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

THE NRG COMPANIES

Christopher C. O'Hara
Assistant General Counsel - Regulatory
NRG Energy, Inc.
211 Carnegie Center
Princeton, NJ 08540
609-524-4926
chris.ohara@nrgenergy.com

Robert C. Fallon
Leonard Street and Deinard
1627 Eye Street, NW, Suite 610
Washington, DC 20006
202-974-6110
fallonr@leonard.com

Dated: June 5, 2007
Albany, New York

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 THE NRG COMPANIES

On April 19, 2007, the New York State Public Service Commission ("Commission") instituted Phase II of this proceeding to address long-term contract issues.[1] The Commission asked eleven questions to examine the "use of long-term contracts and other means to facilitate the entry of new resources that would further the public policy goals of the state regarding electric infrastructure."[2]

I. OVERVIEW

A. NRG's Facilities in New York

The NRG Companies ("NRG") are one of the largest generators in New York, owning almost 4,000 MW.[3] In New York City, NRG owns almost 1,400 MW: the 553 MW Astoria Gas Turbines built around 1970 and the 841 MW Arthur Kill units that date

---

1 Case 06-M-1017, *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)(hereinafter the "*Order*"). NRG's comments build off its comments submitted in Phase I of this proceeding on November 22, 2006.

2 *Order* at 35-36.

3 For purposes of this proceeding, the NRG Companies are NRG Power Marketing Inc., Arthur Kill Power LLC, Astoria Gas Turbine Power LLC, Dunkirk Power LLC, Huntley Power LLC, and Oswego Harbor Power LLC.

to the 1960s. In upstate New York, NRG owns three facilities: Huntley[4] – a 392 MW coal facility that dates to the 1950s;[5] Dunkirk – a 522 MW coal facility that also dates to the 1950s; and Oswego – a 1,634 MW oil and natural gas facility built in the late 1970s.

Summary of NRG's Position

There is a significant need for new investment in New York and, due to regulatory uncertainty in the NYISO markets, much of this new investment will only occur through the use of long-term contracts. The infrastructure is aging – the average age of the electric fleet in New York City is over thirty years old – and that age limits the reliability, efficiency, and environmental performance of the system. In addition, New York City requires, at a minimum, approximately 2,000 MW to meet load growth.[6]

Long-term contracts will be required to replace these aging assets and support new investment because the wholesale markets operated by the New York Independent System Operator Corporation (NYISO) cannot be relied upon, with any certainty, to support new investment. The NYISO markets do not generate sufficient revenues to support new investment, particularly in New York City. For example, market prices in 2006 did not support new investment and will not lead to new market-based investment in the future.[7] Moreover, future revenue streams from the capacity market are especially

---

[4] The New York Power Authority has conditionally awarded NRG, at the Huntley site, a contract to build a 600 MW Integrated Gasification Combined Cycle facility (IGCC). *NRG 2006 Annual Report and Form 10-K at 3.* The Huntley IGCC will be one of the nation's first plants to implement IGCC technology. Such technology turns coal into synthetic gas, while removing the sulfur dioxide, nitrogen oxide and mercury and capturing up to 65% of the carbon dioxide produced.

[5] On November 30, 2006, Huntley Power LLC ("Huntley") notified the New York State Department of Public Service of its intent to permanently discontinue operation of two units at the Huntley Power Station effective June 3, 2007. Huntley retired the units as required by a June 3, 2005 Consent Decree between the State of New York and the New York State Department of Environmental Conservation.

[6] *The NYISO Issues Second Reliability Needs Assessment*, March 19, 2007 at 6; *PLANYC, A Greener, Greater New York*, at page 104.

[7] *2006 State of the Market Report New York Electricity Markets*, May 2007 at 7.

unpredictable and unreliable given the ability of load to artificially depress prices by creating out-of-market new entry, through rate-based self-build or new contracts, thus distorting the supply curve by effectively bidding the new capacity into the NYISO market at below its true cost and below the proxy Cost of New Entry ("CONE").[8] Load and merchant generators are taking significantly divergent positions to address this problem and other capacity market issues in the Federal Energy Regulatory Commission's ("FERC") current investigation of the New York City capacity markets in FERC Docket No. EL07-39-000.[9] The combination of the current NYISO markets being inadequate to support new investment, together with the regulatory uncertainty that currently exists, means that merchant construction is unlikely to occur without long-term contracts.

Yet, today there are few opportunities for long-term contracts. Load Serving Entities ("LSEs") have no assurance that costs will be recovered and thus may be reluctant to pursue such long-term obligations. In addition, the current resource planning process does not (i) identify a resource plan, (ii) specify the location, amount or type of resources needed, or (iii) require that a load serving entity procure those resources.

Worse, some of the long-term contracts entered into have harmed the competitive market because that new capacity contributes to artificially depressed prices, thereby creating uncertainty as to the ability of the capacity markets to support new investment and sending the wrong price signal to existing generators and new entrants.

---

[8] *Protest of NRG Companies, Affidavit of Steven B. Corneli*, filed January 24, 2007, in Docket No. ER07-360-000.

[9] As set further below, NRG's support for a forward capacity market in New York can be harmonized with the state's goals for more long-term contracts. NRG urges both the FERC and the Commission to harmonize the goals of the other, lest the resulting regulatory uncertainty cripple new merchant investment at the very time both agencies recognize that new investment must occur.

The existing situation will improve only if the Commission develops processes that:

1. ensure the development of a statewide integrated resource plan that identifies the resources necessary to meet the resource adequacy needs of the state in the long term;
2. support resource adequacy through a portfolio approach of near-term, intermediate-term and long-term resources;
3. require all LSEs to utilize non-discriminatory competitive procurement to satisfy their resource needs;
4. allow for competition between generation, transmission and demand-side resources on a level playing field to meet those needs; and
5. integrate the state-mandated procurement with the wholesale market in a manner that does not distort the market and sends the correct price signals so that state-mandated procurement efforts can be benchmarked against the wholesale markets and efficient investment decisions are made.

Competitive providers can build and operate power plants more efficiently than traditional integrated utilities. The Commission can look no further than the recent experience in California. Southern California Edison ("SCE") is currently building five peaking facilities (245 MW) at a cost that will "probably exceed $250 million," or $1,020/kw.[10] The competitive market could unquestionably build the same facilities at significantly less costs to consumers. NRG recently participated in a competitive procurement in California and won a contract to provide 260 MW to SCE at a more competitive rate.

The Commission should authorize the procurement of a portfolio of resources by all LSEs, utilizing competitive procurement subject to state oversight, on a near-term (1-3 years), intermediate-term (3-10 years), and long-term (10 plus years) basis. Specifically, LSEs should be required to make annual filings with the Commission, which the Commission would approve in Commission-docketed proceedings open to all market

[10] *Resolution E-4031*, California Public Utilities Commission, November 9, 2006 at 4.

participants.[11] The objective of the annual process would not be to develop specific, prescriptive requirements for LSE procurement. Rather, the objective would be to encourage LSEs to acquire a diverse portfolio of assets and to constantly evaluate and adjust the mix of resources that LSEs are using to meet their load, so that customers can benefit from technological improvements and the opportunities that arise in the competitive wholesale market, while otherwise meeting the long-term resource adequacy of the state.

On a near-term basis, resources can be procured in a manner similar to the Basic Generation Service ("BGS") auctions in New Jersey. BGS auctions procure resources for a "slice of the system," specifically the customers still receiving service from the local utilities. In New Jersey such auctions have achieved the "best possible electric prices for [its] [New Jersey] homes and businesses."[12] New York could achieve similar benefits because BGS-style auctions are well-suited to states such as New York where significant divestiture has occurred in the context of retail access.[13]

In procuring assets on an intermediate-term (3 to 10 years) or long-term basis (10 plus years), the Commission should identify the amount, location, and type of assets it wants procured and ensure that those assets are in fact procured. Identifying the amount, location, and type of resources, and then requiring LSEs to procure the identified

---

[11] NRG anticipates that the informational filing will contain the specifics of the LSE's portfolio and proposals for meeting its load serving and resource adequacy requirements.

[12] *Comments of Jeanne M. Fox, President New Jersey Board of Public Utilities*, cited *in BGS Energy Auction*, Public Service Electric and Gas, March 2004. President Fox, of the New Jersey Board of Public Utilities, has added, "[w]e are extremely proud that New Jersey's auctions, through their well-designed planning and sheer size have been consistently successful in securing the most competitive prices for electric utility supply customers." *New Jersey's BGS Auction: A Model for the Nation*, By Jeanne M. Fox, Public Utilities Fortnightly, September 2005

[13] *Default Service Auctions*, Colin Loxley, David Zalant, Journal of Regulatory Economics, 26:2 at p. 228 (2004). The Loxley, Zalant paper provides additional details on the structure of BGS auctions.

resources, is the only way to ensure that the long-term resource adequacy needs of New York are met. Specific requirements for renewables and other energy efficient resources could be included in the identified resource mix to be procured. Transmission, generation, and demand response would all be permitted to compete to solve reliability issues or load needs on a level playing field, with terms equally applied to all.

Intermediate-term and long-term resources procured in this fashion should not be subject to future regulatory intervention. NRG supports Commission pre-approval of intermediate-term and long-term contracts and the recovery of contract costs procured under competitive processes. For new investment to occur "contract sanctity" must in the future be more than a buzzword: it must be foremost in the Commission's policies because neither load nor merchant generation can be expected to invest if uncertainty exists that contract costs will be recovered.

In sum, NRG does not seek a return to a "command and control" regulatory regime of the past but rather NRG instead proposes more efficient processes to meet the load and public policy goals of the state. New York should avoid the temptation to return to the "good old days" of vertical integration and cost-based rates because such days were not so good because procurement was inefficient – witness costly overruns and imprudent investments – and consumers bore the brunt of those inefficiencies. New York recently returned to the "good old days" with Consolidated Edison's East River Repowering. Costs were projected to be $406 million but the final costs were capped out at $788.3 million, an overrun of almost 100%.[14] The more efficient choice would be a more

[14] Case No. 05-S-1376 – *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of the Consolidated Edison Company of New York, Inc. for Steam Service*, Order Determining Revenue Requirement and Rate Design, issued September 22, 2006 at 6; *Testimony of Victor Connella* at 11.

proactive Commission role in the resource adequacy and procurement processes, while allowing competitive suppliers to build the new investment so that the construction, investment, and operation risk are borne by the debt and equity holders of the competitive suppliers rather than consumers.

C. Answers to Specific Questions

Question

1. Should there be a statewide integrated resource plan process to examine long-term electricity resource needs? To what extent or in what manner would a statewide integrated resource planning process build on or parallel existing reliability planning process? What time frame should be examined in such a process and what issues should be considered? What is the role of the utilities and other interested parties in the process? How should the process differ from any previous integrated resource planning processes? What processes should be adopted, if any to ensure the resource portfolios at the utility and statewide level, satisfy overall planning objectives and public policy considerations? How should immediate concerns and long range considerations be addressed?

Response

There should be a statewide integrated resource plan administered by the Commission. One component of that process should identify the mix of generation resources that all LSEs must procure in the near-term (1-3 years), intermediate-term (3-10 years), and long-term (10 plus years).

Categorizing resources by duration would allow the Commission to address a variety of issues. Near-term resources (1-3 years) would allow the Commission to address price volatility, short-term locational reliability requirements (*i.e.*, projected load forecast and reserve margins), and efficiently serve non-retail access customers. Intermediate-term resources (3-10 years) would allow the Commission to address other locational reliability issues, including reducing transmission congestion, fuel diversity, environmental objectives, and price volatility. Long-term resources (greater than

10 years) would allow the Commission to focus on developing baseload capacity, including the development of innovative technologies, and ensure the long-term resource adequacy of the state.

For the near-term resources (1 to 3 years), there should be an auction to procure resources for a portion of the system load, similar to the BGS auctions in New Jersey. Under such an auction, LSEs serving non-retail access load would auction that load simultaneously. Bids would be offered to supply load at a price and there would be multiple rounds with bids declining through each round. The Staff of the New Jersey Board of Public Utilities has said that BGS auctions benefit consumers because (i) the lower cost suppliers supply BGS, (ii) prices reflect market forces, (iii) any risk will be borne by those that can manage it at the lowest costs, and (iv) there are more bidders, bidding aggressively, and fewer post-auction challenges.[15]

Resources to be procured on an intermediate basis (3 to 10 years) could be purchased from the NYISO capacity market, if that market is modified to provide for more forward contracting, or bilaterally through competitively procurement. Similarly, a state-sponsored competitive procurement process would be used to procure all long-term resources (10 plus years). The Commission's policy goals for reliability, technology, fuel diversity, demand response, and environmental performance should all be reflected in these procurement mandates.

The Commission's resource adequacy process would build upon the NYISO's current planning process. The NYISO currently performs such a statewide planning process in its annual Reliability Needs Assessment. But the NYISO process generally

[15] *Overview of the New Jersey Default Service Policy: Basic Generation Service*, Frank Perrotti, New Jersey Board of Public Utilities, October 5-6, 2006.

does not solve the problems that it identifies, with the exception of certain transmission-based solutions (and NRG submits such a one-sided approach to resource planning is destined to lead to inefficient outcomes). The Commission should build upon the needs identified by the NYISO process by adopting the specific solutions and resource goals for each location taking into account the long-term needs of the region and other policy objectives including environmental concerns and fuel diversity.

Local utilities would participate in the planning process, by providing data on forecasted load growth, *etc.*, and all electric corporations would be provided with equal access and input to the formation of the plan – a plan that would ultimately be publicly vetted and approved in a docketed Commission proceeding.[16] The local utility, however, would have only limited discretion in the amount or type of resources to be procured or when those resources are procured. Such decisions would be made in accordance with the Commission's resource plan.

The NYISO would work in a collaborative process with the Commission to provide the required inputs to determine the resources needed at a particular location and then the Commission would decide the type of resources to be procured based on its policy and resource goals. After the resource goals have been identified, LSEs should conduct competitive procurement processes under the oversight of the Commission in accordance with its guidelines – which as discussed herein would also be under the auspices of an independent monitor.

The primary distinction from the integrated resource process from the "days of old" is that the utilities would not decide upon the resources to be built and the local

[16] The local utility would be allowed to recover the costs associated with its participation in this process.

utilities would not build those resources. Rather, the Commission would identify the desired resources (or needed solution) and such resources would be procured from the market through competitive processes.

Question

2. Should major regulated electric utilities be required or encouraged to enter into long-term contracts, with existing generators, proposed generators, and other entities that facilitate the construction of new generation, the development of additional energy efficiency, the development of additional renewable generation resources, the re-powering of existing generation, or the relief of transmission congestion? Should such contracts be entered into for the purposes of improving fuel diversity, mitigating market power or furthering environmental policies?

Response

All LSEs in New York, not just the major regulated electric utilities, should be required to engage in a portfolio approach to procure a mix of resources, including long-term contracts, from competitive suppliers in order to ensure resource adequacy. Resources should be procured under a variety of contracts lengths, *e.g.*, one year to over ten years, so that consumers could benefit from changes in the competitive market while, at the same time, ensuring that baseload needs are met through contracts that exceed ten years.

Question

3. Should Load Serving Entities other than utilities, including the New York Power Authority and the Long Island Power Authority, be required or encouraged to enter into long-term contracts as described above? What role, if any, might entities other than Load Serving Entities play in such resource procurement?

Response

Yes. All LSEs should be required to satisfy the same portfolio requirements as the incumbent electric utilities. The New York Power Authority and the Long Island Power Authority will play a valuable role in this process, given their credit rating and

ability to enter into larger, long-term contracts. As significant LSEs, they should be required to participate in the same manner as other LSEs and to have a procurement process that reflects the process outlined in the response to Question 1. Furthermore, the power authorities are uniquely positioned to advance the public interest objectives of the state, *e.g.*, by supporting the development of new technologies and fuel diversity.

Question

4. Should resource procurement, as described in Question 1, be coordinated on a statewide basis? What regulatory oversight, if any, would be appropriate?

Response

Yes. Resource procurement must be coordinated on a state-wide basis in order to ensure that the most efficient resources are identified for New York and that New York has adequate resources for the future. In addition, general policy guidelines and goals should be developed on a statewide basis. The NYISO should continue to coordinate statewide and locational planning requirements through its annual Reliability Needs Assessments but the Commission would determine the types/amount of resources to meet the needs identified by the NYISO.

The local utility would be required to provide an annual filing demonstrating its progress in meeting the Commission's resource goals. Adjustments could then be ordered to ensure that the Commission's resource goals are met.

Question

5. What barriers, if any, exist that discourage long-term contracts for development of new electricity resources? What other barriers exist, if any, for development of new electricity resources? Should incentives beyond what exist today be created to encourage entry into long-term contracts generally, or to foster the development of any particular type of resource? How could those incentives be structured consistent with the goal of acquiring the most cost-effective resources?

Response

Barriers that discourage long-term contracts for new resources include the lack of a formalized procurement process by LSEs, and a concern that cost recovery of long-term contracts could be denied in the future. Competitive suppliers face the risk of losing load or being by-passed by competitive suppliers that do not bear a *pro rata* resource adequacy obligation. Thus, they will be less likely to voluntarily take any forward risk. In addition, the short-term nature of the existing NYISO capacity market is also a material barrier; there is no vehicle for forward procurement of generic "capacity" and transparent, forward price signals are not being sent.

Adding a forward procurement process in the NYISO capacity market would significantly reduce a barrier to forward procurement. Not only would a barrier be removed, but an efficiently designed forward capacity market would allow LSEs including competitive retail suppliers, to cover short positions, mitigate long positions, and economically and efficiently satisfy their portfolio requirements. For that reason, a forward capacity market would also promote retail access by giving competitive retail suppliers more opportunities to adjust their capacity needs in advance of meeting load.

Question

6. Should constraints be imposed that would, under certain circumstances, restrict the resource types eligible for long-term contracts, limit the length of contract terms or establish the content of other contract conditions? What steps should be taken to limit the length of contract terms or establish the content of other contract conditions? What steps should be taken to limit any anti-competitive impacts long-term contracts might create?

Response

No, the Commission should not designate the types of resources eligible for long-term contracts at this time. Significant advancements will occur in new technology, such

as carbon capture, and the Commission should not overly restrict its flexibility to take advantage of these advancements in the future. Any future issues can be addressed in annual docketed Commission proceedings. That said, where resource types have been identified as furthering the Commission's goals, there should be requests for proposals by such resource type.

There is also no reason for the Commission to establish the content of contract provisions at this time. The independent power industry and LSEs have long ago addressed the contract issues associated with competitive procurement. Contract terms will be developed that reflect the underlying type of technology including gas, clean coal, or renewable. Moreover, the contracts will be of a sufficient length to support new or repowering of existing facilities while at the same time providing mutual opportunities to address changing market conditions including fuel prices, technology changes or environmental requirements that were not anticipated in the original contract.

The processes proposed here will result in competitive outcomes and lessen the potential for anti-competitive conduct. LSEs will be given the flexibility to procure a portfolio of resources from the competitive market, using processes that draw upon the competitiveness of the market, by allowing all market participants to compete for meeting load. Such processes will prohibit inefficient outcomes, such as utility self build, and independent monitoring will foreclose anti-competitive behavior, such as the favoring affiliates of LSEs in meeting load. As to the Commission's concern with the impact on retail providers, LSEs should not be able to enter into contracts in excess of their needs, when the Commission approves an integrated resource plan on an annual

basis – based on the NYISO's projection of need – in docketed Commission proceedings open to all market participants.

Question

7. Should restrictions or guidelines be imposed on the resource procurement practices employed in selecting resources that would be acquired under the long-term procurement?

Response

Yes. Resources procured on a long-term basis must be consistent with the (i) statewide resource procurement plan, (ii) state mandated requirement to procure a portfolio of assets, and (iii) annual Commission filings by the LSEs. Moreover, long-term resources must be procured under a competitive procurement process in which all market participants can participate on a level playing field. At a minimum, such a level playing field will require that the competitive procurement process be open to all suppliers, with (i) rules transparent to all those participating, (ii) decisions based on clearly established criteria, and (iii) independent monitoring in which reports are provided by the market monitor directly to the Commission.

Question

8. How should long-term contract costs be recovered from customers, and should different recovery mechanisms be developed based on the type of resource that is acquired under the contract, the length of the contract, or other factors?

Response

Different recovery mechanisms could be utilized depending upon the underlying term of the contract, the technology (fuel type) employed, and the nature of the reliability problem solved, or other policy objectives. The key, of course, will be that LSEs are assured that costs will be recovered.

In NRG's view, near-term and intermediate-term procurement costs should be collected by the specific LSEs from its contracted or assigned customers. Long-term procurement in excess of ten years should be collected from all customers on a state-wide basis recognizing that all the state's customers benefit from the investment. Long-term investments in new generation are akin to long-term investments in transmission: they are infrastructure within the state that will ensure that all customers of the state have adequate resources to provide for safe and reliable power delivery. In addition, such long-term investments can be used to advance other important policy objectives, *e.g.*, reducing air emissions or utilizing new innovative technologies, the cost of which are appropriately shared by all consumers.

Question

9. What procedures should be followed in reviewing a long-term contract and in establishing its qualification for cost recovery? Under what circumstances, if any, should recovery of contract costs be pre-approved?

Response

NRG supports the pre-approval of intermediate-term or long-term contracts (*i.e.*, 3 years or greater) in order to give market participants more certainty as to cost recovery. Such pre-approval, in combination with the movement to a forward capacity market, will allow market participants the ability to mitigate the price risk associated with long-term contracts. California provides for such pre-approval and pre-approval will significantly reduce the uncertainty surrounding future cost recovery. [17]

[17] *Order Instituting Rulemaking to Implement the Commission's Procurement Incentive Framework and to Examine the Integration of Greenhouse Gas Emissions Standards into Procurement Policies*, Decision 07-01-039; Rulemaking 06-04-009, California Public Utilities Commission, April 13, 2006 at fn. 189 (stating that the three major utilities currently bring all power purchase contracts with terms of five years or longer before the Commission for review and pre-approval by filing either an advice letter or an application).

Question

10. Can long-term contracts (energy and/or capacity) be harmonized with existing NYISO rules for energy and capacity markets, and with potential NYISO forward capacity markets? If so, how can they best be harmonized? What changes to NYISO market rules, if any, would be necessary or appropriate for the purpose of accommodating long-term contracts? Should NYISO market rules recognize or ameliorate the impact, if any, of long-term contracting on the NYISO capacity prices paid existing generators, or if amelioration is appropriate, should it be accomplished through non-NYISO mechanisms?

Response

Yes, the current NYISO markets for energy and capacity markets can be harmonized with new bilateral contracts procured on a competitive basis. That said, market rules must be developed to prevent new capacity that is constructed with an out-of-market cost recovery mechanism (*i.e.*, utility rate-base or bilateral contract) from artificially depressing prices in the NYISO capacity market. Resources procured on a competitive basis should be reflected in the market at the price representative of its true cost, not effectively as a price taker as is currently the case.[18] That price could be based upon (i) the new facility's long-run marginal cost (calculated in the same manner as the Cost of New Entry (CONE) as developed by the NYISO), (ii) the actual costs of the contract to the LSE, or (iii) some proxy price based upon CONE.

[18] As FERC said, "[w]hen loads own new resources they may have an interest in depressing the auction [*i.e.*, capacity auction] price, since doing so could reduce the prices they must pay for existing capacity procured in the auction." *Devon Power LLC*, 115 FERC ¶ 61,340 at P 113 (2006).

Moreover, needed NYISO changes, such as a forward capacity market ("FCM"),[19] can be harmonized with the movement to more bilateral long-term contracts.[20] Bilateral contracts and a FCM are not mutually exclusive. FERC has recognized that forward capacity markets will not "lessen parties' motivation to purchase more of their forward-looking capacity needs through bilateral contracts . . ."[21] As discussed, rather, an improved NYISO capacity market can be another vehicle, outside of competitive procurement, to procure capacity on a forward basis (3-10 years). Moreover, a well-designed FCM with transparent pricing should send the correct price signal for the bilateral contracting proposed here. To the extent that the LSEs do acquire capacity on a forward basis through bilateral arrangements, such capacity should be integrated into the FCM and thus will operate as a hedge against the FCM clearing price. Additionally, because of changing load sizes, long lead times for new generation, and the "bulkiness" of new generation, the FCM capacity market will facilitate the Commission's oversight of the LSEs by providing a mechanism not only to hedge, but to cover short positions, mitigate long positions, and otherwise balance resource adequacy requirements with load share.

---

[19] NRG supports a forward capacity market similar to that approved in neighboring ISO-NE. There, capacity necessary to meet the forward reserve requirement is procured in a forward auction at least four years in advance. For example, an auction conducted in 2008 would result in physical delivery for 2012.

[20] The Commission will also need to support changes at FERC that allow Divested Generation Owners in New York City, such as NRG, to enter into bilateral contracts.

[21] *PJM Interconnection, LLC*, 115 FERC ¶ 61,079 at P 70 (2006).

SUMMARY

NRG supports the Commission's goal of more bilateral contracts, including long-term contracts. As the Commission decides this phase, it should:

> (i) identify the resources it wants procured and then draw upon the expertise and efficiencies of the market to build those resources through competitive procurement;
>
> (ii) avoid regulatory intervention that disrupts market outcomes; and
>
> (iii) support needed changes in NYISO capacity markets.

Respectfully submitted,

THE NRG COMPANIES

Christopher C. O'Hara
Assistant General Counsel - Regulatory
NRG Energy, Inc.
211 Carnegie Center
Princeton, NJ 08540
609-524-4926
chris.ohara@nrgenergy.com

June 5, 2007