

133 FERC ¶ 61,205
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

TC Ravenswood, LLC

Docket No. EL10-70-000

v.

New York Independent System Operator, Inc.

ORDER ON COMPLAINT AND ESTABLISHING HEARING AND SETTLEMENT
JUDGE PROCEDURES

(Issued December 7, 2010)

1. On May 27, 2010, TC Ravenswood, LLC (Ravenswood) filed a complaint against the New York Independent System Operator, Inc. (NYISO) under sections 206 and 306 of the Federal Power Act (FPA) alleging that NYISO improperly reimbursed Ravenswood for its provision of minimum oil burn service during the period of June through September 2009 (Complaint). For the reasons discussed below, with the exception of rulings below on certain preliminary issues, the Commission establishes hearing and settlement judge procedures to resolve the issues raised by the Complaint.

I. Background

2. Ravenswood states that it owns and/or leases and operates electric generation facilities in New York and sells energy, capacity, and ancillary services in the wholesale electricity market pursuant to market-based rate authority. Ravenswood further states that it owns and/or leases the Ravenswood Generating Station, located in Queens, New York, an approximately 2,480 MW power plant that can serve approximately 21 percent of New York City's peak load. According to Ravenswood, the Ravenswood Generating Station consists of 21 units employing steam turbine, combined cycle and combustion turbine technology. Ravenswood states that the three large steam units at the facility employ dual-fueled (gas and oil) boilers, and they are called upon from time to time to burn fuel oil pursuant to New York State Reliability Counsel's (NYSRC) Local

Reliability Rule I-R3 (Rule I-R3 or Minimum Oil Burn Rule) because they have the capability of burning fuel oil or natural gas.¹

3. Rule I-R3 provides, in part, that “[the New York State] Bulk Power System shall be operated so that the loss of a single gas facility does not result in the loss of electric load within the New York City zone.”² Ravenswood states that this rule is intended to prevent a loss of electric load caused by gas fired generating units tripping off-line in response to the sudden and unexpected loss of gas or pressure in the natural gas facilities that serve them. Ravenswood adds that to avoid gas-fired electric generating units from tripping off, or at least to mitigate the impact to the electric system in the event of a natural gas pressure drop or loss, Rule I-R3 requires certain generating facilities to burn a minimum amount of fuel oil at specified load levels so that those generating facilities will have a better chance of remaining on-line and generating electricity during such an event.³

4. Section 4.1.7a of the NYISO Services Tariff, the focal point of Ravenswood’s Complaint, provides in relevant part:

Generating units designated pursuant to the New York State Reliability Council’s Local Reliability Rule I-R3 . . . as being required to burn an alternate fuel at designated minimum levels based on forecast load levels in Load Zones J and K . . . shall be eligible to recover the variable operating costs associated with burning the required alternate fuel pursuant to the provisions of this section 4.1.7a Recoverable variable operating costs associated with burning the required alternate fuel are those which, but for Local Reliability Rule I-R3 having been invoked, would not have been incurred.⁴

¹ NYSRC Reliability Rules for Planning and Operating the New York State Power System, Version 26, Rule I-R3, “Loss of Generator Gas Supply (New York City)” at 65 (Dec. 4, 2000) (emphasis omitted).

² *Id.*

³ Ravenswood states that each capability period, Consolidated Edison Company of New York, Inc. (ConEd) directs how Rule I-R3 will be applied with respect to load levels and specified units, subject to NYSRC and NYISO review and approval, respectively.

⁴ New York Independent System Operator, Inc., FERC Electric Tariff, Original Volume No. 2 (Services Tariff) section 4.1.9. Section 4.1.7a has been superseded by new

(continued...)

II. The Complaint

5. Ravenswood asserts that NYISO improperly withheld reimbursement under section 4.1.7a for a portion of the variable costs Ravenswood incurred during June, July, August, and September 2009 to respond to NYISO's and ConEd's orders to burn fuel oil instead of natural gas in furtherance of Rule I-R3. Ravenswood states that it seeks to be reimbursed \$2,437,121.48, for these unreimbursed variable costs, plus interest at the rate established under Commission regulations,

6. Ravenswood alleges that in July 2009, after reviewing costs and invoices associated with the procurement, delivery and use of fuel oil at the Ravenswood Generating Station, it determined that the variable cost compensation it received from NYISO for June 2009 pursuant to section 4.1.7a of NYISO's Services Tariff did not reimburse it for the full variable and avoidable costs that it incurred to respond to Rule I-R3. Ravenswood states that in August 2009, it sent a letter and cost data to NYISO seeking additional variable cost compensation pursuant to section 4.1.7a. Ravenswood states that similar letters and cost data were sent to NYISO for July, August, and September seeking additional compensation for unreimbursed variable and avoidable costs Ravenswood incurred in those months in responding to orders invoking Rule I-R3. Ravenswood states that NYISO approved certain additional payments but declined to reimburse three categories of cost: (1) Ravenswood's *pro rata* payments to have barges deliver fuel oil to Ravenswood facilities (Barge Delivery Lease Payments); (2) Ravenswood's *pro rata* payments for third-party off-site fuel oil tank and barge storage applicable to the days when it was ordered to provide minimum oil burn service (Tank and Barge Storage Lease Payments); and (3) incremental variable operation and maintenance charges for on-site equipment, e.g., piping, pumps, and other facilities separate and apart from on-site storage tanks (On-Site Equipment Costs). Further, according to Ravenswood, NYISO notified Ravenswood that it did not reimburse for those three categories of costs because NYISO's Services Tariff and Commission orders do not authorize payments for those types of costs. Ravenswood states that NYISO declined Ravenswood's request to resolve the reimbursement dispute pursuant to NYISO's Expedited Dispute Resolution Procedures for Unresolved Settlement Challenges.

7. Ravenswood argues that the FPA mandates that public utilities be permitted to recover just and reasonable rates,⁵ and under U.S. Supreme Court precedent, a just and

enumeration following NYISO's filing of its Baseline eTariff. However, for simplicity, we will continue to refer to the original section number.

⁵ FPA § 205, 16 U.S.C. § 824(d) (2006).

reasonable rate is one that provides a public utility the opportunity both to recover its costs and earn a reasonable return on its investment.⁶ Ravenswood adds that the Commission has held that compensation paid to generators is unjust and unreasonable where it fails to provide “generators. . . [a] sufficient opportunity to recover their. . . costs.”⁷ Ravenswood contends that NYISO’s interpretation of section 4.1.7a, as applied to Ravenswood during the period June through September 2009 failed to provide Ravenswood an opportunity to recover its variable costs of burning fuel oil that it burned solely in response to Rule I-R3.

8. Ravenswood states that the NYISO Services Tariff provides for the reimbursement of variable costs incurred in furtherance of Rule I-R3. Ravenswood states that when NYISO filed revisions to section 4.1.7a to provide for compensation to be paid to generators that burn alternative fuel as a result of the imposition of Rule I-R3, it deferred the issue of reimbursement for fixed costs, but clearly intended to authorize generators to recover all the variable costs they incur when they respond to Rule I-R3.⁸ Ravenswood notes that the Commission accepted the tariff revisions stating that section 4.1.7a “will ensure that dual-fueled generators are appropriately compensated for additional fuel costs when required to burn oil in response to Rule I-R3.”⁹

9. Ravenswood contends that the costs for which it seeks reimbursement are variable, not fixed, costs that it incurred in response to orders invoking Rule I-R3. According to Ravenswood, the Commission defines fixed costs as “those which do not vary with the amount of energy produced,”¹⁰ and variable costs as “those which do vary with the amount of energy produced.”¹¹ Ravenswood states that variable costs thus include, but are not limited to, costs that vary based on use, i.e., avoidable costs that would not have

⁶ Ravenswood Complaint at 9 (citing *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944)).

⁷ *Indep. Energy Producers Assn. v. Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,069, at P 37-38 (2006) (*IEPA*).

⁸ Ravenswood Complaint at 11 (citing *New York Indep. Sys. Operator, Inc.*, 121 FERC ¶ 61,039, at P 2 (2007)).

⁹ *Id.* at 12 (citing *New York Indep. Sys. Operator, Inc.*, 121 FERC ¶ 61,039 at P 7).

¹⁰ *See, e.g., Southern Co. Servs., Inc.*, 61 FERC ¶ 61,075, at 61,307 (1992), *reh’g denied*, 64 FERC ¶ 61,033 (1993).

¹¹ *Id.*

been incurred but for the production of energy, and incremental operation and maintenance costs that arise because of the use of equipment to produce energy. Ravenswood adds that variable costs related to Rule I-R3 service therefore are those costs that a generator only incurs because it burns an alternate fuel rather than natural gas because of its response to Rule I-R3. Ravenswood states that it incurred the variable costs for which it seeks recovery in this case expressly and exclusively to respond to Rule I-R3 and would not have incurred any of the costs at issue but for complying with those orders.

10. Specifically, Ravenswood argues that both third-party costs (including barging and delivery costs), and incremental operation and maintenance costs associated with on-site fuel oil delivery and handling equipment constitute reimbursable variable costs. Ravenswood states that it contracted with its affiliate TC Ravenswood Services Corporation (TC Services) for fuel oil supply, storage, handling and transportation services (barging). Ravenswood states that TC Services also provided these services to ConEd Steam and that ConEd Steam and Ravenswood paid TC Services for the transportation services and for incremental variable operation and maintenance expenses, on a *pro rata* basis based upon the amount of fuel oil each used. With respect to barging and delivery costs, Ravenswood states that these are not fixed costs, but, rather, variable costs. According to Ravenswood, the costs were triggered by use and varied by month based on volumetric usage. Ravenswood further states that if it had not been required to provide Minimum Oil Burn Service during the months of June through September 2009, it would not have incurred any of the noted barge costs in those months.

11. With respect to off-site costs, Ravenswood states that TC Services leased facilities in order to have fuel oil on hand in the New York harbor area to supply ConEd Steam, and Ravenswood (both for Rule I-R3 compliance and other Ravenswood use). Ravenswood states that it is seeking reimbursement for those months that the storage was used exclusively for Rule I-R3 service (June through September 2009), as such costs are variable costs.

12. With respect to incremental operation and maintenance costs, Ravenswood states that these are associated with on-site fuel oil delivery and handling equipment and the cost is incurred when the equipment is used. Ravenswood adds that the more the equipment is used, the greater the expense incurred.

III. Notice of Filing and Responsive Pleadings

13. Notice of Ravenswood's Complaint was published in the *Federal Register*, 75 Fed. Reg. 32,458 (2010), with interventions and protests due on or before June 16, 2010.

14. New York Transmission Owners¹² and Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. (collectively, Constellation) filed timely motions to intervene. Independent Power Producers of New York, Inc. (IPPNY) filed a motion to intervene out-of-time.

15. The New York State Public Service Commission (New York Commission) and the City of New York each filed a notice of intervention and protest. ConEd, Orange and Rockland Utilities, Inc. and the New York Power Authority (collectively, the Companies) filed a motion to intervene and protest. Consolidated Edison Solutions (ConEd Solutions) and Astoria Generating Company, L.P. (Astoria) each filed a motion to intervene and comments.

16. On June 28, 2010, NYISO filed an answer to the Complaint. On July 21, 2010, Ravenswood filed a request to defer action in this docket and the associated Docket No. ER10-1359-000. On July 22, 2010, Astoria filed a comment in support of the requested deferral. On August 2, 2010, Ravenswood filed an answer to NYISO's answer. On August 16, 2010, NYISO filed a motion to hold the proceedings in abeyance. On August 18, 2010, Ravenswood filed a response in support of NYISO's motion.

17. On August 30, 2010, Ravenswood filed a status report on the settlement discussions. On September 28, 2010, Ravenswood filed a letter stating that the parties remained far apart and requesting that the Commission act expeditiously on the Complaint. On October 1, 2010, NYISO filed a letter expressing its agreement to restart the proceedings and requesting that the Commission allow a 15 day period starting Monday, October 4, 2010, for parties to respond to the Ravenswood's August 2, 2010 answer. The New York Commission filed in support of NYISO's motion, and Ravenswood filed in support of a 15 day comment period but argues that it should begin on September 29, 2010.

¹² New York Transmission Owners in this case consist of Central Hudson Gas & Electric Corporation, Long Island Power Authority, New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, and Rochester Gas and Electric Corporation, individually and collectively.

18. On October 13, 2010, NYISO filed an answer to Ravenswood's argument that Dr. David Patton's affidavit, filed as an attachment to NYISO's June 28, 2010 answer, should be stricken from the record.

A. NYISO's Answer to the Complaint

19. In its June 28, 2010 answer, NYISO contends that the complaint collaterally attacks prior Commission rulings regarding the scope of section 4.1.7a. NYISO states that prior Commission proceedings have addressed minimum oil burn costs in response to a February 2007 section 205 complaint by KeySpan-Ravenswood demanding compensation from NYISO for lost profits during the 2006 Summer Capability Period that it alleged were a consequence of its compliance with Rule I-R3. NYISO states that the Commission rejected Ravenswood's February 2007 complaint.¹³ NYISO states that it subsequently submitted, and the Commission accepted, proposed section 4.1.7a of its Services Tariff that created a special compensation rule under which generators would be eligible to recover variable operating costs of burning an alternate fuel under Rule I-R3.¹⁴ NYISO states that section 4.1.7a did not compensate generators "for the storage and delivery infrastructure required to be able to burn an alternative fuel at any given time."¹⁵ NYISO adds that KeySpan-Ravenswood protested the exclusion of both "storage and deliverability" costs incurred as a result of being capable, upon instruction, "to burn an alternative fuel at any given time" and fixed costs associated with maintaining and investing in equipment required to enable a Minimum Oil Burn generator to switch to "an alternative fuel at any given time."¹⁶ NYISO states that the Commission denied the

¹³ NYISO June 28, 2010 Answer at 4 (citing *Key-Span-Ravenswood, LLC v. New York Indep. Sys. Operator, Inc.*, 119 FERC ¶ 61,089, at P 14, *reh'g denied*, 119 FERC ¶ 61,319 (2007)).

¹⁴ NYISO states that generators were eligible to recover such variable operating costs when: (1) such costs are not reflected in the unit's reference level; (2) the indexed alternate fuel cost, being burned pursuant to the Minimum Oil Burn Rule is more than the indexed variable operating costs for natural gas; (3) the Minimum Oil Burn was activated; and (4) the variable operating costs would not have been incurred but for the requirement to burn the required alternate fuel for Minimum Oil Burn purposes.

¹⁵ NYISO June 28, 2010 Answer at 5 (citing NYISO Transmittal Letter, Docket No. ER07-748-000, at 7 (filed April 13, 2007)).

¹⁶ *Id.* (citing *New York Indep. Sys. Operator, Inc.*, 119 FERC ¶ 61,130, at P 14 (2007)).

protest and found section 4.1.7a to be just and reasonable, notwithstanding the exclusion of these additional costs.

20. NYISO further states that KeySpan-Ravenswood asserted on rehearing that it was unjust, unreasonable, and unduly discriminatory for the Commission to deny its claims for “incremental storage, delivery infrastructure, and related items necessary to maintain its fuel switching capabilities.”¹⁷ According to NYISO, KeySpan-Ravenswood again claimed that “barge transportation and lease arrangements” were incremental storage and delivery infrastructure costs that should be recoverable under section 4.1.7a on the same basis as incremental fuel oil commodity costs. NYISO states that the Commission upheld its original decision and clarified that there were concerns that arise with respect to the costs of oil storage and delivery infrastructure that are not present with respect to the incremental variable costs of burning oil. NYISO adds that the Commission was clear that “barge transportation and lease payments” were the kinds of storage and delivery infrastructure costs that were subject to these concerns¹⁸ and that costs for oil storage and delivery infrastructure would best be addressed through the NYISO stakeholder process.¹⁹

21. NYISO states that on appeal, the United States Court of Appeals for the District of Columbia Circuit upheld all of the Commission’s rulings and agreed that it was reasonable for the Commission to conclude that infrastructure compensation implicated distinct concerns that were not relevant to the incremental variable costs of burning oil and therefore, that section 4.1.7a was just and reasonable even though it did not provide for the recovery of those costs.²⁰

22. NYISO states that there can be no question that the current version of section 4.1.7a is just and reasonable, that it does not currently encompass oil and storage deliverability costs, and that it did not do so during summer 2009. NYISO states that Ravenswood does not argue that section 4.1.7a is unjust, unreasonable, or unduly discriminatory, but, instead, contends that NYISO wrongly declined to pay for purported

¹⁷ *Id.* (citing KeySpan-Ravenswood, Request for Rehearing, Docket No. ER07-748-001, at 7-12 (filed June 11, 2007)).

¹⁸ *Id.* at 6 (citing *New York Indep. Sys. Operator, Inc.*, 121 FERC ¶ 61,039 at P 22).

¹⁹ *Id.* (citing *New York Indep. Sys. Operator, Inc.*, 121 FERC ¶ 61,039 at P 23).

²⁰ *Id.* at 7 (citing *KeySpan-Ravenswood v. FERC*, No. 07-1278, 2009 U.S. App. LEXIS 10014 (D.C. Cir. May 7, 2009)).

variable operating costs. NYISO asserts that each of these categories corresponds exactly to, or, at a minimum, overlaps substantially with, costs that the Commission previously found to be beyond the scope of section 4.1.7a and that Ravenswood is effectively asking the Commission to retroactively grant relief under section 206 of the FPA, which only provides for prospective relief. According to NYISO, this is a collateral attack on earlier Minimum Oil Burn rule precedent. NYISO also asserts that the Commission's earlier Minimum Oil Burn orders were clear that future questions concerning compensation for incremental fuel oil storage and delivery infrastructure costs should be addressed through the stakeholder process in the first instance.

23. NYISO also contends that Ravenswood has not shown that its claimed costs were variable operating costs that would not have been incurred but for its compliance with a specific New York State reliability rule and thus, the costs are not eligible for recovery under section 4.1.7a of NYISO's Services Tariff. NYISO states that the term "variable operating costs" is not expressly defined in section 4.1.7a of the Services Tariff, in other NYISO documents, or in the Commission's prior Minimum Oil Burn orders and that Ravenswood argues for the mechanical application of definitions of fixed and variable costs taken from cost-of-service ratemaking decisions. NYISO asserts that Ravenswood's definition is too broad and that most of Ravenswood's claimed costs cannot be classified as variable operating costs under section 4.1.7a because they do not vary directly based on the volume of fuel oil burned in compliance with the Minimum Oil Burn Rule.

24. NYISO further contends that the FPA does not entitle Ravenswood to special non-market based compensation for any and all costs that it may wish to recover. NYISO states that the law requires only that generators have a "reasonable opportunity" to recoup their costs.²¹ NYISO argues that the precedent cited by Ravenswood is distinguishable and does not support Ravenswood's position. NYISO asserts that *IEPA* involved a "must offer" obligation that suppressed load-serving entities' incentives to engage in long-term contracting and drove real-time prices artificially low, and generators were not receiving any day-ahead market compensation for capacity offered in real-time under the must-offer obligation. NYISO states that the Commission therefore concluded that significant changes had to be made to the must-offer rule to ensure that California generators had the requisite "reasonable opportunity" to recover their costs. NYISO argues that these

²¹ *Id.* at 19 (citing *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) (*Hope*); *Bluefield Water Works & Improvement Co. v. PSC*, 262 U.S. 679 (1923) (*Bluefield*)); *ISO New England, Inc. and New England Power Pool Participants Committee*, 128 FERC ¶ 61,023, at P 34 (2009) (citing *Bridgeport Energy, LLC*, 113 FERC ¶ 61,311, at P 29 (2005)).

factors are not present here because Rule I-R3 impacts a comparatively smaller portion of the output of fewer generators and exists within the framework of the well-functioning NYISO-administered markets. Further, NYISO asserts that *IEPA* is in keeping with the Commission's policy disfavoring non-market-based compensation arrangements, such as reliability-must-run contracts, except in unusual circumstances, e.g., when a generator that is deemed to be essential to the preservation of reliability cannot earn sufficient market revenue to continue operations absent cost-based payments.²² NYISO states that, unlike the California generators in *IEPA*, or the New England generators in the reliability-must-run cases, there has been no demonstration that Ravenswood requires additional cost-based compensation from NYISO for its operations to remain viable; nor does there appear to be any possibility that NYISO's denial of Ravenswood's claimed costs will impact Ravenswood's revenues so severely as to implicate the concerns about confiscatory rates that animated *Hope* and *Bluefield*.

25. Specifically, NYISO argues that the Barge Delivery Lease Payments, the Tank and Barge Storage Lease Payments, and the On-Site Equipment Costs are not recoverable under section 4.1.7a. With respect to the Barge Delivery Lease Payments, NYISO states that although these charges varied from month to month during the summer of 2009, this variation was not driven by the number of barrels of fuel oil burned for Minimum Burn Oil Rule compliance, but, rather, by Ravenswood's usage relative to ConEd's steam operations. NYISO asserts that Ravenswood and ConEd determined the *pro rata* allocations between them pursuant to their contract.

26. With respect to the Tank and Barge Storage Lease Payments, NYISO asserts that in almost no month did this *pro rata* allocation vary with actual usage for Rule I-R3 purposes; that is, in months in which Rule I-R3 was triggered, there typically was no other Ravenswood use of fuel oil. Hence, according to NYISO, the amount of fuel oil burned on a given day for Rule I-R3 had no effect on the size of the Tank and Barge Storage Lease Payments allocated by Ravenswood to Rule I-R3 compliance. NYISO further argues that the lease payment is a fixed infrastructure cost, notwithstanding the fact that the cost is shared and that each company's portion may vary from month to month.

27. NYISO claims that Ravenswood's On-Site Equipment Costs, while not allocated between it and ConEd in the same manner as the lease payment costs, nonetheless do not qualify as variable operating costs that would not have been incurred "but for" the

²² *Id.* at 22 (citing *ISO New England, Inc. and New England Power Pool*, 118 FERC ¶ 61,018, at P 46 (2007); *Devon Power LLC, et al.*, 106 FERC ¶ 61,264, at P 28 (2004)).

invocation of Rule I-R3. NYISO states that these costs appear to directly support Ravenswood's general dual fuel capability as well as its ability to comply with Rule I-R3.

B. Ravenswood's August 2, 2010 Answer to NYISO's Answer and NYISO's October 13, 2010 Response

28. In its August 2, 2010 answer, Ravenswood reiterates its claim that the costs for which it seeks reimbursement are variable "but-for" costs, i.e., Ravenswood incurred them solely as a result of, and would not have incurred them but for, burning fuel oil when it was ordered to do so under Rule I-R3. Ravenswood contends that, contrary to NYISO claims, the costs at issue were not fixed or infrastructure related and neither NYISO nor the intervenors offer contrary evidence to show the costs were fixed or were for any infrastructure owned by Ravenswood. Nor, according to Ravenswood, do they offer evidence that the variable but-for costs would have been incurred absent Ravenswood responding to Rule I-R3 orders by burning fuel oil. Ravenswood asserts that NYISO, instead, tries to equate the costs currently at issue with entirely unrelated types of costs that KeySpan-Ravenswood sought to recover in 2007. Ravenswood states that the costs, the issues, and the context are different; this is not a case about theoretical costs, but rather about Ravenswood's real expenditures to perform a service that provided reliability for the grid.

29. Ravenswood asserts that NYISO is improperly attempting to limit the scope of costs recoverable under section 4.1.7a. Ravenswood argues that the tariff language which states that "recoverable variable operating costs associated with burning the required alternate fuel **are those** which, **but for** Local Reliability Rule I-R3 having been invoked, would not have been incurred" (emphasis added) indicates that variable costs are defined as being "but for" costs. Ravenswood states that the Merriam-Webster dictionary defines "variable" as "able or apt to vary; subject to variation or changes." Thus, according to Ravenswood, the standard for a Rule I-R3 generator to obtain cost recovery under section 4.1.7a is that in responding to a Rule I-R3 order, it must have incurred operating costs that were apt to vary, or subject to variation or changes, and those costs would not have been incurred **but for** Rule I-R3. Ravenswood states that nowhere in the NYISO Services Tariff section 4.1.7a, any other NYISO document, or any FERC order are there specific words or inference that state or suggest that costs will be classified as variable operating costs only if they vary directly based on the volume or number of barrels of fuel oil burned. Ravenswood further states that this is a new limit on the scope of section 4.1.7a and under New York law the parol evidence rule prohibits consideration of extrinsic evidence to vary, contradict, add to, or explain the terms of a

completely integrated written instrument.²³ Further, Ravenswood contends that under New York law, any ambiguous terms in a contract are interpreted against the party that drafted the document.²⁴ Thus, according to Ravenswood, the Commission should reject NYISO's attempt to restrict the scope of section 4.1.7a to provide for recovery only of costs that vary directly based upon the number of barrels of fuel oil burned.

30. Ravenswood states that, in any event, the costs it incurred did vary directly with the number of barrels of fuel oil burned. It procured fuel oil from, and had it delivered by, TC Ravenswood Services Corporation (TC Services). Ravenswood states that the evidence shows that the monthly cost for barge leases fluctuated directly with the fuel oil needs of the site. Ravenswood adds that the cost of delivery and handling of fuel oil was divided between ConEd Steam's use in producing steam, Ravenswood Use, and Rule I-R3 orders based on *pro rata* fuel oil volume usage during the applicable month. Similarly, costs of off-site storage tanks were allocated on a *pro-rata* basis, dependent upon the amount of fuel oil used. Ravenswood states that NYISO does not dispute that the operation and maintenance expenses vary based upon barrels of fuel oil burned to respond to Rule I-R3 orders.

31. Ravenswood states that it submitted evidence showing that it would not have incurred any of the costs it is seeking to recover for the barge, handling, and associated costs "but for" responding to Rule I-R3 orders. Ravenswood further states that the incremental operation and maintenance work and expenses for on-site equipment that it submitted stems directly from burning fuel oil on a barrel-by-barrel basis.

32. Ravenswood argues that the testimony of Dr. Patton, the NYISO Market Monitor, should be stricken from the record or accorded little weight because it is not appropriate for him to interpret tariff provisions. Ravenswood argues that while the Market Monitor can evaluate market rules and tariff provisions for their impact on the competitive market, Order No. 719 expressly prohibited the Market Monitoring Unit from "becom[ing] involved in implementing rule and tariff changes"²⁵ and this prohibition is explicitly

²³ Ravenswood August 2, 2010 Answer at 15 (citing *Fireman's Fund Ins. Cos. v. Siemens Energy & Automation, Inc.*, 948 F. Supp. 1227, 1228 (S.D.N.Y. 1996)).

²⁴ *Id.* at 15-16 (citing *Herbil Holding Co. v. Commonwealth Land Title Ins.*, 183 A.D.2d 219, 590 N.Y.S.2d 512 (2d Dep't 1992)).

²⁵ *Id.* at 41 (citing *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, FERC Stats. & Regs. ¶ 31,281, at P 96 (2008)).

expressed in Commission regulations.²⁶ Ravenswood also reiterates its analysis of applicable judicial precedent and Commission policy with respect to Ravenswood's opportunity for cost recovery²⁷ and argues that NYISO mischaracterizes its arguments. Ravenswood disputes NYISO's claim that Ravenswood is compensated through capacity payments and NYISO's claim that Ravenswood's complaint is a collateral attack on prior Commission rulings. It also reiterates that it is not trying to recover capital costs. Ravenswood further argues that any benefits it incurs from having dual fuel capability are irrelevant in that dual fuel capability also confers associated costs and risks, and the purported benefits do not insulate Ravenswood from risks arising from its status as a generator subject to Rule I-R3 orders.

33. In its October 13, 2010 response to Ravenswood's request to strike the affidavit of NYISO's witness, Dr. Patton, NYISO asserts that Ravenswood has not met its burden of proof. According to NYISO, Ravenswood's claims that Dr. Patton is not authorized to submit an affidavit under these circumstances, that he acted outside his purview and without adequate independence are unsupported. NYISO contends that, contrary to Ravenswood's allegations, evaluating tariff provisions is a core function of the Market Monitoring Unit.²⁸ NYISO states that rendering advice and opinion is not tariff administration; nor is NYISO precluded from consulting with its Market Monitoring Unit before it decides how best to implement its tariff. NYISO asserts that Order No. 719 encourages Market Monitoring Units to provide advice to ISOs and in no way prevents collaboration between the two.²⁹ NYISO also asserts that neither Order No. 719 nor any other Commission precedent prevents the Marketing Monitoring Unit from taking positions that support the ISO whose market they monitor.

C. Comments and Protests

34. ConEd Solutions states that the 2009 bills are finalized and that to re-open these bills to correct for a cost dispute for the benefit of Ravenswood is inappropriate and

²⁶ *Id.* (citing 18 C.F.R. § 35.28(g)(3)(iii)(A) (2010) ("A Commission-approved independent system operator . . . may not permit its Market Monitoring Unit, whether internal or external, to participate in the administration of the Commission-approved independent system operator's . . . tariff.")).

²⁷ *See supra* P 7.

²⁸ NYISO October 13, 2010 Answer at 4 (citing NYISO Services Tariff, sections 30.4.3.5 and 30.4.5; 18 C.F.R. § 35.28(g)(3)(iii)(A)).

²⁹ *Id.* at 7 (citing Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 353-57).

harmful to retail markets. ConEd Solutions contends that retail load-serving entities have no contractual mechanism to collect such costs from current or past customers and that they cannot compete and remain financially viable if they have to absorb costs such as these. It also argues that it would be inappropriate to upset market participant's settled expectations³⁰ and that adjustment of these past expenses is contrary to Commission statements recognizing the need for certainty and finality in market transactions.³¹ ConEd Solutions also states that Ravenswood's request for reimbursement of fuel delivery and storage costs under the minimum oil burn cost recovery rules were previously disputed and denied by the Commission in the ER07-748-000 docket, and that NYISO's denial here is consistent with its tariff.

35. In its answer, Ravenswood asserts that ConEd Solutions' contention, that a grant of the Complaint will have a deleterious effect on the market, should be disregarded. Ravenswood argues that if the Commission were to grant Ravenswood's Complaint but conclude that it is not entitled to recovery because of the resultant uncertainty for the market, such a decision would mean that NYISO is the final arbiter of all disputes concerning the propriety of its decisions concerning payments under its tariffs. According to Ravenswood this argument is at odds with Commission precedent.³²

36. The Companies argue that Ravenswood's complaint should be dismissed because: (1) Ravenswood has not met its burden of proof in that it failed to demonstrate that NYISO violated its tariff; (2) Ravenswood has failed to demonstrate that it actually has unreimbursed costs that are variable costs and that would not have occurred but for the Minimum Oil Burn Rule; and (3) NYISO's tariff does not provide for the payment of the costs that Ravenswood is seeking, therefore Ravenswood's request for retroactive payments violates the filed rate doctrine.³³

³⁰ ConEd Solutions June 25, 2010 Comments at 3-4 (citing *Wisvest-Connecticut, LLC v. ISO New England, Inc.*, 104 FERC ¶ 61,262, at P 11 (2003)).

³¹ *Id.* at 4 (citing *NSTAR Services Co. v. New England Power Pool*, 92 FERC ¶ 61,065, at 61,200 (2000)).

³² *Id.* at 72 (citing *Ameren Services Co.*, 131 FERC ¶ 61,125, at P 1, 28 (2010); *New York Power Authority v. Consolidated Edison Co. of New York, Inc.*, 112 FERC ¶ 61,304, at P 54-56 (2005)).

³³ The Companies state that neither section 205 nor section 206 of the Federal Power Act provide authority to order refunds for periods prior to the effective date of a proposed rate change. The Companies June 28, 2010 Protest at 8 (citing *Arkansas*

(continued...)

37. Specifically, the Companies contend that while Ravenswood refers to its unreimbursed costs as variable, the types of costs listed in the complaint are fixed infrastructure costs related to the capital costs associated with storage tanks, barges, pipes and pumps. The Companies also assert that Ravenswood's complaint fails to indicate whether its unreimbursed costs are costs that it would still have incurred if the Minimum Oil Burn Rule did not exist. They state that as a ConEd interruptible gas transportation customer, Ravenswood is required to have dual fuel capability in order to avail itself of ConEd's less expensive gas interruptible transportation rate. Further, according to the Companies, Ravenswood fails to acknowledge that NYISO's tariff already compensates it for the capital costs associated with its oil storage and delivery infrastructure, in that capital costs such as oil storage facilities are included in NYISO's current demand curve structure pursuant to which generators like Ravenswood are paid for their capacity.³⁴

38. The City of New York, like NYISO, argues that the Commission has previously addressed and rejected Ravenswood's claims. The City of New York also argues that Ravenswood's request is nothing more than an attempt to set a new rate whereby it will receive compensation for costs incurred in past periods and, therefore, would violate the filed rate doctrine³⁵ and would result in retroactive ratemaking.³⁶

39. Astoria comments that generators that provide a service to satisfy NYSRC reliability requirements are entitled to be compensated for providing such service. Astoria states that the Commission has previously rejected ConEd's argument that Astoria should be required to provide quick start service, which was required to meet certain NYSRC rules, for free under Astoria's Continuing Site Agreement with ConEd.

Louisiana Gas Co. v. Hall, 453 U.S. 571, 577 (1981); *Towns of Concord, Norwood, and Wellesley v. FERC*, 955 F.2d 67, 71 n.2 (D.C. Cir. 1992) (citations omitted)).

³⁴ The demand curve establishes the price for capacity in the NYISO's spot market based on the cost of new entry for generators less forecasted generator revenue offsets. The Companies contend that as such, generators receive a payment for all of their sunk capital costs, including the costs associated with oil storage facilities to support dual-fuel capability.

³⁵ City of New York June 28, 2010 Protest at 11(citing *Montana-Dakota Util. Co. v. Northwestern Pub. Serv. Co.*, 341 U.S. 246, 251-252 (1951); *Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571, 577 (1981); *Associated Gas Distributors v. FERC*, 898 F.2d 809, 810 (D.C. Cir. 1990)).

³⁶ City of New York June 28, 2010 Protest at 12 (citing *Associated Gas Distributors v. FERC*, 898 F.2d 809, 810 (D.C. Cir. 1990)).

Astoria states that if the Commission determines that Ravenswood's costs were incurred to provide a service that it was ordered to provide to meet a reliability requirement in New York City, then the Commission must direct NYISO to make these payments to Ravenswood for the Summer 2009 period.

IV. Commission Determination

A. Procedural Matters

40. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

41. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We will accept Ravenswood's and NYISO's answers filed in this proceeding because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

42. As discussed below, we find that Ravenswood is not barred from seeking recovery of the subject costs as a result of the Commission's decision in the Docket No. ER07-748 proceeding. However, factual issues remain and, therefore, with the exception of the issues resolved below, we set the issues raised by the Complaint for hearing and settlement judge procedures.

43. The threshold issue in dispute is whether the Commission has previously resolved the question of recovery of the specific costs at issue here and found them to be unrecoverable under section 4.1.7a. Ravenswood contends that these are different costs than those at issue in prior proceedings, and that these are specific and actually-incurred costs. NYISO and other protesters argue that they are the same costs that the Commission has previously rejected for reimbursement under section 4.1.7a.³⁷

44. We disagree with NYISO and the protesters. Ravenswood never made clear in the Docket No. ER07-748 proceeding what exact type of costs it sought to recover. Rather, it led the Commission to believe that the focus of Ravenswood's protest was on expanding the proposed tariff provision to provide for the recovery of "fixed" (not "variable") costs, which both NYISO and Ravenswood had variously described as interchangeable with

³⁷ See *supra* note 23 and accompanying text.

“infrastructure” costs that would not meet the “but for” requirement of NYISO’s proposed tariff provision.³⁸ Thus, the Commission denied Ravenswood’s protest of NYISO’s initial filing of section 4.1.7a in Docket No. ER07-748 as “beyond the scope of this proceeding,” and denied rehearing, stating, “the Commission affirms its original finding that NYISO’s proposed section 4.1.7a is just and reasonable and not unduly discriminatory and that issues concerning compensation for fixed oil storage and delivery infrastructure costs should be addressed, in the first instance, through NYISO’s stakeholder process.” Indeed, the Commission’s discussion in the October 18, 2007 Rehearing Order in Docket No. ER07-748 is replete with statements describing Ravenswood’s protest as proposing to recover “fixed oil storage and delivery costs” or “infrastructure costs” that would not meet the “but for” requirement.³⁹ However, in light of the fact that Ravenswood had been vague as to what exact type of costs it sought to recover and had described them in various, sometimes conflicting, ways, ultimately the Commission denied Ravenswood’s rehearing request, by concluding: “[i]t is unclear whether the costs Ravenswood seeks are short term or long term, fixed or variable, incremental or ongoing, or avoidable or unavoidable.”⁴⁰ For that reason, on appeal, the U.S. Court of Appeals for the District of Columbia Circuit affirmed the Commission, finding reasonable the Commission’s decision to defer consideration of the issues Ravenswood had raised to a future proceeding.⁴¹

45. In the October 18, 2007 Rehearing Order in Docket No. ER07-748, the Commission also made clear its concern that some of the costs Ravenswood sought to recover, vaguely designated as “infrastructure costs,” might have related to “the capability to operate a unit using an alternate fuel” as such physical capability of the unit itself could be used “for reasons other than complying with Rule I-R3.”⁴² Hence, the

³⁸ See also NYISO’s Transmittal to its April 13, 2007 filing in Docket No. ER07-748-000 at 7 (“NYISO recognizes that this proposal does not compensate Rule I-R3 specified generating facilities for the storage and delivery infrastructure required to be able to burn an alternative fuel at any time. . . . The NYISO continues to consider this request at stakeholder meetings and will propose a recovery mechanism for fixed costs if and when it and its stakeholders agree on its necessity and its design.” (emphasis added)).

³⁹ See, e.g., *New York Indep. Sys. Operator, Inc.*, 121 FERC ¶ 61,039 at P 12-14, 21-22.

⁴⁰ *Id.* P 21.

⁴¹ *TC Ravenswood, L.L.C. v. FERC*, 331 Fed. App’x. 8, 10 (D.C. Cir. 2009).

⁴² *New York Indep. Sys. Operator, Inc.*, 121 FERC ¶ 61,039 at P 22.

Commission was concerned that some of the costs Ravenswood ambiguously stated it was seeking authorization to recover might not meet the “but for” requirement of NYISO’s proposed rule. Importantly, the Commission did not rule that the costs related to burning fuel oil to comply with Rule I-R3 that do, in fact, constitute “variable operating costs” and which would not be incurred “but for” the invocation of Rule I-R3 would not be recoverable. Nor did the Commission have before it, and therefore could not have ruled on, the specifically-identified barge delivery lease payments, barge storage lease payments, and operation and maintenance expenses associated with onsite equipment at issue here. Therefore, the Commission’s orders in the Docket No. ER07-748 proceeding cannot be interpreted as finding that the specific costs now before us are *per se* ineligible for reimbursement under section 4.7.1a. In contrast to the vagueness and lack of clarity regarding the types of costs Ravenswood sought to render recoverable under the proposed rule, the instant proceeding contains reasonably precise descriptions of the actual costs at issue here, although factual questions remain that warrant a hearing.

46. The second issue in dispute that we resolve here is the definition of “variable” costs to be used for purposes of applying section 4.1.7a. NYISO and Ravenswood disagree on what the term “variable” means in that context. Ravenswood argues in its Complaint that the Commission has held that “fixed costs” are those “infrastructure costs which remain constant regardless of the amount of energy produced, whereas “variable costs are considered to be those which do vary with the amount of energy produced.”⁴³ However, Ravenswood later blurred its interpretation of “variable” by asserting in its answer that “variable” costs are essentially defined by the tariff as being “but for” costs and that the term “variable” should be defined in accordance with its common dictionary usage as “able or apt to vary or are subject to variation.”⁴⁴ NYISO asserts that Ravenswood’s definition is too broad and that “variable operating costs” should be defined as costs that vary directly based on the volume of fuel oil burned in compliance with the Rule I-R3. We find that Ravenswood has interpreted the term “variable” too broadly to the extent that it asserts that simply showing that the costs would not have been incurred “but for” Rule I-R3 renders the costs “variable.” Further, we disagree with Ravenswood that the term “variable” as used in section 4.7.1a should be defined according to its common, dictionary meaning. By the same token, we also disagree with NYISO that the term “variable” costs should be defined only as costs that vary directly with the volume of fuel oil burned in compliance with the Rule I-R3. The terms “fixed” and “variable” costs are commonly used terms in cost-based ratemaking in the electric

⁴³ Ravenswood Complaint at 13 (citing *Southern Company Services, Inc.*, 61 FERC ¶ 61,075 at 61,307, *reh’g denied*, 64 FERC ¶ 61,033).

⁴⁴ Ravenswood August 2, 2010 Answer at 11.

industry and, as Ravenswood originally, and correctly, pointed out in its Complaint, the Commission has stated that these terms are defined as follows: “fixed costs are considered to be those which do not vary with the amount of energy produced; variable costs are considered to be those which do vary with the amount of energy produced.”⁴⁵ In the absence of a clear definition of a term in the tariff, as is the case here, the Commission will generally define the term consistent with its common industry usage.⁴⁶ Accordingly, we find that the term “variable” operating costs as used in section 4.1.7a should be interpreted consistent with its common industry usage to mean operating costs that vary with the amount of energy produced by fuel oil burned to comply with a Rule I-R3 order.

47. Further, we find that, to be recoverable, the relationship of the costs to fuel oil burned or energy produced must be “direct” but only in the general sense that, as more fuel oil is burned and more energy is produced, the costs generally will increase; conversely, as less fuel oil is burned and less energy is produced, the costs generally will decrease. Thus, variances in costs incurred need not be exactly proportionate to the volumes of fuel oil burned or energy thereby produced; nor is it required that the costs be incurred contemporaneous with the burning of the fuel oil or the production of the energy to which the costs relate. Whether the costs at issue here meet the foregoing definition, and would not have been incurred “but for” Rule I-R3 having been invoked, are factual issues appropriately set for hearing in which Ravenswood bears the burden of proof.

48. Consistent with the foregoing, we reject NYISO’s argument that granting the relief Ravenswood seeks would contravene a Commission policy “disfavoring non-market-based compensation arrangements” and that, as a result, section 4.1.7a should be construed as narrowly as possible such that it does not encompass Ravenswood’s claimed costs. The cited Commission policies do not command a different result here because cost-based compensation has already been ruled just and reasonable for minimum burn rule service and the Commission is simply interpreting an existing tariff provision by giving its terms their common industry meaning.

⁴⁵ *Southern Company Services, Inc.*, 61 FERC ¶ 61,075 at 61,307.

⁴⁶ *See, e.g., Arkansas Electric Cooperative Corp. v. Entergy Arkansas, Inc.*, 117 FERC ¶ 61,099, at P 59 (2006), *reh’g denied*, 119 FERC ¶ 61,314 (2007), *aff’d, sub nom. Entergy Services, Inc. v. FERC*, 568 F.3d 978 (D.C. Cir. 2009).

49. We also reject the argument that granting Ravenswood's request would violate the filed rate doctrine and its counterpart, the rule against retroactive ratemaking.⁴⁷ First, the filed rate doctrine bars the application of a rate other than that which is properly filed with the Commission. The filed rate doctrine requires NYISO to pay the tariff rate on file, which in this case is the cost-based formula rate in section 4.1.7a. That doctrine cannot be used to bar recovery of costs which are found to be recoverable under, and therefore part of, the tariff rate on file. Indeed, to not apply the authorized tariff rate would constitute a tariff violation. The issue in this case is not whether a different formula rate should be applied but, rather, whether the proposed cost recovery is authorized under the existing formula rate on file. The answer involves factual issues that we set for hearing.

50. Likewise, for essentially the same reasons, we reject the argument that Ravenswood's proposed reimbursement violates the related rule against retroactive ratemaking. Retroactive ratemaking occurs, *inter alia*, when a different rate is later imposed on earlier-provided service to make up for past under-recoveries of costs under the prior rate where the customer was not given prior notice that the originally-charged rate would be subject to change.⁴⁸ Because the tariff authorizes recovery of variable, "but-for" operating costs, if the Commission finds that NYISO inappropriately refused to reimburse Ravenswood for costs that meet those criteria, then, absent a Commission waiver, NYISO must apply the tariff and reimburse Ravenswood for the costs.⁴⁹ Reimbursement for costs authorized by the existing tariff, therefore, would not "retroactively" change the authorized, existing tariff rate or recover costs not recoverable under that original rate but, rather, simply would apply that original rate.

51. We also reject NYISO's argument that dual fuel capability can confer significant economic advantages on dual fuel capable generators like Ravenswood and that this should be taken into consideration in the Commission's determination and used to deny the Complaint. This general observation cannot be grounds for summarily rejecting Ravenswood's specific claim for reimbursement of what it asserts are, in fact, "but for"

⁴⁷ *Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571, 577 (1981); *accord, e.g., New York Indep. Sys. Operator, Inc.*, 113 FERC ¶ 61,340, at P 17 (2005); *Cargill Power Markets, LLC.*, 112 FERC ¶ 61,025, at P 27, *reh'g denied*, 113 FERC ¶ 61,233 (2005).

⁴⁸ *Associated Gas Distributors v. FERC*, 898 F.2d 809, 810 (D.C. Cir. 1990).

⁴⁹ *See New York Power Authority v. Consolidated Edison Co. of New York, Inc.*, 115 FERC ¶ 61,088, at P 15 (2006) (granting refunds following the application of an incorrect rate).

costs. Whether the costs for which it seeks reimbursement would not have been incurred “but for” it being required to comply with Rule I-R3 is a factual issue set for hearing.

52. In addition, we reject the argument that the Complaint should be rejected because, according to ConEd Solutions, the 2009 bills are “finalized.” Requiring NYISO to pay the correct tariff rate as required by section 4.1.7a is not governed by the billing correction procedures of its tariff and does not raise the problems such as re-doing markets associated with re-opening finalized invoices for market-based rates, for example, due to incorrect metering or other errors. The issue here is whether NYISO incorrectly calculated and paid the cost-based rate required by section 4.1.7a of its tariff.

53. Finally, we reject Ravenswood’s request to strike the affidavit of Dr. Patton, which was included as an attachment to NYISO’s August 2, 2010 Answer. Contrary to Ravenswood’s assertion, providing an affidavit on behalf of NYISO is not a matter of tariff administration, and thus is not prohibited by Order No. 719. We do however disagree with NYISO’s assertion that the affidavit falls within the scope of the market monitor core function of evaluating tariff provisions. Dr. Patton is not evaluating the usefulness of the tariff provision as it relates to market design. Nor is he offering an interpretation of the tariff provision, which is a legal question within the Commission’s purview. Rather, based on his expertise as an economist, he has examined certain of Ravenswood’s costs and opined on whether they are fixed or variable. Market monitors are free to offer their opinions to the RTOs they monitor, and indeed to other entities as well. We find there is nothing in our rules, and specifically nothing in Order No. 719, that would prohibit Dr. Patton from submitting the affidavit in question.

C. Hearing and Settlement Judge Procedures

54. The Commission finds that the Complaint raises issues of material fact that cannot be resolved based upon the record before us and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. Accordingly, with the exception of the issues resolved above, we will set the Complaint for investigation and a trial-type evidentiary hearing under section 206 of the FPA.⁵⁰

55. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the

⁵⁰ We remind the parties that the Commission’s Dispute Resolution Service (DRS) is available to convene the parties to explore alternative dispute resolution process options to facilitate agreement on the matters at issue. DRS can be reached at 1-877-337-2237.

hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁵¹ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.⁵² The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning Ravenswood's Complaint, as discussed above. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (B) and (C) below.

(B) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2010), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(C) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or

⁵¹ 18 C.F.R. § 385.603 (2010).

⁵² If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov -- click on Office of Administrative Law Judges).

assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(D) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.