

June 5, 2007

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

Re: 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 (Phase II)

Dear Secretary:

In response 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 and effective April 19, 2007 in the above-referenced proceeding, the New York State Energy Research and Development Authority ("NYSERDA") respectfully submits the following comments:

1. Question: Should there be a statewide integrated resource planning 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 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?

Comment: The State should require utilities and retail service providers to engage in coordinated statewide energy resource supply and reliability planning. NYSERDA recommends a statewide planning process similar to that conducted by the former New

York State Energy Planning Board under Article 6 of the Energy Law. Ensuring that electricity customers are served through the most economical combination of existing and new supply and demand-side resources is vital for a reliable and reasonably priced energy system.

Any integrated resource planning process required by the State, either through legislation or regulation, should complement and support the existing New York Independent System Operator's (NYISO) reliability planning process. While the NYISO reliability planning process focuses on electricity resources and does not factor in economic considerations, the statewide coordinated planning process should include economic and environmental considerations as well.

The statewide coordinated planning process should include all fuels and sectors, including fossil and renewable resources, and energy efficiency and demand management resources. The planning horizon should be at least ten years, with separate strategies developed for the mid-term (three to five years), and the longer term (ten years). The utilities and retail service providers planning efforts should be required to provide for the provision of service through a least-cost combination of supply and demand-side resources using long-term fixed and variable-price contracts, spot market purchases, and futures and hedging contract instruments, as appropriate.

2. Question: 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?

Comment: Entry into long-term contracts should be at the discretion of utilities and retail service providers, given the information and knowledge generated through the statewide, and utility and retail service provider planning processes. No entity should be required through regulation or legislation to enter into long-term contracts for power purchases or demand-side resource procurement – such action should not be prescribed in advance but should be the result of an integrated resource planning process. Ultimately, utilities and retail service providers must plan for meeting customer demands responsibly, reliably and economically – this cannot and should not be predetermined.

Entering into long-term contracts for the purpose of furthering public policy goals, such as facilitating the construction of new generation, developing additional energy efficiency, relieving transmission congestion, etc. presents substantially different

considerations than long-term hedging contracts, which are entered into to ameliorate price volatility, and should be treated differently. Price signals are the prime driver of conventional hedging contracts. However, they are virtually useless when the intention is to accomplish broader policy goals.

Electric utilities and retail service providers alike should be encouraged to enter into long-term contracts and to undertake such actions as would meet the State's needs, as deemed appropriate by the company. Such contracts, if entered into, should be for the purposes of supporting the company's service obligations and the policies and goals of a statewide energy plan.

3. Question: Should Load Serving Entities other than utilities, including the New York Power Authority and 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?

Comment: Utilities and retail service providers should be dealt with fairly and consistently, as referenced in response to the earlier two questions, regardless of whether they are State authorities, investor-owned utilities, municipal electric systems, or private or not-for-profit retail service providers.

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

Comment: Yes, resource procurement, as described in Question 1, should be coordinated on a statewide basis. The level of regulatory oversight should be designed to ensure the consistent application of planning principles, resource needs determination, statewide demand and price forecasts, statewide planning goals and policy objectives, and related planning and policy parameters, while protecting the confidentiality of proprietary contracting arrangements.

5. Question: 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?

Comment: The most important barrier to long-term contracting is regulatory uncertainty with respect to recovery of costs incurred, and costs to be incurred, associated with the prudence of long-term contracts. The most significant risk is posed by after-the-fact

prudence reviews and determinations of imprudence and, hence, the threat of under-recovery of legitimate costs incurred when market conditions might have warranted entering into long-term contracts. If utilities and retail service providers are required by regulation or legislation to enter into long-term hedging agreements as part of a statewide coordinated planning effort, pre-contract prudence approvals should be provided.

6. Question: 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?

Comment: Considerations with respect to contract terms and the like should be addressed as part of the statewide coordinated comprehensive energy planning process. Policy goals and objectives determined through an open, deliberative, and collaborative statewide planning process should provide the direction and guidance necessary in determining whether constraints should be imposed.

7. Question: 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?

Comment: If imposed, such restrictions should only be determined through the open, deliberative, and collaborative statewide planning process described above.

8. Question: 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?

Comment: Costs of long-term contracts should be expensed and flowed through to ratepayers as costs are incurred. Costs of long-term contracts required to be entered into by regulators or legislators should be recovered either through expensing or as an investment (recovered over time with a return on investment) when such contracts are entered into to achieve statewide policy goals and objectives. Costs of such contracts should be fully recovered, particularly when economic judgment by company management would not have otherwise recommended entering into such long-term contracts.

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

Comment: Regulators should apply the same principles in reviewing long-term contracts that they currently apply — no special rules should apply unless regulators require companies to enter into such long-term contracts, in which case, cost recovery should be guaranteed and without question.

10. Question: 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?

Comment: Companies are free to enter into long-term contracts under current market conditions and rules as they deem appropriate. No special rules are required.

11. Question: Are there any other creative solutions that might be considered to address the issues identified herein?

NYSERDA has no comment as to Question 11 at this time.

Copies of this document have been served on all active parties, by electronic mail.

Respectfully submitted,

s/s

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