

STATE OF NEW YORK

PUBLIC SERVICE COMMISSION

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

Case 06-M-1017

COMMENTS OF THE

NEW YORK POWER AUTHORITY

The New York Power Authority ("NYPA" or "Authority") appreciates the opportunity to comment on Phase II of the above-referenced proceeding which touches on a host of significant energy-related issues and policies within the State of New York. The Authority is a revenue financed public authority with statutory authority to own and operate generation and bulk transmission in New York. NYPA serves substantial wholesale and end-user load and while it has no franchise obligation to serve, it has contractual obligations to meet the needs of various customers segments in the State, including the full requirements of certain municipal and rural electric cooperative electric systems and the entire non-federal governmental load in the City of New York and Westchester County. While NYPA's rates, services and practices relating to generation, transmission and distribution of power are generally not subject to the

provisions of the Public Service Law¹ and the jurisdiction of the Department of Public Service², the Authority is a major instrument of New York State energy policy and its participation will assist the Commission as it addresses the important issues raised in this proceeding.

I. BACKGROUND

On April 19, 2007, the New York Public Service Commission ("Commission") issued its Order Requiring Development of Utility-Specific Guidelines for Electric Commodity Supply Portfolios and Instituting a Phase II to Address Longer-Term Issues ("Order"). In the Order, the Commission stated that "an examination will be undertaken of the use of long term contracts and other means to facilitate the entry of new resources that would further public policy goals of the State regarding electric infrastructure." Order, p. 36. In furtherance of this examination, the Commission listed a series of questions that interested parties are invited to answer. NYPA submits the following answers.

II. RESPONSES TO QUESTIONS POSED

1. Should there be a statewide integrated resource planning process to examine long term electricity resource needs? To

¹ Except with respect to the siting of transmission facilities under Article VII of the Public Service Law

² Public Authorities Law, § 1014.

what extent or in what manner would a statewide integrated resource planning process build on or parallel existing reliability planning processes? 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 that 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: NYPA believes that integrated resource planning for long-term electricity resource needs is a desirable statewide policy goal. However, so as not to supplant existing reliability planning processes conducted under the aegis of the NYISO, in addition to reliability considerations, the Commission should focus on how integrated resource planning can be used to advance the energy policy goals of the State as they may evolve over time including, for example, fuel diversity, energy efficiency, climate change objectives and affordable power for consumers and businesses. The plan should have a long horizon(at least 10 years), recognizing the long lead times necessary to place new infrastructure in service and the time required to recover costs. The challenge is to identify the State's integrated resource planning goals and establish appropriate incentives or regulatory measures to attain the goals that are the least disruptive to the competitive market. One way the State could minimize adverse effects on the

competitive markets is by coordinating any new integrated resource planning with the current NYISO comprehensive planning process.

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: NYPA believes that encouraging major regulated electric utilities to voluntarily enter into long-term contracts is one way to facilitate the financing necessary to achieve the above supply and demand objectives. The use of long-term contracts with regulated utilities will have to be reconciled with the State's desire to have a robust retail access market. Such contracts are appropriate when the competitive market fails to achieve public policy goals. Changes to the NYISO market, such as the creation of a forward capacity market, could also be a means of obtaining new resources.

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: The Commission has no authority to require NYPA to enter into long-term contracts. Nonetheless, NYPA has in the past voluntarily entered into long-term contracts to meet the needs of its load. For example, NYPA recently selected Hudson Transmission Partners and FPL Energy and is currently engaged in negotiations with them to supply 500 MW of UCAP for NYPA's New York City governmental customers, who will pay for the capacity. It is important to note, however, that NYPA requires assurance of cost recovery before entering into any such arrangements, consistent with its bond covenants and statutory requirements. A requirement for non-utility LSE's to enter into long term contracts is likely not a viable option to achieve public policy goals absent long-term contracts between ultimate consumers and such LSE's sufficient to support payments to project developers.

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

Response: Statewide resource procurement in limited instances can be effective. An example is the New York State Energy and Research Development Authority's purchase of renewable attributes on a statewide basis under the Renewable Portfolio Standard.

5. What barriers, if any, exist that discourage long-term contracts for development of new electricity resources? What other barriers exist, if any, for the 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: NYPA believes that the lack of a cost recovery mechanism most likely acts as a barrier discouraging Load Serving Entities from entering into long-term contracts. In the case of ESCOs and regulated utilities, the risk of losing customers to other suppliers is a significant disincentive to buy output under long-term contracts. NYPA has the same disincentive absent cost recovery agreements with its customers or some other form of guaranteed cost recovery. The problem is exacerbated in the case of investing in new technology such as renewable energy and "clean coal" facilities that have high development costs and which may be priced above the market at least at the outset of a contract. The Commission should explore approaches to reduce the financial risk exposure associated with customer shifts from one LSE to another.

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 any anti-competitive impacts long-term contracts might create?

Response: Long-term contract restrictions could be tied to the public policy goal that drives the agreement. For example, if the State declared a policy goal of increasing fuel diversity, long-term contracts might be appropriate for sources that meet that goal but might be priced above market (e.g., renewables and clean coal), but not for conventional market-proven technologies (like combined cycle gas-fired plants) that are competitively priced and ought to succeed in the market if the market design is correct. Such restrictions would help minimize any adverse impact these agreements would have on the competitive retail and wholesale markets. Because achieving public policy goals may likely result in above market costs it is important that such resources are procured through competitive solicitation to ensure that above market impacts are as low as possible.

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

Response: Resource procurement practices need to be fair and open and based on clearly articulated selection criteria in order to ensure equality amongst all qualified bidders. The scoring and selection process should also be documented in the

interest of fairness, while protecting confidential business information from disclosure. Consideration could be given to requiring oversight of the process by an independent entity that can confirm compliance with the process and selection criteria.

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: As a general proposition, the beneficiaries of the long-term contracts ought to contribute towards cost recovery. It is conceivable, therefore that the cost of resources with a statewide benefit could be recovered statewide through a surcharge on all customers (akin to the NYISO's "uplift"), but that the cost of resources with a narrower regional benefit would be recovered from the consumers served by a single utility, or even in a region served by one utility.

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: As noted above, NYPA needs guaranteed cost recovery in the form of a binding agreement to fulfill its bond covenant and statutory requirements. It seems appropriate that regulated utilities should have the same assurances if they are asked to

enter into long-term contracts in furtherance of an agreed-upon State energy policy. This would appear to require pre-approval of cost recovery by the Commission. There remains the question of how the Commission can bind future Commissions and thus assure the regulated utility of full cost recovery.

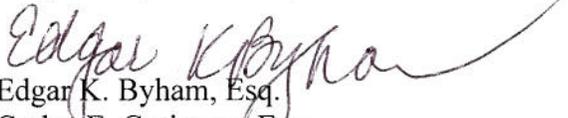
10. Can long-term contracts (energy and/or capacity) be harmonized with existing NYISO rules for energy and capacity markets, and with potential NYISO forward capacity markets? If so, how can they best be harmonized? What changes to NYISO market rules, if any, would be necessary or appropriate for the 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: NYPA does not perceive an inconsistency between existing NYISO rules for energy and capacity markets and long-term contracts since NYISO rules accommodate long-term bilateral contracts. The issue is how such long-term contracts can be reconciled with the expectations of existing merchant suppliers of capacity, energy and ancillary services.

V. Conclusion

WHEREFORE, the New York Power Authority respectfully requests that the Commission consider the comments herein.

Respectfully submitted,


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Dated: White Plains, New York
June 5, 2007