R3 or Con Edison's procedures for operating its system in accordance with Rule I-R3, the Ravenswood Facility is out of service or is facing an outage, or there is any other event that materially reduces TCR's ability to provide Minimum Oil Service, or the need for such service, TCR will exercise commercially reasonable efforts to reduce the Predetermined Costs and other costs payable under this TCR Minimum Oil Burn Agreement including, to the extent practicable, to attempt to renegotiate the terms and conditions of the storage and transportation agreements with TCR's suppliers, to reflect the then current needs of the Parties. Amounts payable hereunder will be reduced by the amount of any such avoidable costs with the intent of keeping TCR in a comparable economic position.

Section 16. Signatures. Signatures may occur by counterparts. Such signatures shall have the same effect as if all signatures were on the same document.

IN WITNESS WHEREOF, the Parties hereto have caused this TCR Minimum Oil Burn Agreement to be executed by their duly authorized officers, and copies delivered to each Party, to become effective as of the Effective Date identified herein.

**New York Independent System Operator,
Inc.**

TC Ravenswood, LLC

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