

NEW YORK STATE
PUBLIC SERVICE COMMISSION

Case 06-M-1017 – Proceeding on Motion of the Commission as to
Policies, Practices and Procedures for Utility
Commodity Supply Service to Residential and
Small Commercial and Industrial Customers

INITIAL COMMENTS OF FPL ENERGY, LLC

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Pursuant to the New York State Public Service Commission’s (“Commission”) April 19, 2007 order in the above captioned proceeding instituting a Phase II to address longer-term contract issues (“Order”), FPL Energy, LLC (“FPL Energy”), on behalf of itself and its affiliates doing business in New York State, hereby offers its initial comments.¹ FPL Energy is a leading clean energy provider with natural gas, wind, hydroelectric and nuclear power plants in operation in 24 states, including New York State.

FPL Energy is also a member of the Independent Power Producers of New York (“IPPNY”), and supports the Initial Comments filed by IPPNY in this matter in their entirety. Rather than repeating those comments, FPL Energy will summarize them here, and looks forward to submitting additional responsive comments as requested by the Commission by June 25, 2007.

¹ Case 06-M-1017, *Proceeding on Motion of the Commission as to the Policies, Practices and Procedures for Utility Commodity Supply Service to Residential and Small Commercial and Industrial Customers, Order Requiring Development of Utility-Specific Guidelines for Electric Commodity Supply Portfolios and Instituting a Phase II to Address Longer-Term Issues* (April 19, 2007).

SUMMARY

In its Order, the Commission initiates an investigation of whether a statewide integrated resource planning (“IRP”) process and long-term supply contracts are needed to meet reliability and public policy goals. The Commission notes that it has consistently endorsed competition where it is more effective than regulation, but expresses its concern that markets alone may not satisfy public policy concerns.² Pointing to the unwillingness of market participants to construct needed new merchant capacity in New York City because of regulatory uncertainty and other investment risks, the Commission proposes that long-term contracts may be needed to facilitate the financing and construction of new capacity.³ The Commission also indicates that IRP may be necessary because the New York Independent System Operator’s (“NYISO”) existing planning process does not address issues such as the types of projects that should be constructed to satisfy all policy goals.⁴ The Commission therefore suggests that there may be a growing need for a comprehensive decision-making process to guide the development of New York’s electricity infrastructure. To address these issues, the Commission asks interested parties to comment on a series of questions addressing the use of long-term supply contracts and IRP.

In a joint letter filed with the Commission in 2003, IPPNY and the Natural Resources Defense Council urged the Commission to initiate a proceeding to address important issues concerning the use and solicitation of long term contracts. At that time, an electric utility had sought the Commission’s approval to recover the cost of a long-

² *Id.* at 29-30.

³ *Id.* at 30.

⁴ *Id.* at 33.

term contract procured pursuant to a competitive solicitation that was restricted to new resources. IPPNY was concerned that without Commission policy and guidance, future solicitations for long-term contracts would similarly discriminate against existing resources, to the detriment of the competitive wholesale electricity market.

FPL Energy welcomes the Commission's investigation of these important issues and appreciates the opportunity to provide comments on them. As a wholesale supplier and marketer serving New York State, we continue to strongly support the continued development and enhancement of reliable and efficient competitive electricity markets. A well-functioning competitive wholesale energy market is essential to meeting New York State's needs for electricity and just and reasonable rates. With respect to the instant proceeding, FPL Energy's interest lies mainly in ensuring that the Commission's policies on long-term contracts and IRP are complementary to the functioning of reliable, non-discriminatory, competitive wholesale energy markets in New York.

FPL Energy understands the Commission's concern that the electricity markets in New York, as currently structured, may not always satisfy all public policy objectives. The Commission should not lose faith in the competitive market, however. It should do everything possible to ensure that market forces, instead of regulatory intervention, achieve the required level of resource adequacy and other public policy goals in New York.

The Commission acknowledged in its Order that new capacity could have adverse effects on the economics and operation of existing facilities that support system reliability and that "appropriate steps" may be required to maintain reliability.⁵ As discussed in greater detail in the response to the individual questions below, the Commission's

⁵ *Id.* at note 31.

policies on long-term contracts and IRP should be narrowly tailored to avoid harming existing facilities and the competitive wholesale electric market.

One of the greatest threats to the competitive markets and impediments to needed investment is the very real risk of regulatory intervention in the markets. Using long-term contracts to affect economic outcomes, rather than to address reliability concerns, may gravely undermine the ability of investors to rely on and respond to market signals that reflect the need for capacity additions and will severely increase the risk of investing in merchant capacity. Thus, the Commission must ensure that long-term contracts are not allowed to be used to facilitate non-competitive market intervention. Consistent with this approach, FPL Energy supports the following recommendations submitted by IPPNY in its comments:

- The Commission should support efforts of market participants in the NYISO's committee process and at the Federal Energy Regulatory Commission ("FERC") to review the capacity market design and implement mechanisms that may be needed to ensure the market will provide economic signals sufficient to retain needed existing facilities and to site new resources in New York when they are needed. Such mechanisms may or may not include a voluntary or mandatory forward capacity market ("FCM"), among other measures.
- If a reliability need is identified in the NYISO's Reliability Needs Assessment ("RNA") and no merchant solutions come forth by a specified time, the Commission should direct the electric utility in whose service territory the need arises to hold a competitive solicitation for resources to meet the reliability need.

- The Commission should coordinate with the NYISO, electric utilities and other market participants to develop procedures that ensure that competitive solicitations for long-term contracts are fair and non-discriminatory and appropriately designed to yield the necessary resource(s) to meet reliability needs.
- The Commission should reaffirm its policy that long-term contracts executed pursuant to properly structured competitive solicitations are presumptively prudent.
- The Commission should assure recovery of an electric utility's costs of construction of new capacity only if a competitive solicitation fails to produce a solution that can meet the reliability need in a timely manner.
- The Commission should encourage, but not require, regulated electric utilities to enter into long-term supply contracts selected through fair, open and non-discriminatory competitive solicitations available to both existing and new resources to meet reliability needs that have not been addressed by the merchant market.
- To the extent that any procurement process for long-term contracts is limited to certain types of resources or to only new resources and thus are not pursued through a competitive, non-discriminatory procurement process ("Discriminatory Procurement"), effective market mechanisms must be in place in the competitive wholesale markets to prevent such Discriminatory Procurement from improperly depressing clearing prices for market based facilities.

CONCLUSION

Consistent with the principles and comments noted above, the Commission should ensure that any policies it adopts concerning long-term contracts and IRP do not interfere with the competitive market.

As noted earlier in these initial comments, FPL Energy looks forward to submitting responsive comments regarding this matter by June 25, 2007.

Respectfully submitted,

BY: _____ DATE: June 5, 2007

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