

NEW YORK STATE PUBLIC SERVICE COMMISSION

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Proceeding on Motion of the Commission :
as to Policies, Practices and Procedures For Utility :
Commodity Supply Service to Residential and : **CASE 06-M-1017 -**
Small Commercial and Industrial Customers. :
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PHASE II - INITIAL COMMENTS OF THE ENERGY ASSOCIATION OF NYS

Pursuant to the Commission’s “Order Requiring Development of Utility-Specific Guidelines for Electric Commodity Supply Portfolios and Instituting a Phase II to Address Longer-Term Issues” issued April 19, 2007 (Order), The Energy Association of New York State (EA) hereby submits the following comments.¹

The member companies of the Energy Association, and in particular the electric delivery utilities, while similarly situated in many fundamental respects, offer a range of views in response to the questions posed by the Commission in the Phase II Order. This, in itself, should be instructive that the questions posed are complex and do not readily admit of easy answers even among those with a shared perspective. It also speaks to the need for the Commission, even as it seeks to enhance the regulatory certainty necessary to incent investment in new electric supply, to retain its historic prerogative of flexibility in shaping policy to meet the needs of diverse service territories and to respond to changing and unforeseen circumstances.

¹ The Energy Association of New York State is a non-profit trade association whose members are: CH Energy Group; Consolidated Edison Company of N.Y. Inc.; Entergy Nuclear Northeast; KeySpan Corporation; Mirant N.Y. Inc.; and National Grid

With regard, however, to the central issue in the establishment of Phase II of this proceeding, whether regulated electric utilities should be required or encouraged to enter into long-term contracts in order to facilitate new supply, there is resounding unanimity among the EA member companies: long-term contracts can be a useful tool for energy delivery companies in assembling supply portfolios to meet their customer's needs, but the utilities should not be directed or required to enter into such contracts.

The most fundamental reason why the companies are so strongly averse to *mandated* long-term contracts is the fundamental shifting of risk from investors and project developers to utility companies and their customers, which is inherent in such contracts and is the essence of their value to developers. This aversion is rooted in the hard reality of New York's historic experience with mandated supply contracts and terms, and the impact they have had on the ability of the Commission and the companies to meet their joint obligation to provide safe, reliable service at just and reasonable prices. The economic consequences to customers, in terms of overpayments and stranded costs, from New York's last well-intentioned foray into mandated supply contracts negatively impacts New Yorkers to this day. It was, to a significant degree, in reaction to those cost impacts that the State sought to shift the risks of supply development from local utilities and their customers to developers through the creation of a competitive wholesale market.

The member companies are also concerned that mandated long-term contracts will have an immediate negative impact on customers and shareholders alike by being imputed to utilities as debt by rating agencies and, based on their assessment of the recoverability risk, increase the costs to utilities of borrowing.

In terms of the appropriate role of long-term contract going forward, the EA member companies generally share the following principles:

- Energy delivery utilities should retain their flexibility to manage their supply portfolio for the benefit of their customers using a broad range of options, and their expertise to balance considerations of cost, reliability, volatility and other factors as changing conditions dictate.
- That management can be informed by the Commission through statement(s) of policy considerations for the utilities to consider in making their determinations with respect to long-term contracts or other supply options.
- The use of long-term supply contracts should be at the option of the utilities, as one of a range of portfolio management tools.
- Regulatory policies should not encourage utilities' acquisition of supply through long-term contracts over other preferable means such as purchases in competitive markets or through utility ownership of generation. Long-term contracts should generally be considered only when and if other preferable means of obtaining supply have proven inadequate.

- To whatever extent the Commission may deem it desirable for utilities to enter into long-term supply contracts, the inherent risk/reward imbalance must be addressed. To the extent utilities are to be bound to long-term contracts with third parties in order to promote public policy, the utilities should have greater assurance from the Commission of reciprocal cost recovery of those contractual obligations.
- Competitive supply markets must be allowed to continue to mature and develop. Regulatory policies with regard to long-term contract that may have a chilling on competitive markets should be avoided.
- The NYISO reliability process should be allowed to mature and develop. Any long-term supply planning by the Commission and/or the utilities should be complimentary to and done in close coordination with the NYISO process, avoiding conflicts, contradictions and redundancy.

Dated: Albany New York
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Respectfully Submitted,

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