

STATE OF NEW YORK DEPARTMENT OF PUBLIC
SERVICE

THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

Internet Address: <http://www.dps.state.ny.us>

PUBLIC SERVICE COMMISSION

WILLIAM M. FLYNN
RYMAN

Chairman

THOMAS J. DUNLEAVY
LEONARD A. WEISS
PATRICIA L. ACOMPORA
MAUREEN F. HARRIS



DAWN JABLONSKI

General Counsel

JACLYN A. BRILLING

Secretary

June 26, 2006

VIA ELECTRONIC FILING

Honorable Magalie R. Salas, Secretary
Federal Energy Regulation Commission
888 First Street, N. E.
Room 1-A209
Washington, D.C. 20426

Re: Docket No. AD05-17-000 – Notice Requesting Comments
On Wholesale And Retail Electricity Competition

Dear Secretary Salas:

For filing, please find the Comments of the Public Service Commission of the State of New York in the above-entitled proceeding. Please note that this document intentionally contains "redlined" text.

Should you have any questions, please feel free to contact me at (518) 474-7663.

Very truly yours,

s/s

Sean Mullany
Assistant Counsel

Attachment

UNITED STATES OF AMERICA
ELECTRIC ENERGY MARKET COMPETITION
INTERAGENCY TASK FORCE AND THE
FEDERAL ENERGY REGULATORY COMMISSION

Notice Requesting Comments On) Docket No. AD05-17-000
Draft Report to Congress on)
Competition in the Wholesale And)
Retail Markets for Electric Energy)

COMMENTS
OF THE PUBLIC SERVICE COMMISSION
OF THE STATE OF NEW YORK ON DRAFT REPORT
TO CONGRESS ON COMPETITION IN THE WHOLESALE
AND RETAIL MARKETS FOR ELECTRIC ENERGY

The New York State Public Service Commission (NYPSC) submits these comments pursuant to the Notice Requesting Comments (NRC) issued June 5, 2006. The NYPSC submits its comments in compliance with Rule 214 of the Federal Energy Regulatory Commission's (FERC or Commission) Rules of Practice and Procedure. Copies of all correspondences and pleadings should be addressed to:

Sean Mullany
Assistant Counsel
Public Service Commission
of the State of New York
Three Empire State Plaza
Albany, NY 12223-1350
sean_mullany@dps.state.ny.us

Rajendra Addepalli
Manager, Staff ISO Team
Office of Economic Development and
Policy Coordination
Public Service Commission
of the State of New York
Three Empire State Plaza
Albany, NY 12223-1350
rajendra_addepalli@dps.state.ny.us

INTRODUCTION and SUMMARY

The NYSPSC commends the Electric Energy Market Competition Interagency Task Force ("Task Force") for its Draft Report to Congress On Competition In The Wholesale And Retail Markets For Electric Energy ("Draft Report"). We welcome the opportunity to comment on the Draft Report, and are hopeful that it will serve as a framework for the ongoing dialogue on policy issues raised by the still-evolving competitive markets. The Draft Report includes a comprehensive overview of the competitive markets and a fairly balanced description of various models adopted in different jurisdictions.

An ongoing and well-informed assessment of the state of the markets is critical to making the best policy judgments. To this end, it is important that we continue efforts to develop appropriate metrics for gauging and evaluating the operation of competitive markets. The focus of the wholesale market part of the Draft Report appears to be primarily on entry of new infrastructure in competitive markets. It is beyond debate that this is an essential metric of success. However, other measures of market operation, such as improvement in operation and efficiency, are also critical to a comprehensive evaluation of market performance.

The Draft Report examines some of the barriers to the new entry of merchant facilities in organized markets. One important, complex, and highly relevant area of concern is what has been referred to as "regulatory uncertainty." We agree that regulatory uncertainty will have a profound impact on competitive

markets and that federal and state regulators should work hard to minimize regulatory uncertainty as much as possible.

Finally, experiences across the country have demonstrated that an appropriate design is essential for competitive markets to succeed. Judgments about the efficacy of competition as a means for achieving the economically efficient allocation of resources must be informed by careful examination of how markets are designed and the impacts of such designs.

DISCUSSION

For ease of reference, and to minimize the burden of finalizing the Draft Report, where possible we have presented our comments in the form of "marked-up" text. In such cases, we have also included a brief discussion of the rationale for the particular changes we have recommended. Where this approach is infeasible, however, we have articulated our comments in narrative form.

Page 53:

The summary of New York's wholesale market should include mention of the demand curve for operating reserves implemented by the NYISO to provide appropriate scarcity price signals. In addition, the description of new generation should include generation capacity added since the NYISO's markets opened in December 1999. We recommend that the text on page 53 of the Draft Report be modified as indicated below:

"b. New York

Wholesale Market Operation: The New York ISO (NYISO) provides

transmission services as well as operating a centralized electric power market. On the one hand, NYISO uses price mitigation to guard against wholesale price spikes but, on the other, it allows high cost generators to be included in marginal location prices. The NYISO has implemented a demand curve for operating reserves, to provide appropriate scarcity pricing for the energy market at times of shortage or near shortage (i.e., when the system is running low on operating reserves). Moreover, the NYISO operates locational capacity markets to ensure sufficient capacity to meet peak loads.

New Generation Investment: In addition to significant amounts of generating resources located within New York City and on Long Island, New York has at times built generation in less populated areas and moved it to more populated areas. For example, the New York Power Authority was responsible for getting hydroelectric power from the Niagara Falls area into more congested areas of the state. During the early 1990's, the proliferation of independent power generators under PURPA resulted in units sited at industrial facilities, but not necessarily close to load centers. Since the NYISO's markets opened, more than 4,700 MW of generating capacity has been added, primarily in more populated high-priced regions, while about 600 MW has been retired.¹³⁰

Deleted: traditionally

Deleted: From January 2002 through June 2003, NYISO added 316 MW in capacity.¹²⁹ Three generating plants with a total summer capacity of 1,258 MW came on line in 2004. Three plants totaling 170 MW retired in 2004.¹³⁰

¹³⁰ New York State Department of Public Service, *Staff Report on the State of Competitive Energy Markets: Progress to date and Future Opportunities*, p.2 (March 2, 2006). Available at: <http://www.dps.state.ny.us/EnergyCompetition.html>.

Deleted: ¹²⁹ FERC State of the Markets Report 2004 at 109.¶

Deleted: FERC State of the Markets Report 2005 at 97

Page 54:

We recommend that the text on page 54 of the Draft Report be modified as indicated below:

"In a further effort to spur new capacity construction, NYISO also sets a more generous "reference price" for new generators in their first three years of operation.¹³¹ (Bids above the reference prices may trigger price mitigation.) Unlike New England, New York is seeing new generation investment in a congested area. 226 MW, 180 MW, and 1,000 MW of new central station capacity has entered into commercial operation in the New York City area in 2004, 2005, and 2006, respectively. The fact that New York is better able than New England to match locational need with investment is likely due to clearer market price signals in New York, both in energy markets and capacity markets."

Deleted: Approximately

Deleted: is planned to enter

Please also note that **Figure 3-2: Estimate of Annual NY Capacity**

Values - All Auctions, on page 54 of the Draft Report, displays values for 2006 year-to-date. Annual New York capacity values for calendar year 2006 will likely be comparable to 2005, rather than the small fraction displayed in Figure 3-2. Because 2006 values are not yet ascertainable, we recommend deleting 2006 YTD capacity values from Figure 3-2.

Page 58:

The second paragraph on page 58 discusses possible reasons for a "perceived lack of ability to enter into long-term purchase power contracts." It states that

. . . . some comments argued that organized exchange markets based on uniform price auctions (*e.g.*, PJM and NYISO) have made it difficult to arrange contracts with base-load and mid-merit generators at prices near their production costs.

We do not agree with those who describe organized markets based on uniform price auctions as an impediment to entering long-term purchase power contracts. Given the existence of the markets, it is unreasonable to expect to be able to arrange long-term contracts with base-load and mid-merit generators at prices near their production costs. Any supplier will consider opportunity costs in its offer price and require compensation commensurate with other sales opportunities, be they in LBMP-based spot markets or elsewhere.

It is also unreasonable to expect base-load and mid-merit generators to use "production costs" as a benchmark for prices for long-term purchase power

contracts. "Production costs" in the energy markets typically reflect fuel costs but not much else, and such facilities have much larger fixed costs than marginal gas-fired units. For example, coal & nuclear plants have relatively low fuel costs, but significantly larger fixed costs (*e.g.*, plant construction costs, operating and maintenance costs, taxes, etc.). If long-term contracts were priced at "production cost" levels, such facilities would not recover their fixed costs.

Finally, to the extent some have argued that the regulated cost of service (including O&M, capital, and normal rate of return) is the "correct" price for coal and nuclear plants, it should be noted that while those plants may earn a high rate of return when gas prices are high, they earn very low (or even negative) rates of return during years when gas prices are lower. If natural gas prices remain at current levels, and these resources continue to earn higher rates of return, such price signals will provide an incentive for construction of new coal and nuclear plants. Ultimately, new entry should drive rates of return back down.¹

The last two sentences in the second paragraph on page 58 currently read as follows:

"Stated another way, when natural gas units set the market price, these units may recover only a small margin over their operating costs, while nuclear and coal units recover larger margins. Under traditional regulation, by contrast, all of an owner's generation units generally are allowed the same return, which may be less than marginal units, and more than infra-marginal units, in competitive markets."

¹ Please also note that the second paragraph refers to "Box 3-2" as describing how prices are set in organized exchange markets. However, no such Box is displayed within that section of the Draft Report.

This text is somewhat confusing. While nuclear and coal units may earn larger margins, they also have larger fixed costs to cover. In equilibrium (assuming new nuclear and coal generation have had time to enter in response to profit opportunities), the larger margins of nuclear and coal units should just cover their larger fixed costs, allowing comparable rates of return on investment (adjusted for risks). However, some units with exceptionally low fixed costs (*e.g.*, certain hydro units, which could not be duplicated) could earn exceptional profits if they were paid market prices.

The last paragraph on page 58 states that "[i]n addition, the very competitiveness of these markets cannot be assumed." The Draft Report should also be amended to note that organized markets are subject to ongoing scrutiny by FERC, state regulators and the ISO/RTOs. Market monitoring is in place in all these markets, along with mitigation measures, where appropriate. Moreover, market monitors report regularly to FERC on the competitiveness of the respective markets and propose changes if needed.

Pages 64-65:

The last paragraph addresses the question of whether price levels are adequate for new generation projects to recover their full costs. This discussion should also address the question of locational variances in price. In areas where new generation is not immediately needed, such price signals are entirely rational and proper. In other areas where the need for new generation is greater, prices have reflected such need. Accordingly, we recommend that the paragraph

spanning pages 64 and 65 of the Draft Report be modified by adding the text indicated below:

Net revenue analyses for the centralized markets with price mitigation suggest that price levels are inadequate for new generation projects to recover their full costs. For example, in the last several years, net revenues in the PJM markets have been, for the most part, too low to cover the full costs of new generation in the region. Based on 2004 data, net revenues in New England, PJM and California would have allowed a new combined-cycle plant to recover no more than 70% of its fixed costs. In areas where new generation is not needed, such price signals are entirely rational and proper. Where new generation is needed, prices in New York have reflected such need. For example, based on 2005 data, net revenues in New York City were close to the levels required to support new generation, due in part to relatively high locational capacity prices in New York City.¹⁷⁶

¹⁷⁶ See: Potomac Economics, 2005 State of the Market Report: New York Electricity Markets, April 2006, slides 33-36, available at: http://www.nyiso.com/public/webdocs/committees/mc/meeting_materials/2006-04-26/agenda_04_2005_NYISO_Annual_Report.pdf

Page 66:

The first full paragraph on page 66 of the Draft Report describes locational capacity markets, which provide for higher capacity credits in load pockets such as New York City. We suggest adding the following text at the end of the paragraph, as indicated:

.... Prices would be lower because there would be less scarcity, and high cost units would be needed to run during fewer hours. NYISO's locational capacity market provides for higher capacity credits in New York City and Long Island, reflecting the higher cost and tighter capacity conditions in those load pockets; transmission lines that deliver generation into those load pockets can receive these higher locational capacity credits, providing a market-based incentive for transmission investments.

Page 67:

The third sentence in the third paragraph on page 67 states that "[a] uniform

price auction may thus produce prices that are very high compared with the costs of some generators and yet not high enough to give investors an incentive to build new generation that could moderate prices going forward." This sentence confuses production costs (limited to fuel and other variable costs) with total costs (including fixed costs, such as construction, fixed operation and maintenance, taxes, etc.). The market-clearing price, whether achieved by a uniform price auction or pay-as-bid, must be high enough to cover total costs, if it is to give investors an incentive to build new generation. For coal and nuclear plants with relatively high fixed costs but relatively low production (variable) costs, the market price must be well above their production costs in order to cover their substantial fixed costs. We recommend, therefore, that this sentence be deleted.

Page 68:

The first paragraph properly identifies the importance of being able to distinguish between high prices due to genuine scarcity, and high prices due to the exercise of market power. The Report should note (both on page 68, and on page 3 under Observations on Generation Supply in Markets for Electricity) that, in New York, steps have been taken to address this need. The NYISO has developed cost based reference prices and automated mitigation procedures which employ "conduct and impact" thresholds to distinguish between high prices due to genuine scarcity and high prices caused by the exercise of market power. New York's approach is designed to protect consumers against market power abuses, while

preserving scarcity pricing.² Accordingly, we suggest that the first paragraph on page 68 be amended as follows:

. . . . Being able to distinguish between the two situations is therefore important in markets with market-based pricing. While difficult, it is not impossible. The NYISO has implemented price rules and mitigation procedures specifically designed to identify when high prices are due to genuine scarcity, and not the exercise of market power.

The last paragraph on page 68 addresses the difficulty of determining "the appropriate level of capacity payments to spur new entry without over-taxing market participants and consumers." It may be helpful to mention the steps which New York has taken to address this area of concern. To provide more complete information about New York's approach, we suggest that the last paragraph on page 68 be amended to include the text indicated below:

. . . . It is difficult to determine the appropriate level of capacity payments to spur entry without over-taxing market participants and consumers. NYISO employs a capacity market "demand curve," in which greater supply leads to lower capacity payments according to a fixed schedule, published in advance; thus if the payment level is initially above the cost of capacity, new entry will automatically reduce the payment down to the actual cost of capacity.

Page 69:

The fourth sentence in the second paragraph on page 69 of the Draft Report (emphasis added) currently reads as follows:

² FERC Docket PL05-6-000, Establishing Reference Prices for Mitigation in Markets Operated by Regional Transmission Organizations and Independent System Operators, Notice of Intervention and Comments of the New York State Public Service Commission, (May 2, 2005); Motion for Leave to File Supplemental Comments and Supplemental Comments of the New York State Public Service Commission, (June 9, 2005).

. . . . These concerns can be addressed somewhat by appropriate rules – e.g., **NYISO’s rules giving capacity payment preference to newly-entered units** – but in general, it is difficult to tell whether capacity payments alone would spur economically efficient entry.

In general, all NYISO capacity suppliers (new and existing) are eligible for comparable payments (with higher payments in New York City and Long Island). Generation facilities within New York City which were divested by Con Edison are subject to bid and price caps on capacity payments. The bid and price caps applicable to these particular facilities were imposed prior to divestiture in order to mitigate market power within New York City. This was not, however, a general preference to all new supply. Accordingly, we recommend deleting the reference to the NYISO's rules.

Page 71:

The second paragraph on page 71 of the Draft Report includes the following statement:

"Few residential customers have switched to alternative suppliers or marketers in these states."

Although in the past relatively few residential customers migrated to alternative suppliers, last year, in New York State, significantly greater numbers of residential customers switched to alternative suppliers.

The Task Force may also wish to note that specific data regarding customer migration rates, including the total number of customer accounts, the percentage of all eligible customer accounts, and the amount of load represented, is available from the New York State Department of Public Service, at its Web site at

http://www.dps.state.ny.us/Electric_RA_Migration.htm. According to the most recent data, as of April, 2006, a total of 426,080 of all residential electric accounts have switched to alternative suppliers in New York State. This represents 7.6% of all eligible residential accounts and a total load of 252,574 MWh.

Page 77:

The second paragraph on page 77 of the Draft Report currently states:

"Other large states such as Texas, New York, Pennsylvania, New Jersey, and Illinois moved ahead with retail competition as planned. These states have ended, or are about to end, their POLR service rate caps and will soon rely on competitive wholesale and retail markets for electricity."

New York is distinguishable from the other states mentioned. As a result, the scope of the phrase "POLR service rate caps" is unclear. The reference to New York State indicates the phrase "POLR service rate caps" includes not only legislatively-enacted caps adopted in certain other states, but also more complex approaches, such as hedging, which have been employed in New York.³ Because New York's approach has been very different than policies adopted in the other states mentioned, we recommend deleting the reference to New York in the first sentence of the second paragraph on page 77.

Page 78:

³ As footnote 183, on page 72, correctly observes, in New York State, POLR prices have been adjusted to reflect, to a certain extent, changes in wholesale prices. This has ameliorated the so-called "rate shock" which has been experienced to a greater extent in some other jurisdictions.

"Few alternative suppliers currently serve residential customers."

It may be appropriate to insert the phrase "In general," at the beginning of this sentence, and include a footnote explaining that, where available, specific information on the number of alternative suppliers is included in the profiles in Appendix D of certain states which have adopted retail competition.

Page 80:

"In New York, between six and nine suppliers offer services to residential customers in each service territory."

The data presented here are not consistent with the information provided on page 138 of the Draft Report, which indicates between 6 and 13 alternative suppliers are serving residential customers. The most recent data available indicates that between 6 and 16 alternative suppliers are serving residential customers in different service territories in New York State. The report should also note that these numbers continue to change as New York State moves forward, and that more complete information, such as the scope of services offered by such providers, is needed to fully evaluate this aspect of the competitive retail market.

Page 82:

"It is difficult to draw conclusions about how competition has affected retail prices for residential customers in those states in which residential customers continue to take capped POLR service (*e.g.*, Maryland, Illinois, and portions of New York, Pennsylvania, and Texas)."

As mentioned above in connection with page 77, outright price caps have not been applied to residential POLR service in New York State. New York's

approach has been more complex. As a general matter, the state has sought to achieve an appropriate balance between effective price signaling, enhanced demand elasticity, and consumer protection against undue price volatility.⁴

Accordingly, we recommend deleting the phrase "and portions of New York."

Page 84:

The second full paragraph on page 84 of the Draft Report currently states as follows:

"In states with traditional cost-based regulation, utilities have used various incentives for customers to reduce consumption during periods in which there is high demand and transmission congestion (*e.g.*, hot summer days). The existence of retail competition has, in some instances, discouraged the use of these traditional types of programs, particularly when POLR is no longer the responsibility of distribution utilities. Without the need to maintain a portfolio of resources to meet POLR, distribution utilities may no longer value these types of programs as a resource to ensure reliable and efficient grid operation. Shifting the responsibility of grid operation and reliability to regional organizations such as ISOs/RTOs further decreases the direct interest by distribution utilities in these types of product offerings."

The Report should also point out that, in other instances, such as in New York State, ISOs have successfully implemented large demand response

⁴ "Generally, rates should increasingly reflect market prices over time. As markets develop and utility multi-year contracts expire, utility commodity rates should move toward a short-term market price flow-through. We therefore agree with the RD that in the final stage of a utility's offering of a competitive service, the rates for that service should closely track the unadjusted spot market price. As noted above, however, customers should not be exposed solely to the spot market until other hedged services are generally available." Case 00-M-0504, Statement Of Policy On Further Steps Toward Competition In Retail Energy Markets, 40-41 (August 25, 2004).

programs. For example, NYISO has developed programs for price-responsive load and distributed generation which have resulted in increased participation by demand response providers in the New York Control Area.⁵ During periods of extreme weather or other system emergencies, these resources provide valuable alternatives to involuntary curtailments and help reduce the costs of serving the remaining load. For example, in 2002, the NYISO was able to call on these resources to help avoid voltage reduction and/or load shedding. Moreover, New York's market design incorporates demand curves for installed capacity and operating reserves, to provide more gradual and predictable price responses to tightening markets. These provide market participants with advance warning of potential shortages, providing a lead time for efficient response.

Page 85-86 and footnote:

The second sentence of the last paragraph on page 85, and footnote 210 currently read as follows:

"The POLR price is the price that new suppliers, including unregulated affiliates of the distribution utility, must compete against if they are to attract customers.²¹⁰

²¹⁰ There is one potential exception. Suppliers that offer a substantially different product, "green" power from wind turbines, for example, may be able to charge a higher price and still attract customers."

⁵ As of October 18, 2005, the NYISO had enrolled 1794 participants, representing 1120 MW, in its Special Case Resources (SCR) Installed Capacity (ICAP) Program. There were 917 participants, representing 597 MW, in the NYISO's Emergency Demand Response (EDRP) Program, and 19 participants, representing 394 MW, in its Day Ahead Demand Response Program (DADRP).

In addition to the impact of other value-added services, such as "green" power offerings, other factors have bearing. For example, pricing structures, such as fixed-price options, will impact the competitive dynamics between different market participants.

**Appendix D: State Retail Competition Profiles
Pages 137-142:**

We recommend a number of changes to the Draft Report's summary and overview of New York's retail competition policies and markets, as indicated below.

Administrator and Start Date: Restructuring in New York State has taken place primarily through orders of the New York Public Service Commission (PSC) rather than through legislative initiatives. Because the PSC phased in restructuring through PSC-approved utility restructuring plans over a three year period, each utility had a different timetable to transition to retail competition.

In 2004, the PSC identified a number of "best practices," and ordered distribution utilities to submit plans to foster the development of retail competition.⁶ For example, the PSC encouraged utilities to consider interim programs, modeled on the approach taken by Orange & Rockland Utilities, Inc. (O&R), to encourage residential customers to try purchasing energy from alternative suppliers. Subsequently, the PSC adopted statewide guidelines for such programs, based in part on the O&R program,

Deleted: speed

Deleted: developed by Orange and Rockland (O&R) as the model for all

⁷ Under those guidelines, the utility notifies any customers who contact

Deleted: utilities to follow

Deleted: The O&R program requires

Deleted:

Deleted: to invite

⁶ NY PSC, Case 00-M-0504, "Statement of Policy on Further Steps toward Competition in Retail Energy Markets" (August 25, 2004).

⁷ Case 05-M-0858 et al., "Order Adopting ESCO Referral Program Guidelines and Approving an ESCO Referral Program Subject to Modifications," (December 22, 2005). As part of that order, the PSC also approved Central Hudson Gas & Electric Corporation's ESCO Referral Program which also was modeled on the

Deleted: The

Deleted: and

the utility that they can try an alternative supplier for a two-month period. Alternative suppliers participating in the program offer a one-time 7% discount for the trial period. Customers can either pick an alternative supplier or have one randomly assigned and customers can return to POLR service or to another alternative supplier at the end of the trial period. As the table on retail switching indicates below, switching levels in the O&R distribution territory are higher than in other territories.

Deleted: to

On September 23, 2005, the PSC determined that the pace of development of real-time pricing was insufficient to moderate the effects of rising fuel costs.⁸ To speed the development of real-time pricing, the PSC ordered that existing real-time pricing programs in some distribution territories be expanded to include all territories and that POLR service for large C&I customers be tied to real-time pricing.

Consumer Options: New York retail electricity customers can select an alternative supplier or be part of an aggregation of consumers that obtain electric power from an alternative supplier. Customers not served by an alternative supplier receive POLR service from the distribution utility. POLR service for large C&I customers is offered on an hourly price basis that tracks wholesale spot market prices.

Deleted: designated POLR service provider in the distribution territory

Alternative Suppliers Deemed Eligible to Provide Service: The New York PSC website provides lists of alternative suppliers in each distribution territory. For example, in February 2006, the number of alternative suppliers serving residential customers ranged from 6 in the Central Hudson and O&R territories to 16 in the National Grid (Niagara Mohawk) distribution territory. C&I customers generally had more alternative suppliers to choose from.

Deleted: Licensed

Deleted: 13

Switching Restrictions and Minimum Stay Requirements: The NY PSC is in the midst of implementing a number of policies to encourage consumers to try alternative suppliers.⁹ One of these, known as "ESCO Referral

O&R program,

Deleted: retail competition enhancement plan, including this approach, was approved by the PSC on June 1, 2005 (Case 05-M-0332). The PSC has rejected substitute approaches proposed by other distribution utilities.

⁸ NY PSC, Case 03-E-0641, "Order Instituting Further Proceedings and Requiring the Filing of Draft Tariffs" (September 23, 2005).

⁹ New York State Department of Public Service, *Staff Report on the State of Competitive Energy Markets: Progress to Date and Future Opportunities* (March 2, 2006), Electric and Natural Gas Retail Markets sections I to III.

Programs," places limits on the ability of alternative suppliers to levy charges against departing customers. Further details about the PSC's guidelines for ESCO Referral programs can be found in a recent order.¹⁰

Deleted: These policies do not authorize suppliers to

Finally, please note that the reference to the December 14, 2005 System Benefits Charge (contained in Table 23, on page 141 of the Draft Report) is incorrect, and should read as follows:

[http://www3.dps.state.ny.us/pscweb/WedFileRoom.nsf/ArticlesByCategory/537570FAF2225B2852570D600700767/\\$File/05m0090_12_21_05.pdf?OpenElement](http://www3.dps.state.ny.us/pscweb/WedFileRoom.nsf/ArticlesByCategory/537570FAF2225B2852570D600700767/$File/05m0090_12_21_05.pdf?OpenElement)

Respectfully submitted,

Dawn Jablonski Ryman
General Counsel
NYS Department of Public Service
3 Empire State Plaza
Albany, New York 12223-1350

_____/s/_____/

By: Sean Mullany
Assistant Counsel
(518) 474-7663

Dated: June 26, 2006
Albany, New York

¹⁰ Cases 05-M-0858 and 05-M-0332, Order Adopting ESCO Referral Program Guidelines and Approving an ESCO Referral Program Subject to Modifications, (Issued December 22, 2005). Available at: <http://www3.dps.state.ny.us/pscweb/WebFileRoom.nsf/Page?OpenForm>

CERTIFICATE OF SERVICE

I, Sean Mullany, do hereby certify that I will serve on June 26, 2006, the foregoing Comments of the New York State Public Service Commission upon each of the parties of record, indicated on the official service list compiled by the Secretary in this proceeding.

Date: June 26, 2006
Albany, New York

s/s
Sean Mullany