

119 FERC ¶ 61,319
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Keyspan-Ravenswood LLC

Docket No. EL07-35-001

v.

New York Independent System Operator Inc.

ORDER DENYING REHEARING

(Issued June 25, 2007)

1. On April 25, 2007, the Commission denied a Complaint filed by Keyspan-Ravenswood LLC (Ravenswood) seeking compensation from the New York Independent System Operator Inc. (NYISO) for incremental costs incurred in the summer of 2006 when burning oil pursuant to a local reliability rule.¹ Ravenswood filed a request for rehearing on May 25, 2007. For the reasons discussed below, the Commission denies rehearing.

Background

2. At times in the summer of 2006, Ravenswood was required to burn fuel oil, which was more expensive, instead of natural gas under a local reliability rule known as the Minimum Oil Burn Rule. NYISO provided compensation to Ravenswood under section 4.1.7 and Attachment C² of its Services Tariff for these occasions but only in an amount

¹ 119 FERC ¶ 61,089 (2007) (April 25 Order).

² 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

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sufficient to permit Ravenswood to recover its costs. Under Attachment C, NYISO offsets Day Ahead margins that Ravenswood earned during the dispatch day against Ravenswood's incremental costs incurred in burning oil during the dispatch day. 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. The offset reduced or eliminated the profits Ravenswood would have earned but for its compliance with the instruction to burn fuel oil. Thus, NYISO did not provide Ravenswood with its full Day Ahead margins for the dispatch days on which it was required to burn fuel oil.

3. In a Complaint filed February 15, 2007, Ravenswood sought compensation for the full amount of its Day Ahead margins under section 5.4 and Attachment J³ of the NYISO

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, OATT.

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.

³ 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, Services Tariff.

Section 5.4, Original Sheet No. 115, Tariff, provides in part:

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

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Services Tariff. Section 5.4 governs payments to generators that are redispatched during “Adverse Conditions.” Under section 5.4 and Attachment J, a generator would receive its full Day Ahead margins with no offset. Ravenswood claimed it came within section 5.4 because NYISO acted pursuant to that section in dispatching Ravenswood’s units according to the Minimum Oil Burn Rule.

4. The Commission found that Ravenswood was only entitled to compensation if the Services Tariff provided for it. It found further that section 5.4 applied only when there was an Adverse Condition and that an Adverse Condition was described in sections 2.2 and 5.4, through examples, as a severe threat to security.⁴ The Commission found Ravenswood did not bear its burden of proving that it was entitled to compensation under section 5.4. It found Ravenswood had not shown that an Adverse Condition existed or that one was declared by NYISO or that Ravenswood followed procedures prescribed under section 5.4 when it burned oil pursuant to the Minimum Oil Burn Rule. The Commission found, in addition, that Ravenswood had not shown that it was redispatched, as required under section 5.4. Finally, the Commission found section 5.4 and Attachment J provide for the compensation of balancing obligations incurred in the energy market⁵ and the costs Ravenswood sought were not balancing obligations, but additional incremental operating costs.

5. The Commission notes that it has accepted tariff revisions filed by NYISO, effective May 13, 2007, to provide Day Ahead margins for dual-fuel generators that are required to burn oil under the Minimum Oil Burn Rule.⁶ These new provisions will provide Ravenswood with its incremental operating costs with no offset of the margins (or profits) that Ravenswood earns during all hours of that day during the 2007 Summer

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. . . .

⁴ April 25 Order at P 26.

⁵ The balancing obligations referred to here 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.

⁶ *New York Independent System Operator, Inc.*, 119 FERC ¶ 61,130 (2007) (Tariff Revision Order).

Capability Period and thereafter when it is required to burn fuel oil that is more expensive than natural gas under the Minimum Oil Burn Rule.

Request for Rehearing

6. Ravenswood claims on rehearing that it comes within section 5.4 and should be compensated as authorized by that section so that it receives its full Day Ahead margins for oil burns during the 2006 Summer Capability period. The Commission rejects Ravenswood's arguments on rehearing and affirms its prior holding in the April 25 Order that Ravenswood is not entitled to the compensation authorized by section 5.4 for oil burns during the 2006 Summer Capability period, as discussed below.

A. Whether the Commission Properly Interpreted Section 5.4

7. Ravenswood asserts the Commission misinterpreted section 5.4. It claims the Commission failed to make the threshold determination whether this tariff language is ambiguous, *i.e.*, whether it is susceptible to different interpretations. Ravenswood indicates section 5.4 is ambiguous and should be interpreted as providing that all that is needed for the application of section 5.4 is an Adverse Condition and that a situation requiring the Minimum Oil Burn Rule is an Adverse Condition. Ravenswood asserts the Commission failed to consider extrinsic evidence concerning the allegedly ambiguous section 5.4 consisting of the "make whole" rationale of Order No. 2000-A, undue discrimination arising from compensating gas-only generators under section 5.4, and the creation of perverse economic signals through discouraging dual-fuel capability.

8. The Commission rejects these arguments and affirms its prior holdings that Ravenswood did not show that an Adverse Condition existed when it burned oil pursuant to the Minimum Oil Burn Rule or that it was entitled to compensation authorized by section 5.4. The Commission recognizes that the language of section 5.4 is somewhat ambiguous. However, we continue to interpret the requirements for the application of section 5.4 and the meaning of Adverse Condition as stated in the April 25 Order and below. The Commission finds that the matters cited by Ravenswood as extrinsic evidence are not relevant to the interpretation of section 5.4, but pertain to other issues as discussed immediately below.

9. The extrinsic evidence Ravenswood cites consists of policies and statutory requirements that bore on the justness and reasonableness of the then-existing section 5.4, rather than on how the terms of that section should have been interpreted. However, there was no need for the Commission to make a determination that the then-existing section 5.4 was unjust and unreasonable. If the Commission had determined that section 5.4 was unjust and unreasonable, it could have provided relief for Ravenswood, but only prospectively, that is only for oil burns occurring after the date of the issuance of its

order. However, by the time the April 25 Order was issued, NYISO had already filed tariff revisions that would, henceforth, provide Ravenswood with its incremental operating costs without offset of its Day Ahead Margins when it burned oil that was more expensive than natural gas pursuant to the Minimum Oil Burn Rule.⁷ On May 11, 2007, the Commission accepted these tariff revisions to be effective May 13, 2007.⁸ These revisions provided Ravenswood with the only relief with respect to which it was entitled under section 206 of the Federal Power Act—prospective relief. If the Commission had made a determination that the then-existing section 5.4 was unjust and unreasonable, it could only have provided Ravenswood with relief prospectively, just as NYISO’s proposed revisions did.⁹ The Commission could not have provided Ravenswood with its Day Ahead Margins for the 2006 Summer Capability period, a period that ended October 31, 2006, and the only period for which it was claiming relief.¹⁰

B. Whether There was an Adverse Condition under Sections 2.2 and 5.4 When Ravenswood Burned Fuel Oil Under the Minimum Oil Burn Rule

10. Ravenswood argues that there was an Adverse Condition when it burned oil under the Minimum Oil Burn Rule. Ravenswood argues that section 5.4 applies whenever there is an Adverse Condition. It states that Adverse Condition is defined in section 2.2 of the Services Tariff as “conditions of the natural or man-made environment that threaten the adequate reliability of the NYS Power system.”¹¹ Ravenswood argues that the conditions

⁷ April 25 Order at P 29.

⁸ Tariff Revision Order.

⁹ Federal Power Act (FPA), section 206 (2000); April 25 Order at P 24-25.

¹⁰ Section 206 of the FPA permits the Commission to establish a refund effective date and order refunds for a period of fifteen months following the refund effective date. The earliest refund effective date is the date on which a complaint is filed. In this case, the complaint was filed on February 15, 2007. Thus, the refund provisions of section 206 cannot provide a remedy for Ravenswood because the events for which it is seeking relief occurred during the 2006 Summer Capability period which was well before both the filing of the complaint and the earliest possible refund effective date.

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.” Services Tariff, First Revised Sheet No. 22A.

activating the Minimum Oil Burn Rule are conditions that threaten the adequate reliability of the NYS power system and therefore constitute an Adverse Condition within the meaning of sections 2.2 and 5.4 of the Services Tariff. Ravenswood states that the Minimum Oil Burn Rule addresses an Adverse Condition consisting specifically of a sudden loss of gas pressure that could cause in-city generators to trip off line.¹²

11. Ravenswood asserts the Commission erred in finding that section 2.2 defines Adverse Conditions by examples. It also notes section 2.2 states that the examples are non-exclusive illustrations of a generally applicable definition. Ravenswood also asserts the Commission erred in interpreting section 2.2 as requiring a severe threat to system security and that the Commission has not explained how the plain language of section 2.2 encompasses only severe threats to reliability. At the same time, Ravenswood argues that the conditions activating the Minimum Oil Burn Rule constitute a severe threat to security, comparable to the weather examples illustrating the definition of Adverse Condition in section 2.2. Ravenswood asserts that the fact that the loss of gas supply arose frequently during the summer months does not make it a less serious threat, as it asserts, NYISO contended.¹³

¹² Ravenswood also argues that the Minimum Oil Burn is a local reliability rule that addresses a threat that is as severe as that addressed by another local reliability rule, the Thunderstorm Watch Rule. In making this argument, Ravenswood relies on materials that were not submitted with its Complaint. These materials include the NYSRC Reliability Rules (Version 18, January 5, 2007) at 66, 68-70. Ravenswood Request for Rehearing at 9-10 and nn. 20, 21, and 24. The Commission is not obliged to consider these materials. Under Commission Rule 713(c)(3) “new matters” may be raised on rehearing only if “based on matters not available for consideration by the Commission at the time of the final decision or order.” 18 C.F.R. § 385.713(c)(3) (2006); *Trans Alaska Pipeline System*, 67 FERC ¶ 61,175 at 61,531 (1994). Ravenswood could have presented these materials with its Complaint. In any event, the Commission notes that Version 18 of the NYSRC Reliability Rules was published after the 2006 Summer Capability period, the period covered by Ravenswood’s Complaint, and therefore cannot apply to the Minimum Oil Burn events occurring during that period.

¹³ Ravenswood cites NYISO March 19, 2007 Answer at 8 (“[T]he 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.”).

12. The Commission rejects these rehearing requests and affirms its prior holdings that an Adverse Condition under section 2.2 and 5.4 is a severe threat to security and that the activation of the Minimum Oil Burn Rule does not constitute an Adverse Condition. The Commission finds that, while they are somewhat ambiguous, it was reasonable to interpret sections 2.2 and 5.4 using the examples of Adverse Conditions provided in the sections themselves. The examples, which are the same in both of these sections, are thunder storms, hurricanes, tornadoes, solar magnetic flares, and threat of terrorist activities. In section 5.4, the examples, and conditions like them, require the adjustment of generator output levels to reduce power flows across transmission lines vulnerable to outages.¹⁴

13. The Commission affirms that the conditions activating the Minimum Oil Burn Rule are not comparable to the threats illustrated in the examples. The Minimum Oil Burn Rule is activated when system load reaches 9,000 MW and a sudden loss of gas pressure in the gas transmission facilities that supply Consolidated Edison Company of New York Inc.'s (Consolidated Edison) in-city generators could result in the units tripping off line.¹⁵ Under the Minimum Oil Burn Rule, generators are not required to reduce their output levels; they are only required to change the fuel that they are using. Nor are there changes to line loadings. A local reliability rule might describe an Adverse Condition under section 2.2 and 5.4, but, in this case, the Minimum Oil Burn Rule is a local reliability rule that does not describe an Adverse Condition under those sections.

C. Whether Ravenswood Met the Requirements of Section 5.4 and Whether There are Other Requirements in Section 5.4 Besides the Existence of an Adverse Condition

14. Ravenswood asserts the Commission erred in finding that Ravenswood had not shown that NYISO had declared an Adverse Condition or that Ravenswood followed procedures prescribed under section 5.4 when Ravenswood burned oil pursuant to the Minimum Oil Burn Rule.¹⁶ Ravenswood asserts that the requirement to declare an Adverse Condition is satisfied by invoking the appropriate operating procedures, in this

¹⁴ Section 5.4, Original Sheet No. 115, Services Tariff.

¹⁵ Ravenswood Complaint, Exhibit A, I-R3. Loss of Generator Gas Supply (New York City & Long Island), at pp. 67-68.

¹⁶ April 25 Order at P 26.

case, the Minimum Oil Burn Rule.¹⁷ It also indicates that following the Minimum Oil Burn procedures was following procedures under section 5.4. Ravenswood asserts that section 5.4 is intended to govern NYISO reliability operations, including the Minimum Oil Burn Rule.¹⁸

¹⁷ Ravenswood May 25, 2007 Request for Rehearing at 11 (“[I]f the Minimum Oil Burn rule is triggered by an Adverse Condition, the necessary declaration by the NYISO has been made.”).

¹⁸ Section 5.4, in its entirety, is as follows (Services Tariff, Original Sheet Nos. 115 and 116):

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 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.

The ISO shall have the sole authority to declare that Adverse Conditions are imminent or present and invoke the appropriate operating procedure(s) affecting the NYS Power System in response to those conditions. Activation of a procedure in compliance with a Local Reliability Rule shall involve a two (2) step process. The Transmission Owner directly involved with such Local Reliability Rule, such as Storm Watch, shall advise the ISO that Adverse Conditions are imminent or present and recommend to the ISO the activation of procedures in support of that Local Reliability Rule. Consistent with the Local Reliability Rule, the ISO shall declare the activation of the appropriate procedures.

The Transmission Owner and the ISO shall coordinate the implementation of the applicable procedures to the extent that Transmission Facilities Under ISO Operational Control are impacted. Records pertaining

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15. As the Commission affirmed above, the conditions activating the Minimum Oil Burn Rule do not constitute an Adverse Condition under section 5.4. In addition, contrary to Ravenswood's assertions, the Commission finds that NYISO did not declare an Adverse Condition on the occasions when Ravenswood was required to burn oil and that Ravenswood did not follow procedures under section 5.4 when it burned oil pursuant to the Minimum Oil Burn Rule. The Commission finds that, contrary to Ravenswood's assertions, section 5.4 is not satisfied by invoking the Minimum Oil Burn Rule and procedures thereunder. The Commission finds that section 5.4 requires a two-step process when a local reliability rule is involved. First, the Transmission owner must advise NYISO that Adverse Conditions are imminent or present and recommend that NYISO activate procedures in support of the local reliability rule. Second, NYISO must declare the activation of the appropriate procedures consistent with the local reliability rule. In this case, the Commission finds the two-step process did not occur. Instead, Consolidated Edison, the affected local Transmission Owner, instructed Ravenswood to burn a minimum amount of fuel oil.¹⁹

16. Ravenswood also asserts that the occurrence of an Adverse Condition is the sole precondition for triggering the application of section 5.4, and that other conditions, such as redispatch and the incurrence of balancing obligations are not found in section 5.4 and are not required for section 5.4 to apply. Ravenswood also asserts that section 5.4 authorizes compensation for any incremental costs incurred by generators responding to reliability instructions and not just for balancing obligations.

17. The Commission rejects these contentions. The Commission finds that section 5.4 contemplates an adjustment of generator output levels to reduce power flows across transmission lines and that section 5.4 refers to such an adjustment of output as a

to the activation of such procedures and the response in accordance with those procedures shall be maintained and made available upon request.

The Real-Time LBMPs [Locational Based Marginal Prices] 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 shall be recovered by the ISO through the Rate Schedule 1 charge under the ISO OATT.

¹⁹ NYISO March 19, 2007 Answer at p. 4.

“redispatch of the system.”²⁰ In addition, as Ravenswood recognizes, section 5.4 only authorizes compensation.²¹ The Commission finds compensation is actually provided for generators redispatched under Adverse Conditions under Attachment J of the Services Tariff.²² Attachment J provides Day-Ahead Margins for eligible generators that buy out of Day-Ahead Energy schedules in a manner that reduces their Day-Ahead Margins. That is, Attachment J repays eligible generators the balancing obligations that they incur by buying out of their Day-Ahead schedules under certain circumstances.²³ Thus, the Commission finds, Ravenswood would have had to have incurred balancing obligations to receive compensation under section 5.4 and Attachment J and Ravenswood could not be compensated for incremental operating costs under these provisions.

18. Ravenswood asserts that, in any event, it was redispatched when following the Minimum Oil Burn Rule. It states that the Minimum Oil Burn Rule directs an adjustment of generator output levels by instructing a dual-fuel generator “to burn oil at a minimum level.”²⁴ It also states it was redispatched because under the Minimum Oil Burn Rule, it was instructed to reduce output on natural gas and increase output levels on fuel oil after its Day-Ahead Schedule was fixed. Ravenswood states it is incorrect to read section 5.4 as applicable only to generating units receiving dispatch down instructions.

²⁰ “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. . . .” Services Tariff, Original Sheet No. 116, section 5.4.

²¹ Ravenswood Request for Rehearing at 19.

²² Services Tariff Attachment J, Third Revised Sheet No. 486 *et seq.*

²³ Of suppliers eligible to receive Day Ahead Margins under Attachment J, the most relevant here are suppliers that are “scheduled out of economic merit order by NYISO in response to an ISO or Transmission Owner system security need” and suppliers that are derated or decommitted by NYSIO “in response to an ISO or Transmission Owner system security need” Services Tariff, Attachment J, section 2.0, Third Revised Sheet No. 486. Ravenswood does not meet either of these sets of criteria.

²⁴ *Citing* Local Reliability Rule I-R3 (Version 16, March 10, 2006), appended to Ravenswood Complaint as Attachment A.

19. The Commission rejects Ravenswood's contentions that it was redispatched. The Commission finds, as discussed above, that section 5.4 contemplates an adjustment of output levels and refers to such an adjustment as a redispatch. The Commission agrees with NYISO and Consolidated Edison that a redispatch consists of changing the scheduled output of a generator.²⁵ Such a change could be upward or downward, but there must be a change. In this case, Ravenswood's level of output was not changed so that Ravenswood was not redispatched.

The Commission orders:

Ravenswood's request for rehearing is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²⁵ NYISO March 19, 2007 Answer at 8; Consolidated Edison March 16, 2007 Comments at 4 (stating that to be redispatched, a generator must be dispatched in accordance with a schedule that is different from the bid it submitted in the Day-Ahead Market).