PUBLIC SERVICE COMMISSION
OF THE STATE OF NEW YORK

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.	Case 06-M-1017

PHASE II REPLY COMMENTS ON BEHALF OF CENTRAL HUDSON GAS & ELECTRIC CORPORATION

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Preliminary Statement

Based on the documents served upon Central Hudson Gas & Electric Corporation ("Central Hudson"), it appears that Phase II Initial Comments were filed by twenty-seven parties on or about June 5, 2007. Central Hudson hereby replies to those comments.

Following the Introduction, the first part of these reply comments addresses some of the key decisional considerations. The second part addresses the parties' initial comments on some of the Commission's eleven questions. The Commission's attention is also respectfully invited to the comprehensive initial comments submitted by Central Hudson; those comments will not be significantly repeated in these reply comments.

Introduction

Central Hudson believes that Phase II is one of the most important cases of the last decade, because it will determine whether the Commission will change the largely passive posture it had taken over the past several years relative to developing the New York energy supply picture.

Central Hudson believes that the State, acting through the Commission, has both an opportunity and the responsibility to articulate a clear and compelling assessment of the State's future energy picture, whether or not the NYISO or any other entity may also engage in energy planning. The State's and the Commission's responsibilities do not merely authorize the Commission to develop the best statewide IRP that is possible, they require it. If we are to achieve economic growth beyond the New York City metropolitan area, the State must exert leadership along every possible avenue.

Central Hudson therefore believes that the Commission should promptly develop a robust statewide IRP.[1] As New York

[1] The City of New York ("City") has expressed the basic objectives in a fashion that Central Hudson agrees with: "The planning process should be designed to identify the portfolio of generation, transmission and demand-side resource options that will best maintain reliability minimize costs, mitigate price volatility, improve environmental and health quality, and advance other public policy goals. The planning horizon should be at least ten years." It should be noted, however, that the City has a Zone J-centric view of planning that Central Hudson does not entirely share. While Central Hudson agrees that Zone J is the most difficult zone to supply, from a number of perspectives, Central Hudson believes that a comprehensive statewide IRP should clearly be the first planning step. These reply comments explain the reasons for that view.

State is both an economic entity and a single, statewide control area, a statewide analysis is necessary. A robust IRP is needed to provide a comprehensive, rational and compelling assessment of future power needs, both supply-side (including transmission and generation) and demand-side (including energy efficiency and load control options).[2] The statewide IRP will include analyses demonstrating that reliability criteria will be maintained (or exceeded) throughout the time period studied in the IRP.

The intention should be to permit the State to lead, through moving beyond theories, generalized concepts or planning platitudes[3] to an optimum statewide "Plan," by means of a robust statewide IRP that values all relevant considerations, and integrates all potential resources, on a consistent and rigorous basis. That kind of plan should produce action from regulated

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[2] A number of parties recognize this reality. For example, NYPA (NYPA IC at 3) states that NYPA believes that integrated resource planning for long-term electricity resource needs is a desirable policy goal. CPB (CPB IC at 8-9) states: "For the State to successfully pursue public policy objectives, such as increased use of renewable resources, reduced environmental impacts, greater use of cleaner energy and enhanced fuel diversity, some form of IRP is necessary. This is particularly important in view of the Commission's recent decision to commence a proceeding on an Energy Efficiency Portfolio Standard based on its finding that a 15% reduction in New York's electricity usage by 2015 is in the public interest. This objective cannot be achieved if left to the NYISO's planning process."

[3] Vague and generalized "specific strategic goals" (DPS Staff IC at 2) are insufficient. We need a resource-specific Plan based upon a rigorous quantitative evaluation of all supply-side and demand-side alternatives. A "study process" (RESA/SCMC (IC at 8 et seq.) is not needed; a rigorous statewide IRP <u>is</u> needed. Likewise, the "comprehensive three-part process" proposed by Hess (Hess IC at 4) is not what is needed. Hess' three-part process is oriented towards supply-side resources and, by failing to refer to demand-side resources, seemingly excludes energy efficiency and other key demand-side resources.

utilities and other market participants alike and lead to transmission, generation and demand-side solutions.

Although the conclusions of the statewide IRP cannot be known until the analyses are complete, virtually every party presumes that a statewide IRP will lead to future resource "need" conclusions differing from those expressed in the NYISO's Reliability Needs Assessment ("RNA").[4] A number of parties find this potential difference to be threatening; Central Hudson does not.

This potential for different assessments leads, however to a threshold question: Namely, whether the possibility that an IRP will reach different conclusions from those of the NYISO requires that the statewide IRP be abandoned or constrained before it is even begun? Central Hudson thinks not.

If a robust statewide IRP, by articulating a comprehensive assessment of the energy picture, reaches new and different conclusions, Central Hudson anticipates that the NYISO and other market participants will respond rationally and constructively. However, no matter whether the completed IRP reflects minor or major differences from the present NYISO RNA study results, or none at all, and no matter whether the NYISO and other parties

[4] The NYISO issues a Reliability Needs Assessment ("RNA") as part of what the NYISO calls a "Comprehensive Reliability Planning Process" or "CRPP." Since the NYISO (IC at 11) acknowledges in its initial comments that its planning does not include a number of public policy interests, such as environmental externalities, the term "comprehensive" is correctly understood as modifying "reliability," and not as modifying "planning."

respond constructively or not, if the IRP is conducted properly, it will speak authoritatively by virtue of the power of the analyses conducted.

A robust statewide IRP is strong medicine. If developed properly, as Central Hudson anticipates, the statewide IRP will itself be authoritative, and will tend to lead to consensus, solidify the potential for future energy project development, and reduce the potential for conflict. Moreover, nothing in the nature of a robust statewide IRP carries the implication, as apparently feared by some commenting parties, that steps taken subsequently to implement the results of the IRP will necessarily impact competitive markets in ways that reduce the benefits of competition.

Taking the lead to complete a robust statewide IRP is not a matter of denigrating competition, putting the benefits of competition at risk,[5] or slighting the NYISO as some suggest.[6]

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[5] The Commission has shown solicitude for market factors in the development of its RPS Program and in the Phase II Order in this case (at 29 et seq.). 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 (Issued and Effective April 19, 2007) ("Phase II Order").

[6] Constellation (IC at 7) suggests that adoption of an IRP "could be perceived as a statement by the Commission that electric industry restructuring has failed." Constellation goes on to state, referring to the failure of competition that would allegedly be implied, that "[n]othing could be further from the truth." However, competition has failed; it has not failed to produce any benefits, it has failed to produce all the benefits it might. As a result, the Commission's adoption of an IRP will not be seen as a "statement" that competition has failed, but a statement that the Commission is seeking to protect the public interest through maximizing the benefits. Similarly, it is not credible for Direct Energy to pretend that the Commission's recognition that environmental, fuel security and other public

It is simply taking sensible and proper action to address important public issues not currently being addressed. People and businesses in the State, the NYISO, and all other interested parties will be benefitted by the completion of a robust statewide IRP.

Once the statewide IRP is completed, utilities should complete their own individual resource plans, not as clones of the statewide IRP, but reflecting similar integrated supply-side and demand-side evaluations to those embodied in the statewide IRP, applied to each utility's individual circumstances.[7] Utilities should evaluate acquiring any required supply-side resources through short, medium and long-term market purchases and through potential utility construction of generation. The individual utility resource plans, a form of portfolio management, should be reviewed and approved by the Commission.

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policy concerns are not being reflected does not constitute identification of what Direct Energy (IC at 2) calls "obstacles to effective competition." After a decade of experience, it is time for the State to address the situation through a robust statewide IRP and whatever else is required.

[7] Central Hudson explained the way it envisions that individual utility IRPs would be developed and would relate to the statewide IRP in its initial comments (IC at 25-30) and will not repeat those points here. Some parties oppose both a statewide IRP and individual utility IRPs (e.g., Con Ed IC at 5, 7), a position that would deny the benefits to be derived from reflecting the values of environmental protection, fuel security and diversity and other public policy considerations in both statewide and more local planning efforts. As explained previously by Central Hudson (IC at 32), "major public policy issues" (Con Ed IC at 7) would tend to affect the development of the statewide IRP. The individual utility resource plans would, however, incorporate similar "public policy factors" into individual utility planning so as to facilitate implementation of the statewide assessment and Plan, to the extent appropriate in light of the individual utility's circumstances.

To the extent that long-term generation resources are called for in the utility's resource plan, the Commission should pre-approve either the long-term contract (in the case of a purchase) or long-term utility rate relief to support the construction (in the case of a utility-build facility). The approvals should be of equivalent reliability and enforceability by the generator against the counter-party utility and by the utility against the Commission.

I. KEY DECISIONAL CONSIDERATIONS

A. Is There a Present Need for State Leadership?

It is obvious that the planning conducted by the NYISO is limited. The NYISO admits it; explicitly acknowledging that its markets do not include the "public policy goal" of "reducing environmental externalities," and that other public policy goals are similarly excluded.[8] In addition, while the NYISO does currently conduct a reliability-driven planning process, that process is admittedly at some risk of foundering.[9] Thus, it is clear that the competitive markets are failing to produce new resources that address environmental, energy security and other

[8] NYISO IC at 11: "Long-term, uneconomic contracting is only in the public interest if it is achieving a public policy goal that is not priced in the NYISO markets such as reducing environmental externalities." See also, KeySpan IC at 3: "The Commission should recognize, however, that the existing wholesale electricity markets are not structured to produce certain public policy goals."

[9] See, May 15, 2007 letter from Dr. Henry Chao of the NYISO, stating that the NYISO "cannot determine with certainty that, at this time, sufficient market-based solutions will qualify to meet the Reliability Needs identified in the RNA. The NYISO encourages additional market solutions to be submitted...."

vital concerns.[10] Furthermore, over the last decade, the only plants built were gas-fired combined cycle facilities, and that has produced a substantial over-reliance[11] on natural gas as a fuel.[12] In addition, the existing market mechanisms have not been successful in providing incentives that have led to construction of major new transmission investments to alleviate congestion.[13] The present, highly unsatisfactory situation demands leadership by the State at this time.[14]

Nonetheless, a number of parties, apparently fearing actions that the Commission might take[15] upon seeing the results of a robust statewide IRP,[16] extol the benefits of competitive

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[10] Central Hudson IC at 6-8.

[11] MI's table (IC at 10) presents fuel use by generating capacity. The picture is markedly different in terms of production, where almost 40% of the kWh are produced from natural gas. Accordingly, MI's contention that "New York's fuel mix already is very diverse" is simply wrong. Moreover, the trend of increasing use of natural gas firing for new generation, if left unchecked, will lead to increasing predominance of gas firing as existing plants are retired and replaced.

[12] Central Hudson IC at 6-7. Even generators agree that the State's generation portfolio is over weighted with gas-fired plants. See New York Suppliers ("Suppliers") (IC at 17), agreeing that markets are "tilted" towards natural gas.

[13] One potential transmission project that may alleviate congestion to some degree is the New York Regional Interconnection project, but it is currently in the siting process.

[14] Central Hudson IC at 21.

[15] As FPL Energy phrases it (IC at 5): "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." IPPNY (IC at 7) asserts that: "a planning process that requires electric utilities to select resources for reasons other than meeting reliability needs, not otherwise satisfied by the competitive markets at the lowest cost, will do more harm than good...."

[16] See, e.g., Con Ed Solutions IC (at 1-2): "the Commission could be jeopardizing the ability of market solutions to satisfy the required resource needs and potentially usurp the existing reliability backstop mechanism."

markets generally, and the NYISO's markets specifically.[17] Those compliments are offered for the purpose of suggesting that the existence of benefits means there is either no reason for Commission action,[18] or, if reason for Commission action exists, it exists for only the most limited action,[19] and any action taken should be considerate of, in the sense of deferential or subservient to,[20] or constrained by,[21] the NYISO's market structures and institutions.[22]

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[17] See, e.g., Suppliers IC at 10-13; KeySpan Corporation (KeySpan") IC at 1-2; IPPNY IC at 3, 10-11 and 13; FPL Energy IC *passim*.

[18] See, e.g., Suppliers IC at 14: "Thus, largely with the exception of the need to better address emerging environmental issues, major structural modifications to the overall market design or to the planning process are not warranted at this time." It should also be recognized that the Suppliers have a specific meaning when referring to "emerging environmental issues." To the Suppliers, that phrase expresses the idea that new market rules should be developed to shield incumbent generators for RGGI costs and risks, potentially through shifting compliance responsibility to load. To the same effect, see NYISO IC at note 7 and related text; and IPPNY IC at 18-19.

[19] As IPPNY (IC at 3) put it: the Commission "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...[T]he Commission's policies on long-term contracts and IRP should be narrowly tailored to avoid undue harm to existing facilities and the competitive wholesale electricity market."

[20] See Suppliers (IC at 5): "Under all circumstances, the terms and conditions of contracts must be consistent with, and not undermine, the existing competitive markets." To the same effect, see IPPNY IC at 4: "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." And see also, IPPNY IC at 7: A statewide IRP "process that requires electric utilities to select resources for reasons other than meeting reliability needs, not otherwise satisfied by the competitive markets at lowest cost, will do more harm than good...." Con Ed Solutions (IC at 3) recommends that the Commission "develop a supplemental process that leverages and builds on the ongoing NYISO efforts."

[21] Hess Corporation (IC at 29): Commission "must not only study the NYISO's rules but also collaborate and coordinate with the NYISO stakeholder committees in order to determine whether harmonization of long-term contracts and NYISO market rules is practical or feasible." IPPNY (IC at 14) also states that the Commission should "coordinate" its planning with the NYISO's CRPP, which appears to mean that the Commission "follow" the CRPP outcomes.

[22] The incumbent generator parties proceed inconsistently. On one hand they press the benefits of the existing markets as the basis for urging that

The efforts at invoking the State's competitive markets as a shield against robust Commission analyses of energy needs through a statewide IRP are misplaced.[23] Competition is subservient to the public interest; not the reverse.[24] Furthermore, the question here is not whether the NYISO markets produce benefits, but whether there is a need for state action to produce benefits not being attained through the NYISO.[25]

B. What Form Should the State Action Take?

To produce benefits to the people and businesses in the State, the State must develop an assessment of the State's

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regulatory action not be taken by the Commission and, specifically, that the Commission not endorse long-term, out-of-market supply contracts. At the same time they also seek long-term, out-of-market contracts to fund the costs of state environmental requirements. See: Mirant IC at 2 "costs for back-end controls, however, may not be currently captured by the wholesale market energy or capacity rules...these units may require contracts to make the necessary retrofits." See also, Suppliers IC at 13, and IPPNY IC at 18-19.

[23] At another level, the commenting parties' efforts at creating a chasm between the Commission and the NYISO are contrary to the basic reality that both the Commission and NYISO are joined as co-venturers in the important responsibility of meeting the public's needs for power.

[24] IPPNY has the roles of the Commission and NYISO backwards in its suggestion (IC at 9) that the only role for the Commission, if any, is effectively that of a consultant to the NYISO: "If there is a role for "centralized planning" it is to evaluate whether there are any flaws or omissions in the wholesale market's rules that are leading to a failure to send price signals required to procure necessary or desirable resources and services."

[25] Preparing a robust IRP is not necessarily the only action that the Commission should take. Several parties question whether the NYISO has actually operated inefficiently, with detrimental effects on consumers. CPB states (CPB IC at 4-5): "[t]he NYISO's Independent Market Advisor concluded that the Installed Capacity Spot Market Auctions during the 2006 Summer Capability Period have been characterized by economic withholding of Capacity to exercise market power to the maximum extent allowed. This has caused electricity prices to be artificially high throughout New York State, causing customers to pay more than $100 million in inflated electricity prices in 2006 alone. These market design flaws continue in 2007, to the detriment of consumers." The City (IC at 7) states that incumbent generators have no incentive to add supply, but do have incentives to withhold supply. It should be noted that a major investigation by the FERC is considering in-City capacity withholding and market power concerns.

energy needs that is realistic, comprehensive, quantitative, and rigorous. The assessment must withstand examination in the market place of ideas. Central Hudson believes that this can be attained only through a robust statewide IRP, which will also form a platform for leadership and solutions.[26]

First, as highlighted recently by Governor Spitzer's 15x15 policy, it is obvious that the energy picture includes supply-side and demand-side resources. A proper IRP is the only tool that can lead to a rational and supportable integration of both supply- and demand-side alternatives. Second, it is simply a matter of governmental responsibility that the State develops and articulates its own, thoroughly considered assessment of the future energy picture. The State's and the Commission's responsibilities are independent of those of the NYISO, not subservient to, constrained by, or conditioned upon the NYISO. This implies that the Commission will proceed independently, yet seek the cooperation and support of the NYISO, and utilize (to the extent appropriate) information developed by the NYISO in developing the statewide IRP.[27] Third, the most constructive course of action is for the State to articulate a strong, well-reasoned, well-documented and supported IRP assessment of the

[26] Central Hudson IC at 6-7. As explained in Central Hudson's initial comments (IC at 25 et seq.), the context of a new, statewide IRP differs from that of the prior studies, although the scope and kinds of analyses in the IRP will be similar.

[27] The NYISO has constructively offered (IC at 1-2) that it is in a unique situation to assist the Commission and provide reliable information.

future energy picture through a robust statewide IRP. The IRP will then speak for itself.

Completion of a robust statewide IRP should leave options open to the NYISO, regulated utilities, other market participants and other interested parties to address, within their own spheres of interest, appropriate responses. For example, should the NYISO and NYISO market participants choose to do so, the NYISO might seek to establish market mechanisms addressed to "needs" identified in the statewide IRP. Nothing in the nature of an IRP precludes that option. Moreover, both the language of the Phase II Order[28] and the Commission's sensitivity to market factors in the development of its RPS Program imply an on-going Commission sensitivity to market factors. Thus, the statewide IRP, through identifying "needs," may be thought of as identifying opportunities that may, in the first instance, be satisfied through solutions arising from utility and other market participant proposals.

[28] Phase II Order (at 29-30): "it is important to note that this Commission has consistently found that the development of competitive markets, where feasible, will assist in assuring the provision of safe and adequate utility services at just and reasonable costs. We have consistently endorsed competition where it is more effective than regulation, but also realize that markets alone may not automatically satisfy a broad range of public policy needs and goals."

C. A Robust Statewide IRP Will Itself Speak Authoritatively From the Strength of its Analyses; There is No Need for Rules of Engagement

Since the intention of the IRP process is to systematically include and evaluate all relevant factors, including those excluded from the NYISO's process,[29] it can be assumed that results of the statewide IRP will differ to some degree from the results of the NYISO's CRPP.[30] Indeed, the potential for that outcome is a key reason to proceed with a robust statewide IRP.

Many of the parties who, through extolling the benefits of competition, seek to minimize or limit the Commission's role in energy planning also argue that the Commission should specify how the development and use of an IRP will relate to the NYISO's processes. For example, the Suppliers (IC at 5) state that "[u]nder all circumstances, the terms and conditions of contracts must be consistent with, and not undermine, the existing competitive markets." The NYISO advocates the position that the NYISO's CRPP/RNA conclusions should be taken as a given in any State IRP process.[31] National Grid states that the

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[29] Because the statewide IRP is intended to incorporate factors clearly absent from the NYISO's planning, it is incorrect to describe the IRP as "redundant" (Hess IC at 5-6), or as a "duplicate" of other planning processes (NEMA IC at 11-12).

[30] MI sets an unattainable hurdle in taking the position that any Commission IRP should be neither duplicative of, or in conflict with (IC at 2), or "possibly contradictory to," (IC at 3) existing planning efforts.

[31] NYISO IC at 5: "Any State-conducted resource planning process should build upon the existing processes rather than duplicating efforts by implementing a separate process to examine needed infrastructure investment." By stating that the Commission should "build upon" and "not duplicate" the CRPP outcomes, the NYISO is communicating that its determinations should be taken

Commission "should search for solutions within competitive markets themselves," implying a limitation (inappropriate in Central Hudson's view) on the Commission's ability to cause needed facilities to be constructed. To a similar effect, LIPA "encourage[s] the PSC to work to make its planning process consistent with and not duplicative of the NYISO process."[32]

No matter how expressed, these "prior constraint" concepts are misplaced. As noted above, the parties objecting to a statewide IRP effectively assume that incorporation of "public policy factors" currently absent from the NYISO's processes into a statewide IRP will inevitably lead to different results than the NYISO's RNA.[33] If that occurs, and were the Commission to have adopted the a priori constraints urged by some parties, the IRP would have no force or effect, no matter how cogent and compelling its conclusions turned out to be, simply because they differed from the NYISO's RNA. Yet the very purpose of the IRP is to determine whether consideration of relevant public policy

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as a given. That NYISO position is an a priori constraint that would hobble a statewide IRP and limit its objectivity and usefulness as an analytical tool to define and achieve legitimate state policy objectives. The NYISO also states that "[t]he preferred means of implementing the state's goals should be through market mechanisms."

[32] LIPA IC at 2.

[33] For example, the IRP might conclude, after evaluating the potential consequences of the 15x15 Policy and rigorously assessing the full range of supply and demand side options, that there is a different level, or different timing, or different location indicated for the "needed" new resources than determined in the NYISO's RNA, or it might conclude that demand-side resources will obviate (in whole or in part) a RNA-based indication for supply-side resources within the forecast time period used in the investigation, or it might conclude that a specific fuel would be desirable for specified new generation requirements.

factors will produce different conclusions than the NYISO's processes.

Moreover, while the precise outcome cannot be identified at this time, it can be hypothesized that, in the extreme, the differences might be small, or they might be large. If the IRP results differ in only minor ways from NYISO RNA conclusions, there would be no purpose to the constraints and no reason to have adopted them. If the IRP results differ in material ways, the various a priori constraints would limit its usefulness and frustrate its essential purposes. They are therefore either unnecessary or counter-productive and should be rejected.

Rather than attempting to describe rules of engagement relative to the NYISO, the Commission should focus its attention on how to develop the best statewide IRP that can be achieved. The NYISO's cooperation and support, in terms of supplying data[34] and the like, should be presumed and welcomed, as should the participation and support of other market participants.

Once the statewide IRP analyses have been completed, identifying statewide "needs," clarifying the options best suited to satisfying those needs, and establishing the State's expectation that those needs will be satisfied, the statewide

[34] At another level, the NYISO's position that its analyses be taken as a given is also inappropriate because the Commission should update the load and energy forecasts from those utilized by the NYISO to recognize, for example, the significance of more recent information, such as the Administration's 15x15 Policy, which has not been reflected in the March 2007 NYISO CRPP/RNA Report.

IRP itself will facilitate action by the NYISO and other interested parties to satisfy the articulated needs. In effect, the statewide IRP will become a kind of "bully pulpit."

Therefore, the Commission need not specify what it will do once the statewide IRP is completed. The Commission should, however, clearly state its expectation that all parties will work constructively to respond to any "needs" identified in the statewide IRP, and it should reserve its options to take such action as it may find appropriate in the event that its expectations are not met.

II. COMMISSION QUESTIONS

Question 1):

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

a) To what extent or in what manner would a statewide integrated resource planning process build on or parallel existing reliability planning processes?

b) What time frame should be examined in such a process and what issues should be considered?

c) What is the role of the utilities and other interested parties in the process?

d) How should the process differ from any previous integrated resource planning processes?

e) 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?

f) How should immediate concerns and long range considerations be addressed?

Central Hudson's Response:

A. The Commission Should Develop a Robust Statewide IRP

As explained above and in Central Hudson's initial comments, the Commission should develop a robust statewide IRP commencing immediately. However, a number of parties criticize IRPs. It is suggested, for example, that an IRP is "old fashioned,"[35] being a technique employed in the pre-restructuring days;[36] that it represents "central planning;"[37] and that it will inevitably be wrong, or soon outdated.[38] These points are addressed below.

While it is correct that individual utility IRPs were done prior to restructuring, that fact has no bearing on the merits

[35] Suez IC at 2: IRP is "no longer consonant with modern market realities." RESA/SCMC (IC at 2) states colorfully that IRPs are "little more than old wine in a new bottle ---a veritable throwback to the highly controlled and static regulatory structure...." And see Direct Energy at 1-2; Hess IC at 1.
[36] Constellation IC at 5: "the [alleged] failure of past IRP policies was a major driver for restructuring the electric industry...."
[37] IPPNY IC at 9; Constellation IC at 3: "while well intentioned, IRP provides little value as it based on incorrect assumptions that central planning and government-run procurement processes can outperform the market." Liberty Power IC at 12.
[38] See IPPNY IC at 7; Constellation IC at 3.

of the analyses included within an IRP.[39] The new statewide IRP that would be done now would be both similar to, and different from, the earlier IRPs. The statewide IRP would be similar to those done previously in that it would include all relevant planning factors, including those currently excluded from (externalized) other planning studies, such as those of the NYISO. The relevant planning factors (e.g., environmental effects, fuel diversity and security) would be "valued" consistently, so that they could be analyzed. Forecasts for loads, energy requirements, available supply-side and demand-side resources, and fuel prices would be employed, as would mathematical descriptions of electric system reliability and transmission constraints. An optimization routine would be employed to select the "optimum" expansion plan; i.e., the plan that represents the minimum costs.[40] Presumably, alternative "scenarios" or "cases" would be defined and studied, and the sensitivities of the various variables would also be determined. The new statewide IRP would be different in relation to the

[39] Planning efforts prior to the individual utility IRPs centered around supply-side resources. To the extent that demand-side alternatives may have been mentioned, it was more or less in passing, their role was minor, and they were not truly "integrated" in the IRP sense.

[40] Some parties appear to be confused by the nature of the analyses contained in an IRP. MI (IC at 4) for example, states that the "primary" purpose of IRP should be "the reduction of electricity prices paid by New York consumers, without jeopardizing reliable service." MI is correct that an IRP will "minimize" costs through the optimization analyses that are inherent in a proper IRP. However, MI's statement is apparently with reference to accounting costs, as those are the costs reflected in prices, but the costs that the IRP will minimize will include costs for factors such as environmental costs that are presently externalized in existing planning, as distinguished from accounting costs.

sources of information (a greater number now than previously),[41] a need to maintain confidentiality for a greater portion of the input information for competitive and infrastructure reasons,[42] and the need to model competitive markets. Standard mathematical techniques are available to address these aspects of the analysis and will presumably be employed.

The "central planning" criticism is also misplaced. Parties advancing that criticism fail to appreciate that the development of an IRP by the Commission does not represent "central planning" any more than does the development of a RNA by the NYISO. In both cases a "central" body develops a "plan." What the objecting parties appear to worry about is not the development of a plan per se, but what the plan may lead to.

Although the objections to an IRP are broadly stated, the actual concern is quite narrow, and relates to the means that may be chosen to implement the conclusions of the IRP and not the IRP itself. Since most, if not all, of the objecting parties point to the Commission's RPS Program as an acceptable model, it seems clear that they actually do not object to Commission action to favor specific kinds of resources, at least as long as those Commission-supported resources must also compete in the NYISO's markets. Therefore, the objections do

[41] Central Hudson IC at 27-28.
[42] Central Hudson IC at 27.

not really go to the IRP per se, but to the means that may be chosen to implement its conclusions.

As to the means that may be chosen to fill any "needs" for new generation found in the IRP, Central Hudson submits that generator company-build and utility-build options should be permitted to compete head to head. If the costs for the specific kind of resource will be above market, the above-market portion will be socialized in some appropriate fashion. The details do not need to be fixed at this time.

Other parties offer revisionist history in an effort at discrediting the IRP concept. Hess (IC at 1) calls the earlier IRPs "a hallmark of New York's electric regulation policy prior to...restructuring, refers (IC at 6-7) to the six-cent law as an example "under which the State made an IRP-based determination...." These statements are plainly incorrect; the six-cent law was initially adopted in 1980 and pre-dated the Commission's pre-restructuring consideration of IRPs in Case 29409 Order by almost a decade.[43] While IRPs were ordered by the Commission for individual utilities in the early 1990s, that hardly made them a "hallmark." By the early 1990s virtually all of the "above market" IPP contracts and high-cost nuclear plants had been fully committed and represented sunk costs. Moreover, the intention of the earlier IRP effort was to inculcate

[43] As of the late 1980s, integrated resource planning had not been adopted either by the utilities or by the Commission (until Case 29409).

demand-side resources into regulated utility planning at parity with supply-side resources. Hess (IC at 7) also mistakenly describes "the saga of the Shoreham Nuclear Plant" as "another example of the harmful legacy of the IRP process." Shoreham was also a plant committed to many years before the Commission's Case 29409-based IRP initiatives, having been first announced in 1965.

Interestingly, most of the objecting parties limit their criticism of the potential for planning errors to an IRP plan, which they critique as always inevitably wrong,[44] yet seemingly presume both that a NYISO RNA will never contain any errors and that ignoring factors currently excluded by the NYISO will produce the best overall result. However, nothing in the CRPP requires that the "correct" new facility be built and market participants are free, under the CRPP, to make mistakes (at their own financial risk, but at potential reliability risks to the public). Moreover, no plan is likely to be entirely correct, but that is not significant if the plan is done rigorously, objectively, and comprehensively, and frequently reviewed and revised if need be.

The commentators effectively presume that once a statewide IRP is completed, it will irrevocably lead to construction of the "wrong" resource at an excessive price. Central Hudson

[44] See, e.g., RESA/SCMC at 5-13.

dismisses these contentions. They are mere speculation. They assume that nothing has been learned from experience. Moreover, insofar as we know today, any generation "needs" shown in the statewide IRP may be met through generating company-built options without the need for Commission-mandated long-term contracts. The commentators are simply incorrect to presume a broken process.

B. DPS Staff's "Dynamic Energy Planning Process"

Instead of the robust, comprehensive, statewide IRP that is called for, DPS Staff has offered what it terms a "Dynamic Electric Planning Process" ("DEPP")[45] to develop "specific strategic goals."[46] Although very little can be known about the DEPP from the cursory description provided by DPS Staff,[47] clearly it is not an IRP. Unlike an IRP, where the intention to "integrate" all relevant resources and policy considerations in a consistent and rigorous quantitative fashion through an optimization methodology is well known, the DEPP is vague, the

[45] DPS Staff seems to attach some significance to the term "dynamic," but the basis for Staff's characterization of its proposal as dynamic is absent. Virtually all planning processes, including IRPs and those of the NYISO, are dynamic in the sense that they look forward repeatedly as conditions change or may be expected to change. Nothing in Staff's description suggests any different connotation to its terminology, and no basis exists for thinking the undefined DEPP superior to IRPs, based on Staff's apparently semantic invocation of the term "dynamic." To the extent that Staff is attempting to suggest that the process it proposes will be periodically updated, so too would an IRP, and the Staff terminology does not describe an attribute that is unique to Staff's process.

[46] DPS IC at 2 and 5-6.

[47] For example, there is no reference to demand-side resources, or energy efficiency, or load control programs mentioned by DPS Staff in its description of its DEPP.

types of analyses that might be done are unspecified, and there are no standards offered for determining the "specific strategic goals." These defects create grave risks that the DEPP process would be rudderless, and the output subjective or otherwise of dubious value.

As there is no present basis upon which to believe that Staff's DEPP will achieve the rigor and comprehensiveness of an IRP, it would be a poor substitute for an IRP and be counter-productive.[48] A poor process will lead to a poor plan that would squander the Commission's opportunity to demonstrate leadership, waste public and private resources alike, and be counter-productive to defining and accomplishing legitimate public policy goals.[49]

C. Staff's Prudence Review Proposal is Counter-Productive

Central Hudson is also concerned, with another portion of the DPS Staff position, in relation to the "expedited, interim plan for all electric utilities" described by Staff.[50]

First, this proposal is inconsistent with the Commission's Order in Phase I, which (at 16) specified a different approach:

> Once the measurement standards and volatility goals are in place, utilities

[48] As Judge Robinson's Recommended Decision on Integrated Planning and Construction/Ratemaking Issues (dated January 26, 1988) in Case 29409 (at 7 et seq.) makes clear, DPS Staff had a deeper and more comprehensive understanding of the elements of an IRP in 1988 than manifested today in its novel, but incompletely and vaguely described, DEPP.
[49] For similar reasons, Central Hudson also does not support the "studies" proffered by Hess and by RESA/SCMC.
[50] DPS Staff IC at 6.

> shall meet with Staff annually on the portfolio management strategies it will implement, and the commodity supply instruments and hedging arrangements it will deploy, to achieve its goals. This will enable Staff to monitor volatility and review and compare utility performance in managing that volatility.[51]

Second, Staff describes the scope of this activity as relating to evaluating the "implementation of each Commission and CRP initiative at each utility to date."[52] Central Hudson objects to this, as a belated and unnecessary prudence investigation. Central Hudson has been through several rate cases since the restructuring of the industry in New York, most recently in 2006, and is operating under a Commission-approved rate plan through June 2009. DPS Staff has presented no basis for reopening the Commission's rate plan. If there was reason to evaluate Central Hudson's portfolio management, it should have been prior to the establishment of the current rate plan.

Third, Central Hudson questions the impacts on both utility and Staff resources. Does Staff have the resources to properly evaluate the subjects without requiring burdensome interrogatories or other education of Staff members in the

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[51] The Order went on (at 25) to state: "A long-term contract entered into for the purpose of encouraging the development of new resources, however, would be outside the scope of this hedging policy. As a result, the approach discussed above will enable electric utilities to avail themselves of longer-term hedges if opportunities arise for them to constrain volatility over a longer period of time, but will not promote activities, or raise cost recovery issues, that should be decided in the Phase II proceeding discussed below."

[52] Staff IC at 6.

specifics of each of the utilities' portfolio management activities? This effort will be burdensome and time consuming at a time when all parties should be devoting their efforts to the far more important matter of developing a robust statewide IRP.

Fourth, the nature of the examination proposed by Staff is retrospective, being based on Staff's assessment of past Commission statements. It makes no sense to evaluate utility portfolios against the standards of yesterday, when the Commission established new portfolio management criteria just a few weeks ago and specified a different process for moving forward with achieving the Commission's objectives.

Fifth, the Commission's most recent Order was "restricted to those hedging practices needed to protect against price volatility without addressing resource adequacy, source of supply, or public policy issues."[53] It makes no sense for Staff to want to evaluate portfolios preemptively now, before those "resource adequacy, source of supply or public policy issues" have been resolved. Furthermore, absent the calibration as to overall future needs to be provided by a statewide IRP, there is no forward-looking objective basis against which the portfolios might properly be judged.[54]

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[53] Phase II Order at 5.
[54] It is also doubtful that Staff could accomplish the tasks it specified in the four month period it stated.

It would be far more productive for DPS Staff to circulate its assessment of "each Commission and CRP initiative" (as alluded to by Staff) to the utilities for the utilities' information and potential use in their own on-going evaluations of their portfolios, pursuant to the process the Commission just established in Phase I of this case.

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?

a) Should such contracts be entered into for the purposes of improving fuel diversity, mitigating market power, or furthering environmental policies?

Central Hudson's Response:

A. Long-Term Contracts have Not Been Shown to be the Best Alternative

As noted in Central Hudson's initial comments (IC at 35), the case showing that long-term contracts are the best alternative has not yet been made.[55] It was not made in the initial Phase II comments of the parties in this proceeding.

Instead, there is a diversity of opinion on the need for long-term contracts to facilitate new supply. Some parties suggest that "siting rather than financing is the major impediment to new investment" (with the exception of nuclear plants).[56] Others find that long-term contracts are critical or desirable.[57] Some parties say that the Commission should neither encourage, nor require utilities to enter into long-term contracts.[58] Others say that long-term contracts should not be required except in limited circumstances.[59] Still others (Liberty Power IC at 18) say that utilities "should not be allowed to enter into long-term contracts for existing or new capacity and/or energy...."

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[55] See also, RESA/SCMC (IC at 18) referring to the presumption, in the question, "without appropriate foundation that long-term contracts are necessary or desirable for the development of new resources."
[56] Constellation IC at 12; and see Liberty Power IC (at 3): "the true barrier to new capacity in New York is the lack of a comprehensive siting law...."
[57] See NRG Companies (IC at 2): "Long-term contracts will be required to replace these aging assets and support new investment because the wholesale markets operated by the [NYISO] cannot be relied upon, with any certainty, to support new investment." See also, Suppliers IC at 21.
[58] Hess IC at 23.
[59] IPPNY at 15.

Hess (IC at 18-19) states that "customers receiving a commodity price based on a long-term contract receive incorrect price signals that lead to inefficient customer usage." The basis for Hess' statement is elusive. Generally, contracts reflect the parties' views of current conditions and future expectations. Bilateral contracts are also generally properly described as market mechanisms.[60] For example, a person entering into a long-term lease for an apartment or automobile receives a valid price signal based on the parties' expectations as to prices during the term, and it is unclear why a long-term commodity contract would not also provide a valid price signal. That the price signal may not come from a spot market is of no moment.

B. For What Purposes Might Long-Term Contracts be Used

Although the question, by its terms, was limited to the potential use of long-term contracts "that facilitate the construction of new generation, [etc.]" as specified in the question, a number of parties answer it as if the question related to long-term contracts for any purpose. See, e.g., RESA/SCMC IC at 13-14: "[l]ong-term contracts cannot be realistically viewed as a magic elixir that will in all cases resolve the State's energy concerns." And, see also, KeySpan (IC at 1), referring to the Commission's supposed goal "of

[60] For example, labor contracts often cover multiple years and set prices over the term, but few would describe them as not market-based.

encouraging utilities to use non-discriminatory long-term contracts to support existing and develop necessary new electricity resources."

The Suppliers (IC at 4) state that if "RNA needs are not sufficiently addressed through merchant proposals, long term contracts should be permitted to facilitate appropriate facilities to satisfy such needs [emphasis added]." In other words, the Suppliers would limit long-term contracts to NYISO-determined "needs," implicitly eliminating any statewide IRP-determined generation needs from being funded through long-term contracts.

Some parties urge that long-term contracts be limited to resources identified as serving "public policy objectives," as distinguished from "usual" new generating resources. CPB (CPB IC at 14) states that "long-term contracts should not be used for resources that are not consistent with the State's public policy goals." The NYISO suggests that the Commission restrict the potential use of long-term contracts:

> "long term contracts should not be structured to produce substantially more revenue than would be available in NYISO markets unless such payments are necessary to pursue specific state energy policy goals that are not priced in NYISO markets." [61]

[61] NYISO IC at 3. At another point (NYISO IC at 10), the NYISO states more broadly: "If long term contracts are used, they should provide a stream of revenues that is comparable to those expected in the NYISO markets and should continue to expose the supplier to market forces."

Reading the NYISO's initial comments as a whole, however, it appears that the NYISO is suggesting that it finds "out of market" contracts acceptable to the extent that they are oriented around addressing generation needs driven by factors outside of the NYISO's market design.

Central Hudson's position includes limiting the potential availability of mandated long-term contracts to generation resources found "needed" in the statewide IRP, as flowed through into the individual utility's resource plan. The CPB and NYISO positions appear to be consistent with Central Hudson's on this point.

IPPNY (IC at 10) states that "[l]ong-term contracts should not be used as a means to discriminate against existing resources, certain new resources or reduce market clearing prices." IPPNY's concern about discrimination is answered by providing some mechanism that will require new generation (to the extent required in the statewide IRP) to be subject to market forces in a fashion similar to the Commission's RPS Program. Moreover, differences in treatment are generally understood as inappropriately "discriminatory" only where there is no reason for the differences. When a particular type of resource is desired to meet a specified public purpose, a basis for differing treatment as compared to some other resource not serving that purpose would be presented, and discrimination would not exist. As to IPPNY's other contention, Central Hudson

sees no reason why reducing market clearing prices is not a legitimate objective. Under the existing NYISO market design, all resources in a zone receiving a particular LBMP in an hour already receive more than their costs (presumably including return on investment), with the exception of the unit that actually sets the clearing price, which receives a price equal to its costs (presumably including return on investment). In theory, this structure is supposed to lead to new resource commitment. If, however, there has not been continued construction of new resources to meet identified needs for additional resources at the places that pay the highest prices, such as in the NYC metropolitan area, it is fair to ask whether the market design is overpaying existing generators and whether other market design changes are needed.

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?

a) What role, if any, might entities other than Load Serving Entities play in such resource procurement?

Central Hudson's Response:

Central Hudson believes that all LSEs should be subject to the same set of rules. No basis for a by to ESCOs (or any other

class of LSEs) has been established.[62] Judging from the commenting ESCOs, most ESCOs seem to be large, well-financed entities that may also have related, vertically integrated operations.[63]

Con Ed Solutions (IC at 4) contends that it would be "imprudent" to require load serving entities that are ESCOs to shoulder the same responsibilities as load serving entities that are regulated utilities, stating that "[s]uch a policy would either impose significant financial risks on these competitive entities or force them to abandon the New York market."[64] More outspokenly, RESA/SCMC states that "[u]nder no conditions should load-serving entities such as ESCOs be required or mandated to enter into long-term commodity or capacity contracts."

The positions advocated by these ESCOs amount to a request for free ridership on the NYISO system. There is, however, no rational justification for the Commission to seek to impose differing responsibilities on different load serving entities concerning their responsibilities as LSEs. As load serving

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[62] Central Hudson IC at 32-33.

[63] Hess Corporation IC at 1: "one of the largest competitive energy service company...marketers of electricity and gas in New York." FPL Energy (IC at 1): "a leading clean energy provider with natural gas, wind, hydroelectric and nuclear power plant operations in 24 states, including New York State." Constellation (IC at 2): a leading national competitive retail energy supplier to commercial and industrial customers, serving more than 10,000 customers [representing 15,500 MW of load] in 17 states and 2 Canadian provinces." NEMA(IC at 1) is a national ESCO trade association. Con Ed Solutions, Direct Energy and RESA/SCMC also present themselves as large, sophisticated organizations.

[64] Con Ed Solutions at 4.

entities, ESCOs must have the same responsibilities as other LSEs.

Question 9):

What procedures should be followed in reviewing a long-term contract and in establishing its qualification for cost recovery?

a) Under what circumstances, if any, should recovery of contract costs be pre-approved?

Central Hudson's Response:

The matter at issue is not just a question of whether there will be "pre-approval," but also of the nature of the pre-approval. It is not simply a matter of "pre-approval" of contracts, but of enforceable commitments to support financial obligations.

DPS Staff's suggestion (IC at 19) that "the prior policy of declining to review long-term contracts for their prudence at the time they are entered into should be reversed," is a proper and necessary change, but is not sufficient because it would address only one aspect of the required Commission actions.

To enter into a long-term obligation with a generating company, or to undertake the construction of a utility-built generating facility, the regulated utility will require a reciprocal long-term obligation for rate support from the Commission. Since the long-term obligations are for the purpose

of attaining public goals, they must be supported by the public. It is not reasonable to expect utility shareholders to fund contractually-required payments for long-term obligations for the purpose of facilitating new supply.[65]

Some parties suggest that such commitments should not be provided; two suggest that it may not be provided. IPPNY (IC at 23) states that the Commission lacks authority, and Suez (IC at 12) states that "pre-approval of long-term contracts requires the Commission to illegally attempt to bind future commissions."[66] While the intention of the long-term commitments sought by Central Hudson is to make them enforceable against the Commission, Central Hudson does not agree that they would be illegal or improperly bind future commissions.[67]

Pre-approval of either long-term contracts or long-term rate relief does not "bind" future commissions in the sense of requiring them to cleave to a particular path. The form of pre-approval sought by Central Hudson would, however, make the State liable in damages to the counter-party should a future

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[65] This proposition assumes reasonable and prudent costs for the venture. It is also not reasonable to expect the public to fund inefficient utility operations.

[66] Although Suez alludes to "numerous PSC decisions," any such decisions may be simply self-referential and not reflect reliance on a specific statute or rule of law. If pre-approval were actually "illegal," as Suez asserts, Suez would likely have provided a citation to the statute or rule of law being violated. IPPNY did not cite any authority for its "lack of Commission authority" position.

[67] As the Supreme Court stated in Winstar (518 US 839, 889): "The answer to the...contention that the State cannot barter away certain elements of its sovereign power is that a contract to adjust the risk of subsequent legislative change does not strip the Government of its legislative sovereignty."

commission choose a different path. This outcome has been approved by the U.S. Supreme Court in US v. Winstar Corp., et al., 518 US 839 (1996), and Suez has provided no authority for the proposition that the Commission lacks the capacity to enter into such obligations.[68]

The issue in Winstar involved:

> the enforceability of contracts between the Government and participants in a regulated industry, to accord them particular regulatory treatment in exchange for their assumption of liabilities that threatened to produce claims against the Government as insurer. Although Congress subsequently changed the relevant law, and thereby barred the Government from specifically honoring its agreements, [the Supreme Court held] that the terms assigning the risk of regulatory change to the Government are enforceable, and that the Government is therefore liable in damages for breach.

Shorn of generating plant investments and the revenues and earnings they produced, regulated utilities do not have the financial capabilities they once had. Moreover, all parties have learned the risks that governmentally-mandated contracts impose on regulated utilities. As stated in Central Hudson's initial comments (IC at 31; footnote omitted):

> if the Commission expects regulated utilities to bind themselves to long-term

[68] That past commissions may have chosen not to enter into such obligations as a matter of policy does not prove a lack of capacity as much as a lack of will. Ironically, the actions of past commissions, which refused to recognize governmental responsibility in the contexts of restructuring and the six-cent law, now require different responses from the Commission in relation to long-term obligations.

> contracts with third parties, the Commission should expect to bind itself reciprocally to long-term rate relief to the utility, on terms equivalent to a contractual obligation. Absent that kind of reciprocal support, regulated electric utilities cannot be expected to enter into long-term contracts.

Other Matters

Certain parties renew in their Phase II initial comments positions already squarely rejected by the Commission in Phase I. For instance, NRG Companies (IC at 5) renew their prior position concerning "BGS" and (IC at 7-10) NRG Companies propose a procurement process for how utility portfolios should be managed entailing a Commission-level procurement approach functionally equivalent to that previously rejected.[69] The Commission rejected these contentions in Phase I, stating (Order at 15-16):

> The auction processes the generators propose, even those that yield hedging instruments with longer terms than the ESCOs propose, are similarly overly-constraining. Requiring a rigid auction approach, with utilities able to obtain supply only in prescribed forms at pre-established time intervals, might force utilities to miss advantageous hedging opportunities as they arise. Utilities should be able to approach such opportunities with the flexibility necessary to act in the best interests of ratepayers. Rigid constraints or overly prescriptive guidelines could preclude

[69] See also, KeySpan IC at 7: "KeySpan contends that statewide coordinated resource procurement should only occur through operation of properly-constructed capacity auctions administered by the NYISO." And see IPPNY IC at 11.

> utilities from acting on those opportunities, to the detriment of ratepayers.
>
> Moreover, the auction processes undertaken in other states that the generators reference are not relevant to New York. Unlike the circumstances in those other states, most New York utilities have continued to hedge since the inception of competitive markets, and so a substantial amount of the supply they already purchase acts as a partial shield against volatility. New York utilities also have largely divested their generation, preventing the potential for abuses that arise in states where delivery utilities might purchase from their generation affiliates. Therefore, the constraints on hedging activity ESCOs and generators propose are rejected.

Accordingly, these matters are not relevant to Phase II and should be ignored.

CONCLUSION

Central Hudson supports a statewide IRP, as described above and in its initial comments. The statewide IRP process should be commenced immediately and completed as promptly as reasonably possible.

The Commission should, when publishing the completed statewide IRP, state its expectation that all interested parties will constructively explore ways and means for satisfying any "needs" found in the statewide IRP.

Regulated utilities should thereupon commence their own individual utility resource plans, consistent with the general approaches and values reflected in the statewide IRP. The

Commission should review and approve the individual utility resource plans.

To the extent that long-term generation resources are called for in the utility's resource plan, the Commission should pre-approve either the long-term contract (in the case of a purchase) or long-term utility rate relief to support the construction (in the case of a utility-build facility). The approvals should be of equivalent reliability and enforceability by the generator against the counter-party utility and by the utility against the Commission.

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Respectfully submitted,

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