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June 25, 2007

Hon. Jaclyn A. Brillling, Secretary
Public Service Commission of the State of New York
Three Empire State Plaza
Albany, New York 12223-1350

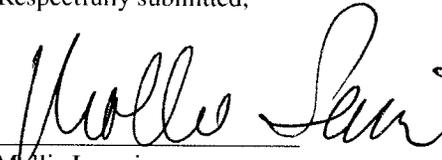
Subject: Case 06-M-1017; Proceeding on Motion of the Commission as to the Policies,
Practices and Procedures for Utility Commodity Supply Service to Residential and
Small Commercial and Industrial Customers

Dear Secretary Brillling:

The New York Independent System Operator (NYISO) hereby submits Reply Comments in the above docket.

The NYISO will electronically serve all active parties in this proceeding with a copy of this letter and its Reply Comments.

Respectfully submitted,



Mollie Lampi
Assistant General Counsel
New York Independent System Operator, Inc.
10 Krey Boulevard
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cc. Active Party List in Case 06-M-1017

State of New York
Public Service Commission 2007 JUN 25 PM 4: 19

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

Reply Comments of the
New York Independent System Operator, Inc.

The New York Independent System Operator, Inc. (“NYISO”) provided Initial Comments in this docket on June 5, 2007 addressing the topics of integrated resource planning and the appropriate use of long term contracts.¹ NYISO recommended that resource planning by the Public Service Commission (“Commission”): 1) build upon, and not duplicate, the NYISO’s established Comprehensive Reliability Planning Process (“CRPP”), as well as its evolving economic planning process; 2) focus on establishing policy goals such as reduced emissions, increased use of renewable generation, and consistency with national strategic energy goals; and 3) work towards an energy policy for all sectors, not just the electric sector.²

The NYISO agreed that economic long term contracts can provide a useful hedge against price volatility, a future revenue stream for financing opportunities, and can mitigate market power. The NYISO expressed its concern, however, that uneconomic long term contracts, supported by regulatory cost recovery, could undermine private

¹The NYISO is the not-for-profit corporation established in 1999 to facilitate the restructuring of New York State’s electric industry. The NYISO is charged with administering New York State’s wholesale electricity markets and operating the State’s high voltage electric transmission system.

²*Responses of the New York Independent System Operator, Inc. to the Commission’s April 19, 2007. Request for Responses, (“NYISO Comments”).*

investment and, as a result, adversely impact reliability. The NYISO recommended that contracts that are not economically-driven should be used, if at all, to pursue electricity supply characteristics or desired energy or environmental public policy outcomes that are not priced in existing NYISO markets. The preferred means of implementing the State's goals, however, should be through market mechanisms.

The number of responsive filings in this docket indicates that the Commission has raised important policy issues. The substance of the initial responses contains several important threads. Perhaps the most important of these is a widespread consensus that neither the planning nor the long term contracts policies ultimately adopted by the Commission should be allowed to undermine New York's progress in introducing competition into the State's electric industry.³

Most of the filings also agree that some additional form of long-term contracting will be desirable to foster resource development in the State. Many, however, echoed NYISO's concerns that long-term contracts not be used indiscriminately to implement new State energy policy. Many advise using long-term contracts with caution, citing such concerns as the shift in risk from market players to ratepayers who may bear the

³For instance, Consolidated Edison advised:

New York State, the Commission, and the NYISO face significant energy challenges as the industry seeks to address the need for secure and reliable supply, global warming, and maintaining a vibrant economy. The Company encourages the Commission to continue to explore solutions to these challenges consistent with the workings of competitive markets.

Initial Comments of Consolidated Edison Company of New York, Inc. and Orange And Rockland Utilities, Inc. Concerning Long-Term Contracts, p. 2.

See also: Initial Comments of Independent Power Producers of New York, Inc., p. 4.

costs of uneconomic investments, and the risk that uneconomic long-term contracts backed by regulated cost recovery would drive out private power plant investment.⁴

Some commenters noted that regulated Load Serving Entities (“LSEs”) may not pursue long-term contracts because of their fear of future disallowed cost recovery for “imprudent” investments. The imprudence concern is a real one and should be addressed by the Commission. While, under New York law, the Commission cannot legally bind future Commissions in this respect, it can and should provide reasonable assurances to the regulated LSEs.

One approach to providing such comfort would be the issuance of an order establishing a de facto “safe harbor” for such contracts. The safe harbor would consist of a set of criteria with which a contract would have to comply to come within it, and the criteria would relate to current competitive market conditions. Such criteria should be developed on the record in this proceeding. While compliance with such safe harbor criteria would not be absolute insulation against second guessing in the form of future imprudence disallowances, that compliance would provide a strong legal defense for the LSE.

On the issue of resource planning, many filings agreed that additional broad based energy planning for the State would be desirable. Most advised that such a planning effort should be well integrated with NYISO’s CRPP.⁵

⁴*See: Comments Of Constellation Energy Commodities Group, Inc. and Constellation New Energy, Inc.*, p. 6; IPPNY, p. 4; *Comments of the Consumer Protection Board* (“CPB Comments”), pp. 14-15.

⁵The Consumer Protection Board advised:

[T]hat the new IRP be coordinated with the NYISO’s planning process, thereby preserving the strengths of each. . . . A new IRP can build on the NYISO’s needs assessment by identifying electric system needs for public policy purposes and can consider solutions that address all available resources and objectives including long- and

Staff of the Department of Public Service (“Staff”), on the other hand, proposed a new process, the Dynamic Electric Planning Process (“DEPP”) that seemingly would duplicate, if not replace, the CRPP as a process for identifying necessary new electric resources.⁶ The NYISO is concerned that Staff’s proposal would duplicate efforts and has the potential for producing inconsistent determinations of needed resources.

The NYISO urges the Commission to adopt a planning process that does not duplicate or recast the NYISO’s CRPP but rather focuses on establishing policy goals, such as reduced emissions, increased use of renewable generation or consistency with national strategic energy goals. In this way, the State can integrate energy policy implementation with the transparent planning and market-driven procurement process of both the CRPP and other market-based initiatives.⁷

The NYISO also recommends that the Commission closely appraise the development and approval by FERC of enhanced NYISO planning activities pursuant to FERC Order 890 before undertaking a new planning regime of its own.⁸ For example,

short-term public policy goals, such as achieving environmental targets. The two processes are complementary, and should be fully coordinated.
CPB Comments, p. 8

⁶Staff describes its recommended approach as:

[A] statewide analysis . . . conducted in a collaborative effort involving utilities and other interested parties [to produce] a draft plan . . . by staff to the Commission for its review and approval. . . . [Information] assemble[d] for the CRP and the recommendations it makes could be easily transferred to the DEPP process, which would be a broader approach focused on more than the minimum infrastructure needed to safely preserve adequate service.

Staff Initial Comments, p. 7

⁷NYISO also notes the need, expressed in its recently released *Power Trends 2007*, for New York’s state agencies to coordinate those multiple regulatory efforts that are directed to the power sector with power suppliers and the NYISO:

[T]o find solutions that also maintain grid reliability, work within the existing electric market structure and provide the transparency and certainty needed for future investment.
p. 4.

⁸118 FERC 61,119 (2007)

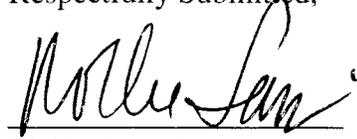
Order 890 will require the NYISO to expand its economic planning processes pursuant to the principles set forth in that Order. It would make sense to wait for FERC action in that regard. This approach will allow an orderly progression of planning procedures within the State, and avoid potential conflicts or burdensome additional regulatory requirements for the market.

Finally, the NYISO agrees with most of the filings, which note that it is important for the Commission to avoid adopting policies concerning long-term contracts that, by design or by default, could serve to manipulate the State's markets for installed capacity ("ICAP") in an attempt to reduce electricity prices. In addition to undermining faith in the State's markets, such manipulation would accomplish little on behalf of consumers, even in the very near term. The NYISO's total ICAP markets account for only about 10% of the cost of electricity traded in its markets. By far the largest component of the price of electricity to consumers is the cost of fuels used to generate electricity. If the Commission's goal is to control costs to retail customers, fuel is where the Commission's attention should turn.

This Commission has already moved to mitigate the cost of fuel through the success of its RPS program, but it would do well to consider ways to achieve further fuel diversity and to support the introduction of technologies that permit the consumption of less expensive fuels for power generation without environmental degradation.

The NYISO appreciates this opportunity to comment on the initial responses received by the Commission and looks forward to working with the Commission and interested stakeholders to develop and implement the energy and environmental policies determined as necessary to guide future energy procurement decisions.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Mollie Lampi", written over a horizontal line.

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