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March 7, 2003

Janet H. Deixler  
Secretary  
Public Service Commission  
Agency Building Three  
Empire State Plaza  
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Re: Consolidated Edison RFP for New Capacity (SAPA ID No. PSC-03-03-00006-P)

Dear Secretary Deixler:

The Independent Power Producers of New York, Inc. (IPPNY) and Natural Resources Defense Council (NRDC) offer the following comments in connection with the above-referenced matter concerning the request by Consolidated Edison Company of New York, Inc. (Con Ed) for recovery of all costs it will incur under any contract executed pursuant to its request for proposals (RFP) for 500 MW of new capacity in New York City. IPPNY is a non-profit trade association representing the independent power industry in New York, whose members include electric generation owners, developers and power marketers who may be affected by any rules the Commission establishes relating to the Con Ed RFP in particular or RFPs in general. NRDC is a national environmental organization headquartered in New York, working to support policies that reduce air pollution and encourage investments in energy efficiency and clean generation of electricity.

Inasmuch as the Commission already has released its Declaratory Ruling on Cost Recovery, Issued January 24, 2003, in which it granted Con Ed's requested relief from the 90/10 sharing provision but declined to address the prudence of any contract entered pursuant to the RFP, IPPNY and NRDC will not address in detail the Con Ed RFP in these comments. Moreover, IPPNY and NRDC are not advocating in these comments that the Con Ed RFP should be delayed

or modified, given the urgent need for new capacity in New York City. However, IPPNY and NRDC strongly believe that the Con Ed RFP raises very important general policy considerations that the Commission must consider as it develops policies that support competitive markets. In order to accommodate a full airing of interested parties' views on the ramifications of using an RFP process to secure some or all of the State's capacity requirements, IPPNY requests that the Commission immediately convene a proceeding to develop guidelines to be used by load serving entities (LSEs) as they structure future RFPs.

At the outset, IPPNY and NRDC note that they both recognize and have stressed the importance of long-term contracts between suppliers and LSEs to facilitate investment in new generation, to assure reliable service to consumers, and to reduce consumer exposure to unnecessary price volatility.<sup>1</sup> Wholesale and retail market rules must be fashioned in a manner that supports the competitive marketplace for electric energy and capacity and sends accurate price signals to suppliers and LSEs for appropriate long-term commitments, without erecting impediments to the ability of counterparties to enter long-term obligations on a rational basis or undermining the functioning of competitive markets.

Given the current design of the installed capacity (ICAP) market in New York State, IPPNY would have concerns with future RFPs that discriminate against existing generation in favor of new facilities. Implementation of the ICAP Demand Curve originally proposed by staff of the Department of Public Service (DPS) and recently approved by the Management Committee of the NYISO will go a long way toward ameliorating the detrimental effects (discussed below) of discriminatory RFPs, but its implementation is not yet a certainty. And even with a restructured ICAP market that includes the Demand Curve, we must guard against developing a process that undermines competitive markets, by taking competitive discipline out of the equation in favor of administrative out-of-market (and likely above market) procurement. In short, a reasonable balance must be achieved among competing objectives.

Under the current ICAP market design, because of the fact that ICAP in excess of the statewide or locational requirement is not accorded any value, ICAP prices plummet quickly when any appreciable excess exists. In addition, owners of the divested generation (DGOs) in New York City are precluded from entering into any bilateral contracts for the divested capacity. If one establishes a procedure whereby RFPs are only available to new generation, then existing capacity will have to compete to serve a reduced demand (reduced by the amount of capacity procured pursuant to RFPs). The result is that discriminatory RFPs would have the effect of further collapsing ICAP market clearing prices in the competitive auctions to a level at which many units would be unsustainable. However, because of the numerous load pockets and stringent double contingency reliability standards applicable in NYC, certain of these units likely cannot be permitted to shut down, for reliability reasons.

While the cause is slightly different, this is similar to the situation currently unfolding in New England. One company announced its intent to shut down a unit that was not covering its costs. ISO-NE determined that the unit is needed for reliability considerations and negotiated an out-of-market reliability must run (RMR) contract to keep the unit on line. The bifurcation of the

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<sup>1</sup> See, *Charting a Course for the Future: New York's Electricity Markets Today & Tomorrow* available at [www.ippny.org](http://www.ippny.org)

capacity market into a competitive and an RMR market is having a snowball effect to drive other existing generators to RMR contracts. This phenomenon is antithetical to competitive markets and the Commission must consider it carefully as it evaluates the desirability of, and rules that should apply to, future RFPs.

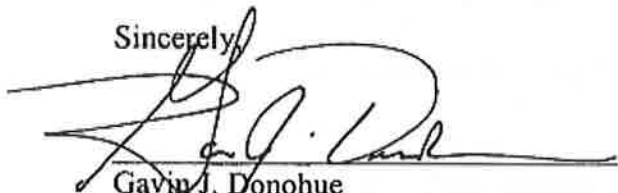
We offer the following brief issues list as an indication of the myriad issues implicated by an RFP process that the Commission should evaluate before embarking on a path toward greater reliance on out-of-market RFPs:

- How much of its ICAP requirement should a LSE procure under an RFP process?
- What length of time should the RFP cover? Should the LSE procure separate tranches of short, intermediate and longer-term contracts?
- Should RFPs be used to ensure the state maintains appropriate fuel diversity among various fuel types?
- How can or should RFPs be best used in connection with the procurement of demand side resources and/or energy efficiency?
  - Is it appropriate to set aside a specified amount of capacity in an RFP that only certain types of resources can apply for (e.g., DSM, renewables, etc.)
- Is it ever appropriate to discriminate against existing supply resources in future RFPs?
- Should RFPs solicit only capacity resources or both capacity and energy commitments?
- What criteria should be used by the LSE in selecting a winning RFP response?
- What weighting should be applied to the following factors in evaluating RFP responses:
  - Lowest capacity cost
  - Lowest all-in energy and capacity cost
  - Environmental performance (e.g., for a re-powering or new facility)
  - Fuel diversity considerations
  - Demand side reduction considerations
- Should external resources be candidates for future RFPs?
- If external sources are deemed acceptable RFP candidates, are existing rules relating to firmness of import capability satisfactory?

In light of the great opportunity for a properly structured RFP process to work with competitive markets, the impact such a process could have on delivering reliable service to consumers, and the significant issues that must be addressed in the design of an appropriate policy, IPPNY and NRDC hereby request that the Commission convene a proceeding to develop guidelines for future RFPs.

Thank you for your attention to this matter. Please don't hesitate to contact me with any questions or comments.

Sincerely,



Gavin J. Donohue  
Executive Director  
Independent Power Producers of New York, Inc.



Ashok Gupta  
Director, Air & Energy Program  
Natural Resources Defense Council

Cc: Hon. William Flynn  
Hon. Thomas J. Dunleavy  
Hon. James D. Bennett  
Hon. Leonard A. Weiss  
Hon. Neal N. Galvin  
Mr. Paul Powers