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FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

December 5, 2014

In Reply Refer To:
TC Ravenswood, LLC
Docket No. ER14-1711-006

New York Independent System Operator, Inc.
Docket Nos. ER14-1822-002
ER14-1822-003

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Dear Ms. Lampi and Mr. Wiseman:

1. In this order, the Commission approves an uncontested offer of settlement (Settlement) filed on October 20, 2014, pursuant to Rule 602 of the Commission's Rules of Practice and Procedure,¹ by TC Ravenswood, LLC (TC Ravenswood); Consolidated Edison Company of New York, Inc. (Con Edison); City of New York, the New York

¹ 18 C.F.R. § 385.602 (2014).

Independent System Operator, Inc. (NYISO); New York Power Authority; and the New York State Public Service Commission (collectively, the Parties). The Settlement resolves all issues in these proceedings related to compensation and terms and conditions under which TC Ravenswood will generate electric energy using Fuel Oil in lieu of natural gas in furtherance of New York State Reliability Council's Local Reliability Rule I-R3 (Rule I-R3 or Minimum Oil Burn Rule) during the three-year period beginning May 1, 2014, through April 30, 2017.

2. In addition, in this order the Commission rejects as moot both NYISO's August 20, 2014 and October 7, 2014 filings in Docket Nos. ER14-1822-002 and ER14-1822-003 respectively, of an unexecuted Minimum Oil Burn Agreement between itself and TC Ravenswood and TC Ravenswood's October 8, 2014 filing in Docket No. ER14-1711-006 of a proposed Minimum Oil Burn Service Cost of Service Recovery Rate Schedule.

Background

3. On May 12, 2011, the Commission approved a settlement agreement that provided, *inter alia*, how NYISO would compensate TC Ravenswood for complying with Rule I-R3 from May 1, 2011, through April 30, 2014. On April 30, 2014, pursuant to section 205 of the Federal Power Act (FPA),² section 35 of the Commission's regulations,³ and section 4.1.9.3 of its Market Administration and Control Area Services Tariff (Services Tariff), NYISO, in the absence of a further agreement with TC Ravenswood, filed in Docket No. ER14-1822, an unexecuted Minimum Oil Burn Agreement between itself and TC Ravenswood.⁴

² 16 U.S.C. § 824d (2013).

³ 18 C.F.R. § 35 (2014).

⁴ New York Independent System Operator, Inc., NYISO Agreements, [Agreement No., NYISO TCR Unexecuted Minimum Oil Burn Agreement, 0.0.0](#). NYISO filed amendments to its April 11, 2014 filing on June 24, 2014, August 20, 2014, and October 7, 2014, in Docket Nos. ER14-1822-001, ER14-1822-002, and ER14-1822-003, respectively, for purposes of extending the deadline for Commission action on the filing to permit the Parties to pursue settlement.

4. On April 11, 2014, TC Ravenswood filed, in Docket No. ER14-1711, its own proposed “Oil Burn Rate Schedule” to sell and recover costs to provide wholesale “Reliability Oil Burn Services.”⁵ On June 20, 2014, NYISO and TC Ravenswood filed a joint request to hold both proceedings in abeyance to enable the parties to engage in settlement discussions. On October 20, 2014, the Parties filed the instant Settlement.

The Settlement

5. The Settlement provides that NYISO will pay TC Ravenswood demand charges, premium costs, and Operations and Maintenance (O&M) costs in furtherance of NYISO’s provision of fuel oil burn for I-R3. The total demand charge under the Settlement will be \$12,490,261.95.⁶ For every barrel of fuel oil that TC Ravenswood burns in furtherance of Rule I-R3, NYISO agrees to pay TC Ravenswood a premium of \$3.50 over the commodity cost eligible for compensation, subject to a true-up.⁷ Further, the Settlement provides that NYISO shall pay TC Ravenswood an O&M cost of \$0.45/bbl for every barrel of fuel oil used by TC Ravenswood in furtherance of Rule I-R3.

6. The Settlement provides that NYISO will withdraw the Unexecuted Minimum Oil Burn Agreement it filed in Docket Nos. ER14-1822-002 and ER14-1822-003, and TC Ravenswood will withdraw the Oil Burn Rate Schedule it filed in Docket No. ER14-

⁵ TC Ravenswood, LLC, TC Ravenswood, LLC - Market Based Rate Tariff, [Oil Burn Rate Schedule, 7.0.0](#). TC Ravenswood filed amendments to its Proposed Oil Burn Rate Schedule on June 2, 2014, June 24, 2014, June 26, 2014, August 20, 2014, September 10, 2014, October 7, 2014, and October 8, 2014, in Docket Nos. ER14-1711-001, ER14-1711-002, ER14-1711-003, ER14-1711-004, ER14-1711-005, and ER14-1711-006 respectively, for purposes of extending the deadline for Commission action on the filing to permit the Parties to pursue settlement.

⁶ Section 2.1 of the Settlement. The demand charges will be \$4,075,000 for year 1, \$4,162,545.20 for year 2, and \$4,252,716.75 for year 3. NYISO shall pay TC Ravenswood the demand charges regardless of whether (i) Fuel Oil has been burned in furtherance of I-R3; (ii) the relative cost of the Fuel Oil compared to natural gas; and (iii) any revisions to the NYISO Market Administration and control Area Services Tariff or Rule I-R3 that occur after the date the Settlement is executed.

⁷ Section 2.4 of the Settlement.

1711-006, with prejudice, upon issuance of a Commission final order, as defined in the Settlement,⁸ accepting the Settlement without condition or modification.⁹

7. Finally, the Settlement provides that TC Ravenswood will comply with requests from NYISO and/or Con Edison to burn fuel oil for I-R3 needs, unless it would cause TC Ravenswood's steam generating units 10, 20 or 30 to be considered "oil-fired electric utility steam generating units" as defined under the U.S. Environmental Protection Agency's (EPA) Mercury and Air Toxics Standards (MATS) or cause a violation of EPA MATS. The Parties indicate that the Settlement does not require TC Ravenswood to invest in any improvements, changes, or upgrades to its generating facilities to reduce emissions and enable it to operate as an "oil-fired electric utility steam generating unit," and TC Ravenswood is not seeking compensation to recover any such costs.

8. The Settlement states that it is subject to the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (*Mobile Sierra*) "to the full extent legally permissible."¹⁰

Notice of Filings and Responsive Pleadings

9. Notice of NYISO's April 30, 2014 filing of the unexecuted Minimum Oil Burn Agreement between itself and TC Ravenswood was published in the *Federal Register*, 79 Fed. Reg. 26,422 (2014) with comments, interventions, and protests due on or before May 21, 2014. Notice of NYISO's subsequent amendments to its filing was also published in the *Federal Register*.

⁸ Section 5.1 of the Settlement.

⁹ The Parties note that the Settlement does not address TC Ravenswood's legal authority, if any, to have its own rate schedule on file under Federal Power Act (FPA) section 205 setting forth rates and terms and conditions under which it would burn fuel oil in lieu of natural gas in furtherance of Rule I-R3. Neither does the Settlement address TC Ravenswood's obligation, if any, to provide fuel oil burn for I-R3 and to be compensated for doing so, pursuant to an unexecuted Implementation Agreement under Section 4.1.9 of the Services Tariff. However, the Parties are not asking the Commission to address these issues in the context of these dockets. *See* section 6.1 of the Settlement.

¹⁰ Section 7.7 of the Settlement.

10. The City of New York and Multiple Intervenors filed motions to intervene. TC Ravenswood filed a motion to intervene and protest. New York Transmission Owners (NYTOs)¹¹ filed a motion to intervene and comments in support of NYISO's filing. The New York State Public Service Commission (NYPSC) filed a notice of intervention and comments. On May 29, 2014, TC Ravenswood filed an answer to the comments of the NYTOs and the NYPSC. On June 3, 2014, the NYTOs filed an answer to TC Ravenswood's protest. On June 5, 2014, NYISO filed an answer to TC Ravenswood's protest.

11. Notice of TC Ravenswood's April 11, 2014 proposed Oil Burn Rate Schedule was published in the *Federal Register*, 79 Fed. Reg. 22,669 (2014) with comments, interventions, and protests due on or before May 2, 2014. Notices of TC Ravenswood's subsequent amendments were also published in the *Federal Register*.

12. Con Edison; Astoria Generating Company, L.P.; the City of New York, New York; Electric Power Supply Association; NRG Companies; Independent Power Producers of New York, Inc.; and Multiple Intervenors¹² filed timely motions to intervene. Central Hudson Gas & Electric Corporation, Long Island Power Authority, New York Power Authority, Niagara Mohawk Power Corporation, and Orange and Rockland Utilities, Inc. jointly filed a timely motion to intervene individually and collectively.

13. Notice of the Parties' October 20, 2014 Settlement filing was published in the *Federal Register*, 79 Fed. Reg. 64,377 (2014), with interventions and protests due on or before October 31, 2014. None were filed.

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹³ the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

¹¹ For purposes of this filing, the NYTOs are: Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc. (Con Edison), Power Supply Long Island, New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

¹² Multiple Intervenors is an unincorporated association of over 55 large industrial, commercial and institutional energy consumers.

¹³ 18 C.F.R. § 385.214 (2014).

Discussion

15. We conclude that the Settlement appears to be fair and reasonable and in the public interest. Therefore, we hereby approve it, effective May 1, 2014, as requested.

16. Because the Settlement provides that the standard of review for changes to the Settlement is “the public interest standard of review. . . to the full extent legally permissible,” we clarify the framework that would apply if the Commission were required to determine the standard of review in a later challenge to the Settlement.

17. The *Mobile-Sierra* “public interest” presumption applies to an agreement only if the agreement has certain characteristics that justify the presumption. In ruling on whether the characteristics necessary to justify a *Mobile-Sierra* presumption are present, the Commission must determine whether the agreement at issue embodies either: (1) individualized rates, terms, or conditions that apply only to sophisticated parties who negotiated them freely at arm’s length; or (2) rates, terms, or conditions that are generally applicable or that arose in circumstances that do not provide the assurance of justness and reasonableness associated with arm’s-length negotiations. Unlike the latter, the former constitute contract rates, terms, or conditions that necessarily qualify for a *Mobile-Sierra* presumption. In *New England Power Generators Association v. FERC*,¹⁴ however, the D.C. Circuit determined that the Commission is legally authorized to impose a more rigorous application of the statutory “just and reasonable” standard of review on future changes to agreements that fall within the second category described above.

18. Section 2.10.1 of the Settlement states that TC Ravenswood will withdraw its rate schedule filed in Docket No. ER14-1711 with prejudice, section 2.10.2 of the Settlement states that NYISO will withdraw its Unexecuted Implementation Agreement in Docket No. ER14-1822 with prejudice, and section 5.1 of the Settlement states that such withdrawals must occur within 10 business days of a final Commission order accepting the Settlement without condition. However, we reject the filings in Docket Nos. ER14-1711-006, ER14-1822-002, and ER14-1822-003 as moot because, although the Settlement requires them to be withdrawn, these filings have a statutory action date of December 5, 2014. Therefore, the respective filings would become effective by operation of law prior to the date that the Settlement requires NYISO and TC Ravenswood to withdraw the filings unless we reject the filings before they can go into effect. In light of the fact that we are approving the Settlement, which expressly provides for withdrawal of these filings, we believe this action is consistent with the intent of the Settlement and renders moot the withdrawal obligations of the settlement.

¹⁴ *New England Power Generators Ass’n, Inc. v. FERC*, 707 F.3d 364, 370-371 (D.C. Cir. 2013).

19. We also direct NYISO to file, within 30 days of the date of this order, the Settlement in its entirety as tariff records in eTariff format in the NYISO Agreements tariff, to be effective May 1, 2014.¹⁵ The Commission's approval of this Settlement does not constitute precedent regarding any principle or issue in this proceeding.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁵ See *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276, at P 96 (2008).