UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Keyspan-Ravenswood LLC Docket No. EL07-35-000

v.

New York Independent System Operator, Inc.

ORDER DENYING COMPLAINT

(Issued April 25, 2007)

1. Keyspan-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). Ravenswood seeks compensation for all incremental costs, including opportunity costs, for each hour in the summer of 2006 in which it was required to burn more expensive fuel oil rather than natural gas.[1] For the reasons discussed below, the Commission denies the Complaint.

The Complaint

2. Ravenswood leases and/or owns and operates electric generation facilities in New York City.[2] It sells energy, capacity, and ancillary services in the wholesale electricity

[1] Ravenswood states it is seeking recovery of the fixed costs of providing oil burning service, such as storage and transportation costs, in the NYISO stakeholder process and in Docket No. EL07-5-000. *See Order Instituting Inquiries Into Gas-Electric Coordination Issues*, 117 FERC ¶ 61,094 (2006) (Coordination Order). Docket EL07-5-000 is the docket for NYISO in the Coordination Order.

[2] It is a wholly-owned, direct subsidiary of KeySpan Corporation.

market pursuant to market-based rate authority. Its Ravenswood Units 1, 2, and 3 have the capability of burning fuel oil or natural gas and so are dual-fuel generating units. The Ravenswood Units are capable of responding to NYISO and Local Transmission Owner reliability instructions to switch from natural gas to fuel oil. Ravenswood can be required to burn oil at a minimum level when generation exceeds 9,000 MW for the New York system under Reliability Rule I-R3 of the New York State Reliability Council (NYSRC).[3] Rule I-R3 is intended to prevent loss of load caused by loss of gas pressure in gas transmission facilities.

3. In its Complaint, Ravenswood indicates that, during the summer of 2006, it submitted its bids based on the cost of burning natural gas.[4] On some occasions, after Ravenswood made its Day Ahead bid based on natural gas but before the dispatch day, NYISO and Consolidated Edison Company of New York, Inc., the Local Transmission Owner, instructed one or more of the Ravenswood units to burn fuel oil, which was more expensive. Ravenswood complied with these instructions. As a result, Ravenswood states it incurred incremental operating costs in each hour in the Summer Capability Period that it complied with the fuel security dispatch instructions to switch from natural gas to fuel oil. Ravenswood states that these additional costs reduced its profit margins[5] in the hours when it was directed to run on fuel oil.

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[3] Exhibit A to the Complaint, "New York State Reliability Counsel Local Rules for Planning and Operating the New York State Power System", Version 16, (March 10, 2006), Rule I-R3, "Loss of Generator Gas Supply (New York City & Long Island)" (Minimum Oil Burn Rule), pp. 67-68. The Rule states "The *NYS 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 or Long Island *zones*."

[4] Complaint at 18-19.

[5] The profit margin referred to here is the difference between the Day-Ahead Market price and the generator's bid.

4. Ravenswood states NYISO provided some compensation under the Bid Production Cost Guarantee (BPCG) provisions of section 4.10[6] and Attachment C of its Tariff. However, Ravenswood states that, under these provisions, NYISO only provides sufficient compensation to ensure that a generator breaks even for the service it performs on the day in question. Ravenswood states that, as a result, NYISO calculated the incremental operating costs Ravenswood incurred on those days it was required to burn fuel oil, but then applied an offset equal to the margins (or profits) that Ravenswood earned during all hours of that day. Ravenswood states that the offset reduced or eliminated the profits it would have earned but for its compliance with the instruction to burn fuel oil.

5. Ravenswood states that section 4.10 is inapposite and that it should be compensated under section 5.4[7] and Attachment J of the Tariff which would afford it its

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[6] Section 4.10, Fourth Revised Sheet No. 105, New York Independent System Operator, Inc., FERC Electric Tariff, Original Volume No. 2 (Tariff), provides in relevant part:

> **4.10 Bid Production Cost Guarantee and Curtailment Initiation Cost Payments**
>
> The ISO shall determine, on a daily basis, if any ISO-Committed Fixed or ISO-Committed Flexible Generator . . . that is committed by the ISO in the Day-Ahead Market will not recover its Minimum Generation Bid, Start-Up Bid, and Energy Bid Price through Day-Ahead LBMP [Locational Based Marginal Price] and Day-Ahead Ancillary Services revenues. If the sum of the Minimum Generation Bid, Start-Up Bid and the net Energy Bid Price over the twenty-four (24) hours day of such a Supplier exceeds its Day-Ahead LBMP revenue over the twenty-four (24) hour day, then that Supplier's Day-Ahead LBMP revenue may be augmented by a supplemental Day-Ahead Bid Production Cost guarantee payment.

[7] Section 5.4, Original Sheet No. 115, Tariff, provides:

> **5.4 Operation Under Adverse Conditions**
>
> The ISO shall operate the NYS Power System during Adverse Conditions, including, but not limited to, thunder storms, hurricanes, tornadoes, solar magnetic flares and threat of terrorist activities, in accordance with the Reliability Rules, inclusive of Local Reliability Rules and related PSC orders. Consistent with such Reliability Rules, the ISO shall maintain reliability of the NYS [New York State] Power System by

(continued…)

full Day Ahead margins.[8] Section 5.4 governs payments to generators which are redispatched during "Adverse Conditions."

6. Ravenswood also states it is unduly discriminatory for NYISO to compensate gas-only generators for their Day-Ahead margins when they are backed down and not provide the same compensation for dual-fuel generators when they are required to burn oil. Ravenswood asserts further that failure to compensate it for all its incremental operating costs when it is required to burn oil sends perverse economic signals by discouraging the maintenance of oil supplies to support dual-fuel capability and that this, in turn, reduces the reliability of dual-fuel units and of the NYS system.

7. Ravenswood requests relief under section 5.4 of the Tariff for its full incremental operating costs, including lost opportunity costs, incurred in all hours since May 1, 2006 when Ravenswood responded to fuel security dispatch instructions to switch from natural gas to more expensive fuel oil under the Minimum Oil Burn Rule.

8. Ravenswood states it has engaged in negotiations with NYISO, but to no avail, and that no other alternative dispute resolution mechanism is required under the Tariff.

> directing the adjustment of the Generator output levels and controllable transmission devices in certain areas of the system to reduce power flows across transmission lines vulnerable to outages due to these Adverse conditions, thereby reducing the likelihood of major power system disturbances.

Attachment J provides for Day-Ahead Margin Assurance Payments to suppliers that buy out of a Day-Ahead Energy, Regulation Service or Operating Reserve schedule in a manner that reduces their Day-Ahead margin after accounting for (1) any real-time profits associated with offsetting increases in real-time Energy, Regulation Service, or Operating Reserve Schedules; and (2) any Supplier-requested real-time de-rate granted by the ISO. Attachment J applies to any Supplier that is derated or decommitted by the ISO in response to an ISO or Transmission owner system security need. Sections 1.0 and 2.0, Attachment J, Third Revised Sheet No. 486, Tariff.

[8] The amount of Ravenswood's lost Day Ahead profit margins is equal to the amount of its incremental operating costs from burning fuel oil.

Notice of Filing and Responsive Pleadings

9. Notice of Ravenswood's Complaint was published in the *Federal Register*, 72 Fed. Reg. 8,722 (2007), with the Respondent's answer, interventions, and protests due on or before March 19, 2007. NYISO filed a timely Answer to the Complaint. Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (jointly, Con Edison) filed a timely motion to intervene and comments. The New York Power Authority; Niagara Mohawk Power Corp. d/b/a National Grid; the New York State Public Service Commission; Independent Power Producers of New York, Inc.; Astoria Generating Company, L.P.; and Central Hudson Gas and Electric Corp., LIPA, New York State Electric and Gas Corp., and Rochester Gas and Electric Corp. (Intervening Companies) filed timely motions to intervene.

10. In its Answer, NYISO asks the Commission to dismiss the Complaint. NYISO asserts that section 5.4 of its Tariff does not apply to generators that switch fuel pursuant to the Minimum Oil Burn Rule. It states that, similarly, section 4.10 of its Tariff is not applicable to a generator that switches fuel pursuant to the Minimum Oil Burn Rule and it did not compensate Ravenswood under that section. Instead, it states, it reasonably interpreted section 4.1.7 [9] of its Tariff to apply to the Ravenswood Units required to burn oil and provided the compensation in accordance with that section and Attachment C of its Tariff. NYISO does not dispute that the compensation it provided to Ravenswood under this section was calculated in the manner described by Ravenswood, and thus did not include compensation for lost margins. NYISO further states that it is in the process of formulating revised provisions for its Tariff that will provide compensation of the type that Ravenswood seeks.

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[9] Section 4.1.7, First Revised Sheet No. 87.01, provides in relevant part:

> **4.1.7 Commitment for Local Reliability**
>
> Generating units committed by the ISO for service to ensure local reliability will recover startup and minimum generation costs not recovered in the Dispatch Day. Payment for such costs shall be determined pursuant to the provisions of Attachment C.

Attachment C provides supplemental payments for generators to make sure they receive their bid costs. For example, the Day-Ahead Bid Production Cost Guarantee Formula provides payment of a sum equal to the Generator's costs (bid costs plus minimum generation bid plus start-up bid) less the Day Ahead LBMP and net ancillary services revenue. Section I, Attachment C, Third Revised sheet No. 421, Tariff.

11. Con Edison filed comments stating the Complaint should be rejected. Con Edison asserts that without a tariff violation, there can be no additional compensation for Ravenswood. Con Edison states that the Minimum Oil Burn Rule applies to generators in areas that would not be able to reliably switch fuels quickly enough should there be a rapid pressure loss following a natural gas pipeline break. It states the Rule is specific to physical system limitations, including proximity of generators to specific gas pipelines.

12. Con Edison argues Ravenswood has not met its burden of proving that NYISO failed to follow its tariff and, as a result, under-compensated Ravenswood. Con Edison also argues that the filed rate doctrine and the rule against retroactive ratemaking prohibit changing NYISO's Tariff retroactively to allow Ravenswood to be compensated for allegedly forgone profits in a past period. Con Edison states that the NYISO stakeholders are considering prospective tariff changes that would provide compensation for lost profits due to Minimum Oil Burn dispatch.

13. On April 3, 2007, Ravenswood filed a request for leave to reply and a Reply to the Answer of NYISO and Con Edison. Among other things, Ravenswood states NYISO and Con Edison ignore Commission policy[10] which requires full compensation without offset to generators that incur lost margins responding to reliability instructions. Ravenswood also argues that it should be compensated under section 5.4 because the absence of an oil-fired unit during high load conditions constitutes an Adverse Condition as defined in section 2.2 of NYISO's Tariff[11] and as it is used in section 5.4 of that Tariff.

Discussion

14. The Commission finds that Ravenswood has not met its burden of proving that section 5.4 provides it with the recovery of the unrecovered portion of its incremental operating costs incurred in the 2006 Summer Capability Period and denies the Complaint.

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[10] Ravenswood cites Order No. 2000-A which, it states, requires generators to be fully compensated, including for lost opportunity costs, when responding to reliability based instructions. Order No. 2000-A, *Regional Transmission Organizations,* 65 Fed. Reg. 12,088, at 12, 098 (March 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd, Pub. Util. Dist. No. 1 v FERC,* 272 F.3d 607 (D.C. Cir. 2001).

[11] Section 2.2 provides that Adverse Conditions are "[t]hose conditions of the natural or man-made environment that threaten the adequate reliability of the NYS Power System, including, but not limited to, thunderstorms, hurricanes, tornadoes, solar magnetic flares and terrorist activities." First Revised Sheet No. 22A, Tariff.

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the intervenors' timely, unopposed motions to intervene and the Respondent's Answer serve to make them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept Ravenswood's Reply because it has provided information that assisted us in our decision-making process.

B. Commission Decision

1. Is Ravenswood Entitled to Additional Compensation for Incremental Costs Incurred in the Summer 2006 Capability Period?

Ravenswood

16. Ravenswood asserts the Commission should compel NYISO to provide it additional compensation for unrecovered incremental costs incurred during the 2006 Summer Capability period under section 5.4 and Attachment J of NYISO's Tariff. Ravenswood states section 5.4 provides NYISO will operate the New York State Power System during adverse conditions in accordance with the Reliability Rules,[12] including local reliability rules. Ravenswood states NYISO acted pursuant to section 5.4 in dispatching Ravenswood's units according to the Minimum Oil Burn Rule.

17. Ravenswood states that section 5.4 authorizes full margin preservation payments to generators for reliability reasons. It states that the Day-Ahead Margin Assurance Payments (DAMAP) of section 4.9 and Attachment J were intended to clarify the compensation procedures to be used under section 5.4 [13] and that NYISO's authority to

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[12] Section 2.158 of NYISO's Tariff defines Reliability Rules as "[t]hose rules, standards, procedures and protocols developed and promulgated by the NYSRC, including Local Reliability Rules, in accordance with NERC [North American Reliability Council, NPCC [Northeast Power Coordinating Council], FERC, PSC [Public Service Commission of the State of New York], and NRC [Nuclear Regulatory Commission] standards, rules and regulations and other criteria and pursuant to the NYSRC Agreement."

[13] *Citing New York Independent System Operator, Inc.*, 102 FERC ¶ 61,096 (2003).

make margin assurance payments remains rooted in section 5.4. It states that NYISO has interpreted section 5.4 to authorize full margin preservation payments to generators that are dispatched off-line or backed down from Day-Ahead schedules for reliability reasons.[14]

18. Ravenswood asserts NYISO compensated it under section 4.10, the BPCG provision, and claims that section 4.10 was the wrong tariff section to use for the calculation of its compensation. It states the BPCG provision is not triggered by a reliability-based instruction such as the Minimum Oil Burn Rule. It states that the BPCG provision would only have been applicable to a generator that would have received insufficient day-ahead revenues without receiving a fuel switch instruction.

19. Ravenswood seeks compensation under section 5.4 for its full incremental operating costs, including lost opportunity costs, incurred in each hour in which it was required to burn fuel oil since May 1, 2006. It states that it would be adequately compensated by the payment of the incremental operating costs plus interest, without offset.[15]

NYISO and Con Edison

20. NYISO and Con Edison assert that section 5.4 is not applicable to operating costs Ravenswood incurred while following the Minimum Oil Burn Rule. They assert section 5.4 governs only recovery of revenue shortfalls when generation is redispatched[16] during Adverse Conditions and, as a result, a generator suffers uneconomic balancing obligations.[17] NYISO explains that an Adverse Condition is a threat to system security comparable to the specific examples in the Tariff like hurricanes and solar magnetic

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[14] *Citing id.*, at P 6, 16.

[15] Complaint at 16, referencing the incremental operating costs shown on page 13 of the Complaint as "compensable incremental operating costs when burning fuel oil" and in Exhibit E as "total cost allowable." Ravenswood has requested confidential treatment of this cost information.

[16] Con Edison states that in order to be redispatched, Ravenswood would have had to be dispatched in accordance with a schedule different from the bid it had submitted in the Day-Ahead Market.

[17] Balancing obligations are obligations that arise when a market participant in the energy market buys or sells a quantity of power in the real-time market that is different from the quantity that it scheduled in the Day-Ahead market.

flares and that the fact that loads reach 9,000 MW is not a threat to system security comparable to these examples. NYISO and Con Edison state that operation of the Minimum Oil Burn Rule is not an Adverse Condition and that they did not declare an Adverse Condition when the Minimum Oil Burn Rule went into effect. They assert there was no Adverse Condition, Ravenswood was not redispatched, and Ravenswood's incremental costs are not balancing obligations and, therefore, Ravenswood is not eligible for compensation under section 5.4.

21. Con Edison asserts that since NYISO's Tariff does not currently provide compensation for lost profits due to dispatch under the Minimum Oil Burn Rule, Ravenswood is seeking a retroactive change in NYISO's Tariff. It states the filed rate doctrine and the rule against retroactive ratemaking prohibit changing the NYISO Tariff retroactively to allow Ravenswood to be compensated for alleged forgone profits.[18]

22. NYISO states it did not compensate Ravenswood under section 4.10 of its Tariff. It states that section 4.10 provides guarantees for bid production costs that are not covered by LBMP and that Ravenswood is not being compensated for bid production costs not covered by LBMP. NYISO states that, instead, Ravenswood is being compensated for unexpected costs that were not reflected in its bids.[19] NYISO states it provided this compensation to Ravenswood under section 4.1.7 of its Tariff.

23. NYISO states it believes section 4.1.7 applies even though Ravenswood was selected to run based on NYISO's normal economic bid evaluation process rather than being directed to run by NYISO specifically because of a local reliability need. It states there is some ambiguity in section 4.1.7 because "commitment to ensure local reliability" could be interpreted as being committed during the normal dispatch process to address a

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[18] Con Edison cites Sections 205 and 206 of the FPA, *Arkansas-Louisiana Gas Co. v. Hall*, 453 U.S. 571, 577 (1981) (*Arkansas-Louisiana*)(filed rate doctrine); *Towns of Concord, Norwood and Wellesley v. FERC*, 955 F.2d 67, 71 n.2 (D.C. Cir. 1992) (rule against retroactive ratemaking) (*citing Columbia Gas Transmission Corp. v. FERC*, 831 F.2d 1135,1139-42 (D.C. Cir. 1987) (*Columbia Gas*); *City of Piqua v. FERC*, 610 F.2d 950, 954 (D.C. Cir. 1979) ("'a utility may not set rates to recoup past losses . . . .'"). The Commission notes that cases under the Natural Gas Act and the FPA typically are read *in pari materia. See, e.g., FPC v. Sierra Pacific Power Co.*, 350 U.S. 348, 353 (1956) and *Arkansas-Louisiana*, 453 U.S. at 578 n.7.

[19] However, payments pursuant to both section 4.10 and section 4.1.7 are made according to Attachment C of the Tariff and Attachment C requires that revenues earned in the Dispatch Day offset payments otherwise due.

particular reliability problem. Nonetheless, NYISO states, units complying with local reliability rules should be eligible for cost recovery whether they are committed for that purpose or required to undertake extraordinary operating costs in order to continue in operation. NYISO states that compensation pursuant to section 4.1.7 must be made in accordance with Attachment C and that Attachment C requires a revenue offset for daily margin. NYISO states that if Ravenswood is not compensated under section 4.1.7, it is not entitled to compensation under the NYISO Tariff.

Commission Determination

24. Section 205 of the Federal Power Act requires that a public utility file its rates; rate schedules; and classifications, practices, and regulations affecting such rates and charges (collectively, rates) with the Commission; [20] that a public utility may not change its rates without 60 days' notice to the Commission, unless that notice is waived; and that rates must be just and reasonable. Thus, NYISO may only apply the terms and conditions that are on file with the Commission, that is, the terms and conditions that are in its Tariff. Thus, for Ravenswood to recover additional compensation for the 2006 Summer Capability Period, it must show that NYISO's existing Tariff provides for that recovery.

25. In addition, based on the provisions of sections 205 and 206 of the FPA, the Courts have formulated the principle that a public utility may only charge rates that are on file with the Commission, the filed rate doctrine.[21] A corollary to the filed rate

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[20] Section 205(c) of the Federal Power Act provides in relevant part:

> Under such rules and regulations as the Commission may prescribe, every public utility shall file with the Commission . . . all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

[21] Section 205 of the FPA; *Arkansas-Louisiana Gas Co. v. Hall,* 453 U.S. 571, 577 (1981); *Columbia Gas,* 831 F.2d at 1141 *quoting Electrical Dist. No. 1 v. FERC,* 249 U.S. App. D.C. 190, 774 F.2d 490, 493 (D.C. Cir. 1985) (quoting *Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571, 577, 69 L. Ed. 2d 856, 101 S. Ct. 2925 (1981)):

> We have recently had occasion to explain, in the case of electrical utilities, the rationale for prohibiting retroactive increases in filed rates:

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doctrine is the rule against retroactive ratemaking. This rule prohibits the Commission from adjusting current rates to make up for a utility's over- or under-collection in prior periods.[22] Thus, as Con Edison asserts, if NYISO's existing Tariff does not provide the additional cost recovery that Ravenswood seeks, NYISO's Tariff cannot be changed to provide that recovery retroactively.

26. The Commission finds that Ravenswood has not borne its burden of proving that section 5.4 is applicable to its incremental operating costs from burning oil pursuant to the Minimum Oil Burn Rule. The Commission finds NYISO's interpretation of section 5.4 persuasive. It finds that section 5.4 applies only when there is an Adverse Condition. Such a condition is described in sections 2.2 and 5.4, through examples, as a severe threat to security. Under section 5.4, when an Adverse Condition occurs, NYISO declares that such a condition exists and sets in motion procedures to address the Adverse Condition. Ravenswood has not shown that an Adverse Condition existed or that one was declared by NYISO or that it followed procedures prescribed under section 5.4 when it burned oil pursuant to the Minimum Oil Burn Rule. In addition, section 5.4 applies to a generator that is redispatched to address an Adverse Condition. Ravenswood has not shown that it was redispatched. Finally, section 5.4 provides for the compensation of balancing obligations incurred in the energy market. The costs Ravenswood seeks here are additional incremental operating costs, not balancing obligations. The filed rate doctrine and the rule against retroactive ratemaking prohibit NYISO from revising this section of its Tariff or any other to provide that recovery retroactively.

27. The Commission finds NYISO has shown, on rebuttal, that it compensated Ravenswood under section 4.1.7 of its Tariff and not under section 4.10. We agree with NYISO that section 4.1.7 is ambiguous and find that NYISO's interpretation of that provision as permitting recovery for Ravenswood is reasonable and not inconsistent with

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> The wholesale purchasers of electricity cannot plan their activities unless they know the cost of what they are receiving, particularly if they are retailers, who must calculate their appropriate resale rates, . . . but also if they are large-scale purchaser-users. Providing the necessary predictability is the whole purpose of the well established "filed rate" doctrine, which "forbids a regulated entity to charge rates for its services other than those properly filed with the appropriate federal regulatory authority."

[22] *Towns of Concord, Norwood and Wellesley v. FERC,* 955 F.2d 67, 71 n.2 (D.C. Cir. 1992) (*citing Columbia Gas Transmission Corp. v. FERC,* 831 F.2d 1135, 1139-42 (D.C. Cir. 1987).

its Tariff.[23] Recovery under section 4.1.7 is calculated in accordance with Attachment C of NYISO's Tariff which requires an offset of daily margin against Ravenswood's incremental operating costs. We find NYISO offset Ravenswood's daily margins against its incremental operating costs in accordance with Attachment C of its Tariff.

2. Is There Appropriate Compensation Under NYISO's Tariff for Generators Required to Burn Uneconomic Fuel Oil?

28. Ravenswood raises many issues in its Complaint concerning whether dual-fuel generators are appropriately compensated under the NYISO Tariff when they are required for local reliability reasons to burn fuel oil that is more expensive than natural gas.[24] As discussed above, NYISO's current tariff provisions do not provide all of the compensation that Ravenswood has sought in this situation. Ravenswood's Complaint indicates that more complete provisions are needed.

29. In its Answer NYISO states that it recognizes the need to ensure that generators are fairly compensated when they respond to reliability rules. NYISO states that, therefore, it has been working with its stakeholders since the fall of 2006 to review the compensation rules that apply when the Minimum Oil Burn Rule is activated and to consider improvements.[25] It states that on March 7, 2007 its Business Issues Committee approved Tariff revisions that would establish payment rules prospectively for generators in Ravenswood's situation. These new provisions contain a margin assurance payment rule that would not include a revenue offset. NYISO states there is no need for the Commission to set a deadline for action, to be concerned about possible ambiguities in its Tariff, or to impose any additional requirements on NYISO. On April 13, 2007 NYISO

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[23] The Commission has recently explained how it proceeds when a tariff provisions is ambiguous. *New York Independent System Operator, Inc. v. Astoria Energy LLC*, 118 FERC ¶ 61,216, at P 34-36 (2007). Because the Tariff was reasonably susceptible to different interpretations, the Commission found that extrinsic evidence of interpretation or intent may also be relied upon in interpreting the Tariff.

[24] For example, Ravenswood asserts that when it is dispatched off gas and required to use more expensive fuel oil for reliability reasons it is in the same position as on-dispatch generators when they are dispatched off-line or backed down for reliability reasons, so that failure to provide it with margin assurance payments under section 5.4 like the redispatched generators is unduly discriminatory and preferential.

[25] *See also* NYISO's Compliance Report at 7, Docket No. EL07-5-000 (January 16, 2007).

filed to revise its tariff in Docket No. ER07-748-000 with a requested effective date of May 13, 2007, and the Commission will address Docket No. ER07-748-000 in its order on that filing.

The Commission orders:

The Complaint is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.