**STATE OF NEW YORK**
**PUBLIC SERVICE COMMISSION**

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| **Proceeding on Motion of the Commission As to the Policies, Practices and Procedures for Utility Commodity Service To Residential and Small Commercial and Industrial Customers – Phase II** | **)** | **Case 06-M-1017** |

# INITIAL COMMENTS OF SUEZ ENERGY, NORTH AMERICA, INC.

SUEZ Energy North America, Inc. ("SUEZ") appreciates the opportunity to offer these initial comments in response to the New York State Public Service Commission's ("PSC" or "Commission") April 19, 2007 Order instituting a Phase II to this proceeding ("Order")[1].

SUEZ and its affiliates own and/or operate merchant power plants and cogeneration facilities in numerous countries, including three plants in New York[2]; they own and operate LNG import facilities. Its retail sales business unit, SUEZ Energy Resources NA ("SERNA") is the fourth largest marketer of retail electric energy to commercial and industrial customers in the United States, and is actively serving customers and marketing in New York.

[1] Case 6-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*, Order Requiring Development of Utility-Specific Guidelines for Electric Commodity Supply Portfolios and Instituting a Phase II to Address Longer-Term Issues (issued April 19, 2007).

[2] These include a 49 MW qualifying facility ("QF") in Uniondale and a 65 MW generator in Syracuse. A proposed acquisition of a substantial interest in a gas-fired combined cycle electric generating facility located in Queens is the subject of a recent PSC ruling. Case 07-E-0288 - *Astoria Energy LLC, SCS Energy, LLC, and Suez Energy Development NA, Inc. – Petition for a Declaratory Order Finding That Commission Review of a Transaction is Not Required or, in the Alternative, for Approval of a Transaction Pursuant to Public Service Law §70, and for Reaffirmation of Lightened Regulation*, Declaratory Ruling on Review of an Ownership Interest Transfer and Making Other Findings (issued May 22, 2007). SUEZ also provides operation and maintenance services to a 203 MW QF located in Rochester.

## OVERVIEW

While specific answers to questions that the Commission has raised in its Order are provided below, SUEZ respectfully submits this overview with respect to the two overarching issues raised by the Commission's questions, namely, what role should Integrated Resource Planning ("IRP") play in New York, and what role should long term contracts play. SUEZ' responses reflect its role as a merchant generator and an active marketer that is serving customers in New York and elsewhere.

Integrated Resource Planning ("IRP") is a concept that was initially developed to encourage utilities to consider non-traditional methods of addressing their "obligation to serve" responsibilities, including the use of renewable resources and energy efficiency. Much has changed since the concept was first introduced. While the emphasis on renewable resources and energy efficiency has responsibly increased, many aspects of the provision of energy and energy-related services to consumers are no longer provided by utilities. As a result, a planning process that strictly focuses on the procurement of resources by the utility is no longer consonant with modern market realities.

New York has already met with great success in melding the benefits of competitive, wholesale and retail markets with the advancement of other public policy goals through targeted, statewide programs. While SUEZ acknowledges that the Systems Benefits Charge ("SBC") and Renewable Portfolio Standard ("RPS") have accelerated the development of renewable resources, demand by environmentally-conscious consumers and cost sensitive "smart" consumers has encouraged competitive providers to seek out green providers and to develop innovative technologies that allow consumers to control their energy consumption. Such "organic" growth is more sustainable than subsidy-driven growth since it does not depend upon the political uncertainty of government subsidy.

This is not to say that some form of forward-looking analysis of resource issues is not appropriate. A broad 'planning' process that coordinates reliability issues with other important policy goals such as environmental goals, health concerns, security, fuel diversity, historic preservation and economic development would serve New York's consumers well. The lapsed New York State Energy Planning Process[3] provides a good starting point for discussion. However, the former statute should be updated and adapted to reflect the fact that New York's markets are an integral part of a larger, regional market, as will be discussed more fully below.

SUEZ believes that the Commission should neither require nor encourage utilities to enter into additional long term power purchase contracts.[4] Such contracts reduce the ability of merchant generators to enter the market, reduce the efficacy of demand response programs and make it more difficult for retail energy marketers to compete with utility programs. In addition, long term contracts reverse the progress that has been made in shifting risk away from ratepayers and into the hands of private investors. If market responses do not come forth to address vital public policy goals, efforts should be made to identify and rectify relevant barriers. Failing this, if the only avenue remaining to facilitate a public policy goal is through a long term contract, it should be awarded pursuant to competitive solicitation and be narrowly tailored in terms of the quantity of energy that is carved out of the competitive wholesale market.

As reflected in a letter recently signed by nine former Federal Energy Regulatory Commission ("FERC") chairs and commissioners[5], competition in the electric industry has increased the efficiency of power plants in the United States, reduced costs to consumers, provided a platform for innovative demand response programs, facilitated the

[3] New York State Energy Law, Article 6 (expired January 1, 2003).
[4] SUEZ notes, however, that current contracts should continue to be honored in order to support confidence in contracts in New York.
[5] Bailey, Vickey A.; Breathitt, Linda; Brownell, Nora Mead; Hoecker, James J.; Langdon, Jerry J.; Massey, William L.; Moler, Elizabeth Anne; Santa, Donald F.; Wood, III, Pat. Open Letter to Policy Makers (May 31, 2007).

development of renewable resources[6], improved reliability and provided an incubator for technological innovation. The Commission can help New York's competitive wholesale markets continue to grow and flourish on behalf of its citizens by minimizing the negative impacts long term procurement contracts can have on these markets.

## RESPONSES TO SPECIFIC COMMISSION QUESTIONS

*1. 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 processes? What time frame should be examined in such a process and what issues should be considered?*

While the New York Independent System Operator ("NYISO") conducts a planning process for bulk power reliability purposes[7], the state may find it advisable to enhance this process with one that coordinates the state's other important policy goals, including environmental goals, health concerns, security, fuel diversity, historic preservation and economic development. A state energy planning process, similar to that which was allowed to lapse by the legislature in 2003, could provide such coordination if updated to reflect the current policy priorities being set by the state. That process provided a framework for a comprehensive energy policy on the part of the state while maintaining the flexibility needed by state agencies to address changing circumstances and priorities. It forced coordination on the part of agencies with disparate stewardships so as to rationalize goals that do not always flow in the same direction.

[6] The letter cites environmental groups as claiming that three-fourths of installed wind capacity is located in RTOs (Regional Transmission Organizations), even though less than half of wind development potential is in those areas.

[7] The NYISO's *Comprehensive Reliability Planning Process* ("CRPP") includes, among other things, a *Reliability Needs Assessment* ("RNA") and *Comprehensive Reliability Plan* ("CRP"). It is a long-range assessment of both resource adequacy and transmission reliability of the New York bulk power system conducted over a 10-year planning horizon. It is conducted pursuant to FERC tariff.

However, any such process should not attempt to duplicate or second guess the reliability planning processes engaged in pursuant to federal requirements. In addition to the issue of redundant effort, the potential for inconsistent results will create further uncertainty for investors.

With respect to time frame, a ten year horizon that is updated every three years provides notice to market participants regarding potential government programs that could affect investment decisions.

*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?*

Unlike during the tenure of the aforementioned energy planning process, 'utilities' should not be the focal point of an enhanced process that attempts to coordinate a variety of sometimes conflicting policy goals. While they must certainly play a significant role because of their expertise and ownership interests, utilities should no longer be considered the sole guardian of the electricity infrastructure. While they remain the 'provider of last resort' with respect to retail service in this State, (an issue which is the subject of ongoing Commission consideration), there is no need for them to be assumed to be the provider of last resort for purposes of generation or transmission construction. With adequately functioning markets, independent companies are more than capable of providing private investment for these projects, as will be explained in greater detail below.

Any such process should be open to all interested parties. While information should be as transparent as possible, processes should be developed to protect confidential proprietary and/or competitive information if the Commission (or relevant board) deems the submission of such information necessary to assist in its planning deliberations.

Another distinction that any new process should make from the one that lapsed is the recognition of the increasingly regional nature of New York's electricity markets and the shift in jurisdiction that has taken place in reflection thereof. Therefore, an effort should be made to coordinate any such planning process with those of neighboring Regional Transmission Organizations ("RTO") and their Canadian or provincial counterparts. If actual coordination of these processes is impractical, then the products or results of these parallel planning efforts should be recognized by the Commission or board and considered in planning deliberations.

*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?*

New York has repeatedly recognized that resource portfolio issues need not be addressed through the utilities, whose service territories represent historic geographic boundaries rather than rational scopes for implementing policy programs that are regional in nature. New York has recognized this through the use of state-wide programs such as the Systems Benefits Charge ("SBC") and the Renewables Portfolio Standard ("RPS"). In the context of the Regional Greenhouse Gas Initiative ("RGGI"), the State has taken a view even beyond its own borders. However, as mentioned above, SUEZ believes that market-driven responses to such policy needs are more sustainable since they are not dependent upon government subsidy.

*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?*

Regulated utilities should be neither required nor encouraged to enter into long-term contracts except in response to an acute public policy crisis that cannot be addressed through market mechanisms or by alleviating the barriers to market responses. Even in these latter circumstances, other public policy options are usually available that interrupt the proper workings of the market less dramatically, such as the SBC and RPS mentioned above. As a general matter, long term contracts reduce the ability of merchant generators to enter the market, reduce the efficacy of demand response programs and make it more difficult for retail energy marketers to compete with utility programs. In addition, long term contracts reverse the progress that has been made in shifting risk away from ratepayers and into the hands of private investors.

If, after unsuccessfully attempting to address market barriers, the Commission determines that long-term contracts are necessary to meet a specific unfulfilled policy mandate, such contracts should be awarded through a competitive solicitation open to old and new resources. These contracts should be designed as narrowly as possible…in terms of the quantity of energy that is carved out of the wholesale competitive market…so as to interfere as nominally as possible with the markets. They should never be used to 'hedge' prices or otherwise disguise market signals that are the key to signaling investment and demand side programs.

***Long Term Contracts Reduce the Ability of Merchant Generation to Compete***

In order to meet a number of public policy objectives, various utilities and public authorities have entered into long term contracts with generators. Some of these contracts have been for significant periods of time and for substantial quantities of power. With each successive contract, however, the remaining load that buys from the spot or medium term market shrinks. The price signals that are vital to signaling the need for investment in particular areas are distorted. The ability to attract private capital for new generation investment is thereby reduced.

### *Long Term Contracts Reduce the Efficacy of Demand Side Programs*

The Commission recently recognized the need to increase the state's efforts to increase energy efficiency through programs including, *inter alia*, demand side programs.[8] According to that order,

> The benefits of energy efficiency include forestalling the building of new generation, reducing use of finite fossil fuels, reducing customers' energy bills, developing independent energy sources for New York State to reduce energy imports, and mitigating the environmental impacts of burning fossil fuel for energy, including greenhouse gas emissions. In addition, more efficient use of energy has the potential to foster economic development and job growth by encouraging in-state technology advances to deliver energy efficiency programs to consumers. (*pp. 2-3*)

Innovative technologies are being developed and commercialized that utilize newly available software, internet options and data communication technologies to allow customers to tailor their consumption. For these to be effective, however, retail customers must have exposure to and an appreciation for the real-time price of the commodity they are being asked to conserve or shift the use of.

Large scale power purchase contracts reduce the extent to which consumers are exposed to real time pricing. This is especially true when such contracts are used to hedge the price of electricity or otherwise reduce volatility.

### *Long Term Contracts Make it More Difficult for Retail Energy Marketers to Compete*

Competitive energy service companies ("ESCO") have brought innovative services, "green" energy sources and new pricing products to consumers across New

[8] Case 07-M-0548 - *Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio Standard*, Order Instituting Proceeding (issued May 16, 2007).

York. According to data found on the Commission's website, ESCOs serve over 41 per cent of the state's load.[9]

If utilities are encouraged or required to increase the use of long term contracts, it will reduce the ability of retail marketers to attract customers. Few ESCOs can match the buying power of an electric utility in its own service territory.

***Long Term Contracts Shift Risk Back to the Consumer***

One of the principal reasons for policy makers' desire to encourage open, competitive electricity markets was to shift the risk of bad investments from consumers to private investors.[10] After reeling from the rate impacts of decades of nuclear cost overruns and above-market power purchase contracts negotiated by utilities, regulators in many parts of the country sought to establish an environment where the potential risks of infrastructure development were borne by private investors.

When a merchant developer constructs a facility, it bears all of the risk of construction overruns and siting rejection or modification. It bears the risk of operating its facility in the most efficient means possible. It bears the risks and costs of increasingly stringent environmental requirements.

Encouraging or requiring utilities to re-enter the role of acquiring long term supplies for consumers in their service territory reverses this important, pro-consumer progress. It creates the potential for a new form of 'stranded cost' that may have to be dealt with by future commissions.

[9] Department of Public Service, *March 2007 Electric Retail Access Migration Reports* http://www.dps.state.ny.us/Electric_RA_Migration.htm.
[10] Cases 94-E-0952 *et al., In the Matter of Competitive Opportunities Regarding Electric Service*, Opinion and Order Regarding Competitive Opportunities for Electric Service, Opinion 96-12 (issued May 20, 1996) at 30-31.

*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?*

The Commission does not have the authority to require, nor need it encourage, non-utility LSEs to enter into long term contracts. If retail consumers are interested in reducing price volatility, and if entities such as energy service companies ("ESCOs") do not have the internal corporate resources to provide such long term stability, the market will drive ESCOs to seek long term contracts.

The New York Power Authority ("NYPA") and the Long Island Power Authority ("LIPA") should not be encouraged to enter into long-term contracts for any of the purposes described in the prior question. In addition to the overall impacts that such contracts have on markets and the consumers that these markets serve, the superior competitive position these entities bring to bear because of their tax exempt status and their ability to avoid much state and federal regulation enhances their ability to distort markets. Again, SUEZ respectfully submits that if there is a public policy objective that is not being met by the market, the inquiry should be how to remove the barriers that are preventing that market response rather than allowing governmental entities to leverage their advantages to reduce the size of the market accessible to private capital.

*What other barriers exist, if any, for the development of new electricity resources?*

There are numerous barriers to entry for new electricity resources, varying across the state. In the metropolitan New York City region, a scarcity of land resources for which a variety of infrastructure needs compete reduces the number of sites that are susceptible to development for large scale electric generation facilities.

The lack of a comprehensive siting statute has reduced the predictability of the regulatory outcome for potentially viable projects. In addition, both successful and attempted legislative intervention in the face of proposed projects has sent a negative signal to potential investors. Finally, a history of varying degrees of interference in wholesale and retail market pricing in many parts of the country has led to greater uncertainty that competitive markets will continue to be supported by regulators and legislators.

This lack of certainty as to the future prospects of properly functioning markets increases risk for investors and can have a chilling effect on infrastructure development.

*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?*

For the reasons noted above, no new incentives should be created.

*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?*

As has been the Commission's policy in the past, contracts should be of no larger capacity than is necessary to meet the public policy goal they are intended to meet. This will help to minimize the ratepayer risks associated with such contracts. Anti-competitive impacts can only be minimized to the extent that such contracts' quantities are minimized.

*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?*

As mentioned above, such processes, if deemed necessary, should be done pursuant to open, competitive processes open to all relevant old and new resources. In addition, current rules relating to utility affiliates and their participation in such solicitations should be enforced.

*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?*

As noted in numerous PSC decisions, pre-approval of long term contracts requires the Commission to illegally attempt to bind future commissions. In addition, it unnecessarily reduces the utilities' incentive to negotiate the best bargain for the ratepayers in its service territory. The long history of "six cent" contracts in New York illustrates the economic harm that can be accomplished when a utility is perceived as being shielded from a prudence review of its actions.

*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?*

The question here should not be whether long term contracts can be harmonized with NYISO "rules", but whether such contracts can be harmonized with the functioning,

competitive wholesale markets these rules are intended to support. As discussed above, while a nominal amount of capacity tied up in contracts can and does function within the NYISO's rules and markets, such contracts are quickly diminishing the availability of load subject to competition in the southeast New York zones. This has played a contributory role in discouraging a greater investment in merchant generation in a part of the state where it is needed most.

## CONCLUSION

SUEZ, as an international company with significant experience in constructing and operating a variety of types of energy infrastructure, stands ready to invest its private capital where markets are properly functioning and are likely to properly function in the future. It has already made significant investments in New York's wholesale and retail markets in recognition of the leadership role this state has played in facilitating rational markets that benefit consumers.

SUEZ appreciates the difficult challenges the Commission faces in ensuring that all New Yorkers have access to reliable electricity at just and reasonable rates. SUEZ respectfully submits that the single greatest contribution that the Commission can make to encouraging new, merchant investment in New York's critical infrastructure is to take this proceeding as an opportunity to reaffirm the State's commitment to competitive markets as a means of advancing the interests of its consumers, economy and environment.

Dated: June 5, 2007

Respectfully submitted,

SUEZ Energy North America, Inc.

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