

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

KeySpan-Ravenswood, LLC)	
)	
Complainant,)	
)	Docket No. EL07-35-000
v.)	
)	
New York Independent System Operator, Inc.,)	
)	
Respondent.)	

**ANSWER OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
TO COMPLAINT OF KEYSpan-RAVENSWOOD, LLC**

Pursuant to Rule 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2006), and the February 21, 2007 *Notice of Complaint*, the New York Independent System Operator, Inc. (“NYISO”) hereby submits this Answer to the complaint (“Complaint”) filed by KeySpan-Ravenswood, LLC (“Ravenswood”) on February 15 in the above-captioned proceeding.¹ The Complaint claims that the NYISO acted unjustly, unreasonably, and in an unduly discriminatory manner by allegedly under-compensating Ravenswood when it was required to switch the fuel for its generating units from natural gas to oil in compliance with New York’s “Minimum Oil Burn Rule.”²

The Commission should dismiss Ravenswood’s Complaint. Ravenswood contends that it is entitled to compensation under Section 5.4 of the Market

¹ Ravenswood had filed both confidential and non-confidential versions of the Complaint. The NYISO’s answer is public. It does not contain the confidential information that had been included in the non-public version of the Complaint, or any other privileged materials.

² See NYSRC Local Reliability Rule IR-3 (commonly known, and referred throughout this Answer, as the “Minimum Oil Burn Rule”). While Ravenswood’s alternative fuel is oil, other units potentially subject to IR-3 burn distillate or kerosene as their alternate fuel.

Administration and Control Area Services Tariff (“Services Tariff”). Section 5.4, however, only governs recovery of revenue shortfalls when generation is redispatched during “Adverse Conditions” and as a result suffers uneconomic balancing obligations. As is demonstrated below, Ravenswood is not eligible for compensation under Section 5.4 because no Adverse Condition occurred, because it was not redispatched, and because the costs it incurred are unrelated to uneconomic balancing obligations.

Contrary to the Complaint’s assertions that the NYISO is indifferent to the concerns faced by Generators such as Ravenswood, the NYISO is very cognizant of the need to properly compensate suppliers that comply with reliability instructions. Indeed, the NYISO read Section 4.1.7 of the Services Tariff broadly so that Ravenswood could be compensated for its operating costs. That provision, however, expressly required the NYISO to apply the revenue offset that Ravenswood objects to in this proceeding. In short, the NYISO complied with its tariff and compensated Ravenswood to the full extent that its tariffs allow. Far from being discriminatory, the NYISO’s approach was the only lawful way that it could compensate Ravenswood. The only alternative under the NYISO’s existing tariffs would have been not to compensate Ravenswood for complying with the Minimum Oil Burn Rule at all.

That said, the NYISO acknowledges that the reliability responsibilities placed on Generators like Ravenswood under the Minimum Oil Burn Rule can give rise to complex compensation issues that are not completely addressed by the existing tariffs. Prior to Ravenswood’s complaint, the NYISO instituted a stakeholder process to explore whether changes to the compensation rules should be made to address reliability-related fuel switching.

As is discussed in Part III.D, below, the NYISO, working with Ravenswood and other stakeholders, has developed proposed Services Tariff revisions to address these kinds of situations. The revisions would expressly provide compensation to Generators,³ such as Ravenswood, that must switch from natural gas to more expensive oil, or other alternate fuels under the Minimum Oil Burn Rule, without subjecting them to a revenue offset. The proposal would also formalize the process for Generators to seek such additional compensation. This process should be completed soon and should result in the NYISO filing proposed tariff revisions for the Commission to consider. There is thus no need for further action by the Commission at this time.

I. Communications and Correspondence

Communications regarding this proceeding should be addressed to:

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II. Background

The New York State Reliability Council's ("NYSRC") Minimum Oil Burn Rule provides that the bulk power system in New York "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

³ Capitalized terms not otherwise defined have the meaning ascribed to them in the Services Tariff or, as applicable, the NYISO's Open Access Transmission Tariff.

Long Island zones.”⁴ The local Transmission Owner determines how the Minimum Oil Burn Rule is applied in the relevant zone, using procedures that are subject to NYSRC and NYISO review. Consolidated Edison Company of New York, Inc. (“ConEd”), the Transmission Owner for the district where Ravenswood’s units are located, has concluded that if forecasted demand exceeds 9,000 MW, generating units in New York City should burn a minimum amount of alternative fuel. In Ravenswood’s case, the alternative fuel is oil.⁵ Because demand in fact exceeded 9,000 MW at certain times during the summer, ConEd, with the NYISO’s knowledge, instructed the Ravenswood units to burn a minimum amount of fuel oil rather than the cheaper natural gas at its generating units during those periods.

Ravenswood subsequently informed the NYISO that it wanted to recover its operating costs associated with complying with the Minimum Oil Burn Rule, without offset for the margins per hour that it would have otherwise earned.⁶

Ravenswood claims that it is entitled to compensation under Section 5.4 of the Services Tariff. The NYISO, however, concluded that Section 5.4 was inapplicable, but found that it could compensate Ravenswood under Section 4.1.7. In accordance with Section 4.1.7’s requirements, the NYISO included an offset for Ravenswood’s daily

⁴ Complaint at 4 (citing the Minimum Oil Burn Rule).

⁵ ConEd procedures describe the actual percentage of the alternate fuel that must be in place for each specified Generator.

⁶ Section 4.1.7 and Attachment C of the Services Tariff require the NYISO to compensate Generators for additional costs experienced when complying with local reliability rules by first applying any LBMP revenue received for that day in excess of the as-bid costs submitted by the Generator in its accepted offer.

margins⁷ when calculating its payment under Section 4.1.7. The compensation provided by the NYISO was less than the full amount that Ravenswood sought, but did reimburse the operating costs that Ravenswood incurred under the Minimum Oil Burn Rule to the fullest extent allowed by its existing tariffs.

III. Answer

The Complaint alleges that Ravenswood should have been compensated for the operating costs it incurred in complying with the Minimum Oil Burn Rule, without offset for the locational-based marginal pricing (“LBMP”) revenue received above its bid-in costs. Ravenswood contends that Section 5.4 of the Services Tariff, which governs payments to Generators redispatched during “Adverse Conditions” controls.

Ravenswood further alleges that the NYISO’s general authority to compensate generators under Section 5.4 is not displaced by the provisions of Attachment J to the Services Tariff, which were added in 2003 and which established a specific formula for calculating Day-Ahead Margin Assurance Payments (“DAMAPs”) to Generators.⁸ Finally, Ravenswood contends that Section 4.10 of the Services Tariff, which governs Bid Production Cost Guarantee (“BPCG”) payments, does not justify the NYISO’s offset of its daily margin.

As is demonstrated below, each of Ravenswood’s arguments is either without merit or irrelevant to the facts of this case. The NYISO paid Ravenswood the amount

⁷ As explained below, Section 4.1.7 provides that the NYISO shall use Attachment C of its Services Tariff to calculate payments under that section. Attachment C, in turn, provides for the offset mechanism as part of the calculation formula.

⁸ A DAMAP is “[a] supplemental payment made to an eligible Supplier that buys out of a Day-Ahead Energy, Regulation Service, or Operating Reserves schedule in a manner that reduces its Day-Ahead Margin. Rules for calculating these payments, and for determining Suppliers’ eligibility to receive them, are set forth in Attachment J to this ISO Services Tariff.” Services Tariff at § 2.36b.

allowable under its tariffs. The NYISO also anticipates filing tariff revisions in the near future that should fully address Ravenswood’s concerns on a prospective basis.

Accordingly, the Commission should dismiss the Complaint.

A. Ravenswood is Not Eligible for Compensation Under Section 5.4 of the Services Tariff

Section 5.4 of the Services Tariff pertains to the operations of the New York State Power System during “Adverse Conditions.”⁹ It also provides that the NYISO “shall maintain reliability of the NYS Power System by directing the adjustment of the Generator output levels . . . to reduce power flows across transmission lines vulnerable to outages due to those Adverse Conditions”¹⁰ Finally, Section 5.4 states that real-time

LBMPs:

[S]hall be based on adjusted Generator levels set in response to activation of these procedures. Revenue shortfalls may occur if the redispatch of the system Curtails Energy Day-Ahead and more expensive Energy is dispatched subsequent to the Day-Ahead Settlement.¹¹

Ravenswood interprets these provisions as entitling it to full compensation for all costs arising from its having to switch from cheaper natural gas to more expensive oil as a portion of the fuel for its generating units in response to the Minimum Oil Burn Rule. Section 5.4, however, bars the NYISO from compensating Ravenswood under this provision for several reasons. Specifically, Ravenswood was not redispatched and there were no “Adverse Conditions” (nor a declaration of Adverse Conditions). Both are

⁹ “Adverse Conditions” are defined in the Services Tariff as: “Those 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.” Services Tariff at § 2.2.

¹⁰ *Id.* at § 5.4.

¹¹ *Id.*

necessary prerequisites to the applicability of Section 5.4. Finally, the costs for which Keyspan seeks recovery are not balancing obligations but rather are operating costs.

1. *Ravenswood Was Not Redispatched*

First, in the event of an “Adverse Condition,” as Section 5.4 describes, the NYISO adjusts Generator output in order to off-load transmission facilities and reduce the transmission system’s susceptibility to loss of load in the event that particular transmission facility goes out of service:

Consistent with such Reliability Rules, the ISO shall maintain reliability of the NYS Power System by 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.¹² (emphasis supplied)

Generation redispatch can cause uneconomic balancing obligations for some Generators when the NYISO-imposed redispatch produces a schedule that requires the delivery of less Energy than did their Day-Ahead schedules and the Real-Time LBMPs exceed those paid Day-Ahead. These uneconomic balancing obligations can erode the redispatched Generator’s Day-Ahead margin. Section 5.4 provides for margin recovery under this specific circumstance.¹³ Section 5.4 also describes the revenue shortfalls that can occur on account of the generation redispatch:

The Real-Time LBMPs shall be based on adjusted Generator levels set in response to activation of these procedures. Revenue shortfalls may occur if the redispatch of the system Curtails Energy scheduled Day-Ahead and more expensive Energy is dispatched subsequent to the Day-Ahead Settlement. These revenue shortfalls

¹² *Id.* (emphasis supplied).

¹³ It also authorizes the NYISO to recover revenue shortfalls across the market that result when Load is fully hedged Day-Ahead but adverse conditions require operation of more expensive Generators than were scheduled Day-Ahead.

shall be recovered by the ISO through the Rate Schedule 1 charge under the ISO OATT.¹⁴

In this case, Ravenswood is not eligible for compensation under Section 5.4. Although the Complaint attempts to obfuscate the issue by equating Ravenswood's fuel change with a "dispatch change" and "dispatching off of gas" with redispatching,¹⁵ the key fact remains that Ravenswood was *not redispatched*. Ravenswood was dispatched in accordance with its Day-Ahead schedule. Therefore, Ravenswood did not incur the uneconomic balancing obligations associated with the redispatch that Section 5.4 is intended to protect against.

Redispatch of a Generator is an unambiguous prerequisite to a Section 5.4 recovery. There is nothing in the tariff language that would even arguably suggest that Section 5.4 could apply absent redispatch.

2. *No "Adverse Condition" Occurred (or Was Declared)*

Second, the operation of the Minimum Oil Burn Rule is not an "Adverse Condition." Loads routinely exceed 9,000 MW in Load Zone J during the summer months. Loads reached that level for at least one hour on sixty-four days from May 30 through August 30, 2006. The fact that loads reach 9,000 MW is not a threat to system security comparable to the specific examples of "Adverse Conditions" that are specified in the tariff, *i.e.*, thunderstorms, hurricanes, tornadoes, solar magnetic flares, or terrorist activities.

¹⁴ Services Tariff at § 5.4.

¹⁵ Complaint at 2. Specifically, Ravenswood states that "if a dispatch change is in response to the Minimum Oil Burn Rule, dual-fueled generators who dispatch off of gas and sustain increased fuel oil costs lose margins because the NYISO erroneously interprets its Services Tariff to deny these dual-fuel generators full compensation for these lost margins." *Id.*

Although the Services Tariff’s definition of “Adverse Conditions” might conceivably be read so liberally as to include system conditions necessitating the activation of the Minimum Oil Burn rule, it would be unreasonable to do so. The mere fact that rules designed to prevent reliability problems have come into play should not be enough to constitute “Adverse Conditions.”¹⁶

In addition, even if an Adverse Condition could be said to have existed, the NYISO did not declare an Adverse Condition and initiate redispatch procedures as Section 5.4 requires.

3. *Ravenswood Does Not, and Cannot, Point to Examples Where a Generator that Was Not Redispatched Was Compensated Under Section 5.4*

The Complaint fails to cite a single case where the NYISO has used Section 5.4 to compensate a generator that was not redispatched. Although Ravenswood cites examples of Generators that were compensated under Section 5.4 in an attempt to depict the NYISO’s treatment of it as unduly discriminatory,¹⁷ those examples all involve situations where generators were redispatched.¹⁸

Ravenswood also invokes Commission precedent requiring ISOs/RTOs to compensate generators that are redispatched for their lost opportunity costs. In reality,

¹⁶ This type of compliance with local reliability rules may be distinguished from the special rules under the NYISO’s Storm Watch procedures. Although those procedures, like the minimum oil burn requirements, are established under local reliability rules they differ in that the Storm Watch rule results in changes to line loadings and generator re-dispatch.

¹⁷ See Complaint at 21-22.

¹⁸ The same is true of other cases cited by Ravenswood. For example, the Complaint cites *New England Power Pool, Inc.*, 107 FERC ¶ 61,183 at P 26 (2004) (“*NEPOOL*”), as providing that Generators supplying reserves should be compensated for their lost opportunity costs. See Complaint at 10. However, *NEPOOL* involved a redispatched generator that was, “following ISO-NE’s dispatch instructions” *NEPOOL* at P 26. The Complaint also cites to Order No. 2000-A and *PJM Interconnection, L.L.C.*, 108 FERC ¶ 61,030 (2004). As indicated by the language that Ravenswood itself uses or cites, these situations involve the redispatch of generators. See Complaint at 9.

the NYISO's tariffs, and its actions, have been fully compliant with Commission precedent. Compensation is available under Section 5.4 to Generators that are redispatched. Indeed, several of the orders cited by Ravenswood involve redispatch scenarios. As is discussed below, compensation other than for the costs of redispatch is available under Sections 4.1.7 and 4.10. The latter ensures that generators that are selected to run will recover their "Bid Production Costs," subject to an offset mechanism that ensures only those costs that exceed LBMP earned revenues are reimbursed.

Finally, the Complaint suggests that the Commission conclude that Attachment J of the Services Tariff does not displace Section 5.4. The NYISO agrees that Attachment J does not displace Section 5.4. The argument, however, is irrelevant. Attachment J of the Services Tariff, which became effective in 2003, is consistent with Section 5.4. Both provisions protect against the same harm -- the dispatch of a Generator to an output level below its Day-Ahead schedule that exposes it to balancing obligations that erode its Day-Ahead margin. Ravenswood's argument that Attachment J does not displace the NYISO's more general authority under Section 5.4 does not save it from the fundamental flaws in its case, namely, that it was not redispatched and is therefore not eligible to be compensated under provisions that protect Generators that have been.

It should be noted that the NYISO and its stakeholders have previously considered the question of whether fuel-related expenses unrelated to balancing costs should be compensable under Section 5.4 or the DAMAP rules. In the proceeding that culminated in the adoption of the DAMAP tariff provisions, the Commission directed the NYISO and its stakeholders to consider whether generators should be compensated for fuel-related costs that could arise when they were redispatched below their day-ahead

schedules, *e.g.*, losses associated with unused fuel.¹⁹ The NYISO and its stakeholders ultimately decided that such costs should not be covered and no other tariff revisions were filed. The Commission took no further action.

B. The NYISO Properly Compensated Ravenswood Under Section 4.1.7 of the Services Tariff

While Section 5.4 is facially inapplicable to Ravenswood's situation, the NYISO believes that it was authorized to compensate Ravenswood under Section 4.1.7. Specifically, Section 4.1.7 provides that:

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. Payments for such costs shall be determined pursuant to the provisions of Attachment C. Such payments shall be recovered by the ISO from the local customers for whose benefit the generation was committed in accordance with Rate Schedule 1 of the ISO OATT.²⁰

Ravenswood was selected to run based on the NYISO's normal economic bid evaluation process, rather than being directed to run by the NYISO specifically because of a local reliability need. Nevertheless, Ravenswood behaved responsibly by honoring its commitment to run even after the activation of a reliability rule imposed unexpected additional costs. Keyspan could have derated its unit and bought out of its Day-Ahead contract but instead continued to meet its commitment by observing the minimum oil burn obligations it then faced. The NYISO believes that this is the kind of situation that

¹⁹ See *New York Independent System Operator, Inc.*, 102 FERC ¶ 61,096 at PP 24-25 (2003) ("It is not clear that the NYISO should guarantee recovery of NRG's cost of selling previously nominated but unused natural gas when the NYISO instructions require NRG to reduce generation in order to maintain the security and reliability of the transmission system [T]he Commission will direct the NYISO to investigate potential solutions for the issue raised by NRG through its stakeholder process and to file tariff revisions, as appropriate."). See also *New York Independent System Operator, Inc. Compliance Status Report* at 3, Docket Nos. ER03-238-001 and -002 (May 12, 2003).

²⁰ Services Tariff at § 4.1.7.

Section 4.1.7 was intended to cover and that Ravenswood was therefore entitled to compensation under it.

The NYISO read Section 4.1.7 broadly, but reasonably, in order to achieve a result consistent with the Commission's policy in favor of compensating generators that fulfill their reliability obligations. As it now stands, Section 4.1.7 contains some ambiguities. For example, it is unclear exactly what is meant by a "commitment to ensure local reliability." The NYISO does not "commit" generation outside of the normal dispatch process to address this particular reliability problem. Nonetheless, units complying with local reliability rules should not be required to depend, for cost recovery, on whether the reliability rule required that it be committed for that purpose or required they undertake extraordinary operating costs in order to continue in operation. The purpose of Section 4.1.7 is to ensure that generating units are not economically disadvantaged by complying with local reliability rules that require operation out of the market's economic merit order. By contrast, the NYISO does not believe that it could have plausibly read the "Adverse Conditions" and "redispatch" prerequisites out of Section 5.4.

Once it determined that Section 4.1.7 was applicable to Ravenswood, the NYISO had to apply the terms of that provision. Those terms include the revenue offset for daily margin that is incorporated into Section 4.1.7 through Attachment C to the Services Tariff.²¹

If the Commission ultimately concludes that Section 4.1.7 is inapposite, this would not mean that Ravenswood was entitled to the compensation it is seeking. As is

²¹ See Services Tariff, Section 4.1.7 ("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.").

discussed further below, Section 4.10 of the Services Tariff could apply to this case although it too requires a LBMP revenue offset be applied when calculating appropriate cost recovery. Since, as described above, the criteria for invoking Section 5.4 do not apply in this case because Ravenswood was not redispached and no “Adverse Condition” occurred, the NYISO believed that its only choice was either to read Section 4.1.7 broadly, in order to compensate Ravenswood, or adopt a narrower reading of that provision and not compensate Ravenswood at all. The NYISO believes its choice was reasonable and consistent with Commission policy.

C. Section 4.10 of the Services Tariff May Also Support Payment

The Complaint asserts that Ravenswood was compensated pursuant to Section 4.10 of the Services Tariff, which governs Bid Production Cost Guarantees (“BPCGs”). While an argument could be made that Section 4.10 justified cost recovery in this case, the NYISO did not rely on this provision of its Services Tariff. Section 4.10 does not directly apply to this situation because Ravenswood is not being compensated for Bid Production Costs not covered by LBMP, but rather for unexpected costs that were not reflected in any way in its bids.

In any event, both provisions are subject to the same calculation rules. Specifically, payments to Generators are calculated under both Section 4.10 and Section 4.1.7 pursuant to Attachment C of the Services Tariff, which requires that revenues earned in the Dispatch Day offset payments otherwise due.

D. The NYISO is Currently Working With Stakeholders to Develop Clear New Tariff Rules to Govern the Compensation of Dual-Fuel Generators That Comply with the Minimum Oil Burn Rule

As the NYISO has noted, it is not without sympathy for Ravenswood's concerns and recognizes the need to ensure that Generators are fairly compensated when they respond to reliability rules. The NYISO also understands the Commission's expectation that jurisdictional tariffs be clear and not be subject to differing interpretations.

The NYISO has therefore 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. In the process a number of complex issues, and possible compensation options, were considered. This process is now near its end. On March 7, 2007, the NYISO's Business Issues Committee ("BIC") approved Services Tariff revisions that would prospectively establish payment rules that would be clearly applicable to generators in KeySpan's situation.²² Significantly, the new "margin assurance payment" rules would not include the revenue offset that KeySpan has complained about in this proceeding. The NYISO anticipates that its Management Committee will approve a tariff filing tomorrow (March 20, 2007) and that the Board of Directors will also approve it next month. The NYISO should be able to submit it to the Commission for its approval in advance of this year's peak summer demand period. Accordingly, there is no need for the Commission to set a deadline for action, to be concerned about possible ambiguities in the NYISO's tariffs, or to impose any additional requirements on the NYISO.

²² The motion approving the proposed revisions is available at <http://www.nyiso.com/public/webdocs/committees/bic/meeting_materials/2007-03-07/bic_final_motions_030707.pdf>. The NYISO's presentation to the BIC is available at <http://www.nyiso.com/public/webdocs/committees/bic/meeting_materials/2007-03-07/BIC_agenda_05_Minimum_Oil_Burn_Presentation_030707.pdf>.

IV. Defenses Asserted and Proposed Process for Resolution

In accordance with Rule 213(c)(2), 18 C.F.R. § 385.213(c)(2), the NYISO denies the following allegations raised by the Complaint.

1. The NYISO failed to apply Section 5.4 of the Services Tariff to compensate Ravenswood for its full incremental operating costs, including lost opportunity costs, for the specific circumstance described in the Complaint.
2. The NYISO failed to follow Commission policy in rejecting Ravenswood's claims for full compensation. In fact, the NYISO has a wide variety of mechanisms in its Services Tariff to compensate Generators. Ravenswood's situation, however, does not squarely fit the relevant tariff provisions.
3. The NYISO erred in relying upon the BPCG provisions of Section 4.10 of the Services Tariff, rather than the more general provisions in Section 5.4, in providing compensation to Ravenswood.

The NYISO asserts the following defenses:

1. The NYISO has not taken any action that violates Section 206 of the Federal Power Act.
2. The NYISO has not violated its Services Tariff or any Commission orders.
3. The NYISO has not acted unjustly, unreasonably, and in an unduly discriminatory manner in connection with compensating Ravenswood under a different tariff provision than the one Ravenswood sought.
4. The NYISO did not inappropriately refuse to compensate Ravenswood under Section 5.4 of the Services Tariff.

As is stated above, the NYISO requests that the Commission dismiss the Complaint, and permit the NYISO to continue working with Ravenswood and other stakeholders to develop prospective revisions to its Services Tariff.

V. Conclusion

For the reasons stated herein, the Commission should dismiss Ravenswood's Complaint, and permit the NYISO to continue working through its stakeholder process to develop prospective improvements to the Services Tariff.

Respectfully submitted,

/s/ Ted J. Murphy

Counsel for the
New York Independent System Operator, Inc.

March 19, 2007

CERTIFICATE OF SERVICE

I certify that I have on this day served the foregoing document on the official service list compiled by the Secretary in this proceeding, in accordance with 18 C.F.R. § 385.2010 (2006). I also certify that I have served this document on the complainant.

Dated at Washington, DC this 19th day of March, 2007.

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