

140 FERC ¶ 61,214
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

TC Ravenswood, LLC

Docket No. ER10-1359-001

ORDER DISMISSING REHEARING AS MOOT

(Issued September 20, 2012)

1. On November 24, 2010, TC Ravenswood LLC (Ravenswood) filed a request for rehearing of the Commission's October 27, 2010 order in this proceeding.¹ The October 27, 2010 Order rejected Ravenswood's alternate versions of a proposed Ravenswood tariff and "Minimum Oil Burn Service Cost of Service Recovery Rate Schedule," which would apply when Ravenswood is required to burn fuel oil to generate electricity at its electric generation facility instead of natural gas pursuant to reliability rules. In this order the Commission dismisses rehearing of the October 27, 2011 Order as moot.

I. Background

2. Ravenswood operates a dual-fuel generator and, at times, may be required to burn fuel oil in lieu of natural gas pursuant to New York State Reliability Council (NYSRC) Local Reliability Rule I-R3 at designated minimum levels. Pursuant to former section 4.1.7a of the New York Independent System Operator, Inc. (NYISO) Market Administration and Control Area Services Tariff (Services Tariff),² entitled "Incremental Cost Recovery for Units Responding to Local Reliability Rule I-R3 or I-R5," generating

¹ *TC Ravenswood, LLC*, 133 FERC ¶ 61,087 (2010) (October 27, 2010 Order).

² At the time this proceeding was initiated, the relevant section of the NYISO Services Tariff was numbered as section 4.1.7a and is referred to by that numeration in the filings and pleadings at issue. That section later was renumbered as section 4.1.9 after NYISO filed its baseline eTariff and, pursuant to the settlement approved in Docket No. EL10-70-000, was modified in certain respects not relevant here. For simplicity, we will refer to section 4.1.7a in this order.

units that were designated pursuant to NYSRC Rule I-R3 as being required to burn an alternate fuel at designated minimum levels are eligible to recover the variable operating costs associated with burning the required alternate fuel. Under section 4.1.7a, payments made by NYISO to the eligible units under this provision were in addition to the Locational Based Market Price (LBMP) for the energy thereby generated and any other revenues the unit was to receive as a result of the unit's Day-Ahead or Real-Time dispatch.

3. On May 27, 2010, Ravenswood filed a complaint in Docket No. EL10-70-000, raising a long-standing dispute with NYISO over the adequacy of NYISO's compensation for service provided under section 4.1.7a.

4. On that same day, May 27, 2010, Ravenswood submitted, pursuant to section 205 of the Federal Power Act (FPA), "Preferred" and "Alternate" versions of a proposed "Minimum Oil Burn Service Cost of Service Recovery Rate Schedule" to be part of a new "Ravenswood, LLC FERC Electric Tariff, First Revised Volume No. 1."³ Section 1 of proposed rate schedule states that "Minimum Oil Burn Service is a service that [Ravenswood] provides when it burns 0.3% Sulfur No. 6 Fuel Oil ("Fuel Oil") in lieu of natural gas pursuant to New York State Reliability Council ("NYSRC") Rule I-R3." Section 2 of the proposed Rate Schedule provides that the rates under this rate schedule will be charged to NYISO as "customer" under this rate schedule. Sections 4 (Compensation) and 5 (Calculation of Rates) provide that NYISO shall reimburse all costs Ravenswood is obligated to pay under contracts Ravenswood enters into for the purchase and delivery of such Fuel Oil. Section 4 also states that Ravenswood will continue to recover additional costs that are not included in the "I-R3 Contract" under section 4.1.7a of the NYISO Services Tariff. Section 6 provides that Ravenswood will submit a bill to NYISO for reimbursement of costs under the IR-3 Contract and NYISO will submit payment to Ravenswood in accordance with NYISO billing procedures. Ravenswood asserted that it is unable to recover all of the variable costs of providing this service under section 4.1.7a of the NYISO Services Tariff. Accordingly, it stated, it was proposing to establish its own rate schedule to recover such costs.

5. In the October 27, 2010 Order, the Commission rejected both versions of Ravenswood's proposed rate schedule. The Commission stated that Ravenswood's proposed service is the generation of electricity, which is a jurisdictional Market Service that already falls under the exclusive purview of the NYISO tariff. The Commission reasoned that:

³ The proposed Ravenswood tariff would consist entirely of the proposed Ravenswood rate schedule. We note that there is no existing Ravenswood FERC Electric Tariff Original Volume No. 1 for the proposed tariff to be enumerated as "First Revised Volume No. 1."

Because NYISO is the sole provider of Market Services, and because the production of wholesale energy by burning fuel oil to comply with NYSRC Rule I-R3 is a Market Service as defined in the Services Tariff, the NYISO Services Tariff bars Ravenswood from proposing its own duplicative rate schedule to provide the same generation service already governed exclusively by the NYISO Services Tariff. The same reasoning leads us to conclude that the NYISO Services Tariff exclusively governs the pricing for this service. More specifically, section 4.1.7a of NYISO's Services Tariff governs the rates that Ravenswood may charge when required to burn alternate fuels pursuant to NYSRC Rule I-R3 to generate wholesale electric energy and, therefore, Ravenswood cannot propose its own tariff or rate schedule to recover the costs of providing this service.⁴

6. On November 24, 2010, Ravenswood filed a request for rehearing of the October 27, 2010 Order. On December 9, 2010, NYISO filed an answer to Ravenswood's rehearing request.

7. Following settlement discussions, the parties filed an uncontested settlement of the Minimum Oil Burn Service compensation complaint proceeding in Docket No. EL10-70-000 on April 19, 2011. Under the settlement, inter alia, the parties agreed to compensation under the original section 4.1.7a through April 30, 2011, and agreed to revisions to that provision (now section 4.1.9) specifying how Ravenswood will be compensated for complying with Rule I-R3 from May 1, 2011, through April 30, 2014. The parties clarified at page 10 of the Explanatory Statement to the settlement agreement that, as a result, the settlement also resolves the issue of compensation for providing Minimum Oil Burn Service raised in the instant Docket No. ER10-1359 to that limited extent. However, the parties stated that the settlement does not address Ravenswood's legal authority to file its own rate schedules under section 205 of the FPA and that issue remains unresolved and at issue in Docket No. ER10-1359. The Explanatory Statement goes on to state that it is the parties' intent that litigation of Docket No. ER10-1359 shall continue on its own separate track. Of relevance here, section 4 of the settlement provides that the settlement will be complied with "irrespective of the outcome of Docket No. ER10-1359." In an order issued May 12, 2011, the Commission approved the settlement.⁵

⁴ October 27, 2010 Order, 133 FERC ¶ 61,087 at P 25.

⁵ See *TC Ravenswood, LLC v. New York Independent System Operator, Inc.*, 135 FERC ¶ 61,125 (2011).

II. Request for Rehearing

8. Ravenswood argues that the Commission erred in: (1) failing to recognize that Ravenswood is entitled to have its own cost-based rate schedule in effect as a public utility; (2) stating that Minimum Oil Burn Service is the generation of electricity; (3) interpreting and applying the term “Market Services” too broadly; (4) ruling that Minimum Oil Burn Service must be offered exclusively under NYISO’s Services Tariff; (5) failing to assess whether either of Ravenswood’s cost-based rate schedules were just and reasonable; and (6) effectively granting NYISO an exclusive service territory for the purchase and sale of Minimum Oil Burn Service.

9. Ravenswood asserts that it is entitled to have its own rate schedule in effect for the services and products it sells at wholesale through the use of its own assets. According to Ravenswood, section 205 of the FPA entitles public utilities, like Ravenswood to file rate schedules or tariffs with the Commission in order to establish or make changes to just and reasonable rates for, or in connection with, the transmission or sale of electric energy subject to the Commission’s jurisdiction.⁶ Ravenswood contends that it exercised that right in filing the cost-based rate schedule at issue here, and both judicial precedent⁷ and Commission precedent⁸ establish that the Commission has no jurisdiction to deprive Ravenswood of that right. Ravenswood further contends that the October 27, 2010 Order stands the FPA on its head by allowing customers to have a tariff on file that dictates the service a public utility will provide and the rates at which it will provide that service.

10. Ravenswood states that it is not proposing to generate electricity. Ravenswood states that every generator that sells power into the NYISO markets necessarily generates electricity, and they do so by burning the fuel of their choice, or through the use of renewable resources such as wind. Ravenswood differentiates this from the provision of Minimum Oil Burn Service in that, it asserts: Minimum Oil Burn Service is a service provided by a handful of generators that are ordered to burn a particular fuel to operate their plants, rather than use the fuel of their choice or the most economic or efficient fuel; it is a service that requires procurement and delivery of fuel oil at specific times as well as the conversion of that fuel oil into electricity; and it is a service under which a generator operates its plant in a different manner than it would operate if it had the same

⁶ Ravenswood Request for Rehearing at 12 (citing 16 U.S.C. § 824d (2010)).

⁷ *Id.* (citing *Atlantic City Electric Co. v. FERC*, 329 F.3d 856, 859 (D.C. Cir. 2003) (Atlantic City)).

⁸ *Id.* at 13 (citing *California Indep. Sys. Operator, Corp.*, 124 FERC ¶ 61,271, at P 370 (2008); *American Electric Power Service Corp.*, 118 FERC ¶ 61,041, at P 36 (2007); *Cross-Sound Cable Co., LLC*, 109 FERC ¶ 61,223, at PP 17-19 (2004)).

free choice as other generators. Ravenswood claims that Minimum Oil Burn Service is a very specific reliability service that most generators/suppliers cannot provide, and it has a very different cost structure than the generic sale of electric energy.

11. Ravenswood states that the Commission in the October 27, 2010 Order implicitly interpreted the term “Market Services” broadly and in a general sense without reference to the NYISO Market Services Tariff, which defines the term as “services provided by the ISO under the ISO Services Tariff related to the ISO Administered Markets for Energy, Capacity and Ancillary Services.”⁹ Ravenswood also cites section 4.1.1 of the Services Tariff that Market Services include “all services and functions performed by the ISO under this Tariff related to the sale and purchase of Energy, Capacity or Demand Reductions, and the payment to Suppliers who provide Ancillary Services in the ISO Administered Markets.” Ravenswood contends that Market Services do not include the actual Energy, Capacity, Demand Reductions or Ancillary Services, which are provided by suppliers, not NYISO. According to Ravenswood, Market Services typically include services related to market administration, market modeling and scheduling, market bidding support, locational marginal pricing support, market settlements and billing and market monitoring and compliance activities, but they do not include the jurisdictional products and services provided by market participants. Ravenswood argues, therefore, Minimum Oil Burn Service is not a “Market Service” as defined in the NYISO Services Tariff. Ravenswood further argues that this interpretation is confirmed by NYISO’s website, which draws a clear distinction between NYISO’s administrative activities and the activities of buyers and sellers of different energy products and services.

12. Ravenswood states that the October 27, 2010 Order also was in error when it determined that NYISO is the sole provider of Market Services and, therefore, the Minimum Oil Burn Service offered by Ravenswood *must* be provided exclusively through the NYISO Services Tariff. Ravenswood argues that even if a generator can obtain some recovery of its costs of providing Minimum Oil Burn Service through section 4.1.7a of the NYISO Services Tariff, it does not follow that the service *must* be provided exclusively through or to NYISO. Ravenswood argues that the Commission’s suggestion that NYISO is the sole provider of Market Service, in the general sense of the term, fails to take into account the bilateral transactions that market participants enter into outside of the NYISO-administered energy markets. Ravenswood further argues that the Commission has previously authorized at least one entity, Automated Power Exchange,

⁹ Ravenswood Request for Rehearing at 9 (citing section 2.12 of the NYISO Services Tariff).

Inc., to engage in direct competition with NYISO.¹⁰ It states that NYISO did not intervene in that proceeding or attempt to exert status as the “sole provider” of Market services in the New York market. In addition, Ravenswood cites an order in *Otter Tail Power Company*,¹¹ wherein the Commission rejected arguments that Otter Tail Power Company’s proposed stand-alone Control Area Services and Operations Tariff provisions duplicated those typically found in a generation interconnection agreement and those that Midwest ISO may impose on intervenors under its operating protocols and accepted the proposed tariff.¹² Ravenswood states that the Commission found that the proposed tariff would work in tandem with, and not conflict with, the Midwest ISO’s tariff.

13. Ravenswood states that the Commission neither disputed the validity of Ravenswood’s proposed formula rate and direct pass-through concept; nor did it show the proposed rate schedules to be unjust, unreasonable, or otherwise unlawful. Ravenswood adds that the Commission must accept proposals for just and reasonable rates and thus, it erred in rejecting Ravenswood’s proposed rate schedules.¹³ Ravenswood states that it proposed to pass through the exact costs it incurs under the respective contracts for procurement and delivery of the fuel oil (without a mark-up or return on investment) and the costs will be incurred only by the entities that request Ravenswood to provide Minimum Oil Burn Service through NYISO. Thus, according to Ravenswood, the proposed rate schedule is analogous to proposals for formula rates and operates as a direct pass-through of costs. Ravenswood states that Commission precedent demonstrates the viability of formula rates.¹⁴

14. Finally Ravenswood argues that the Commission’s determination is also in error because it effectively grants NYISO an “exclusive service territory” for the purchase and sale of Minimum Oil Burn Service, something the Commission does not have authority under the FPA to create, and also unduly discriminates against Ravenswood contrary to

¹⁰ Ravenswood Request for Rehearing at 9, 20-22 (citing, *inter alia*, *Automated Power Exchange, Inc.*, 94 FERC ¶ 61,094 (2001)).

¹¹ 99 FERC ¶ 61,019 (2002).

¹² *Id.* at 61,088.

¹³ Ravenswood Request for Rehearing at 23-24 (citing, *inter alia*, *New York Indep. Sys. Operator, Inc.*, 124 FERC ¶ 61,301, at P 67 (2008); *TransCanada Power LLC*, 111 FERC ¶ 61,264, at P 27 (2005)).

¹⁴ Ravenswood Request for Rehearing at 26 (citing *Missouri River Energy Services*, 130 FERC ¶ 63,014, at P 66 (2010)).

the FPA.¹⁵ Moreover, according to Ravenswood, NYISO is abusing the authority the Commission would afford it in that NYISO makes no attempt to fully reimburse the supplier for out-of-pocket amounts the supplier pays third parties for services necessary to the provision of Minimum Oil Burn Service. Ravenswood argues that nothing in the FPA suggests that Congress granted authority to the Commission to grant exclusive service territory to NYISO.

III. Commission Determination

A. Procedural Matters

15. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2012) prohibits an answer to a request for rehearing. Accordingly, we reject NYISO's December 9, 2010 answer.

B. Substantive Matters

16. We dismiss Ravenswood's request for rehearing as moot, without prejudice, for the reasons discussed below.

17. As noted above, the Minimum Oil Burn service compensation issue that precipitated the Ravenswood section 205 filing in this proceeding was settled in the complaint proceeding in Docket No. EL10-70-000. That settlement establishes compensation for such service under a new section 4.1.9 of NYISO's Services Tariff through April 30, 2014. Therefore, the issues Ravenswood raises on rehearing in the instant proceeding do not demonstrate that Ravenswood is aggrieved, as required by section 313 of the FPA for a party seeking rehearing of a Commission order.¹⁶ Neither granting nor denying rehearing would change Ravenswood's compensation under the settlement; section 4 of the settlement specifically provides that the settlement will be complied with "irrespective of the outcome of Docket No. ER10-1359." We decline to issue what, at this juncture, would effectively be a declaratory order on a purely hypothetical matter. We dismiss Ravenswood's request for rehearing, without prejudice, because the issues raised here are moot.

¹⁵ Ravenswood Request for Rehearing at 10-11, 27-30 (citing, *inter alia*, *Commonwealth Edison Co.*, 65 FERC ¶ 61,288, at 62,363 (1993) (involving a transmission service arrangement)).

¹⁶ 16 U.S.C. § 8251 (2006).

The Commission orders:

Ravenswood's request for rehearing is hereby dismissed as moot, without prejudice, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.