STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on November 27, 2012

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
Maureen F. Harris
James L. Larocca
Gregg C. Sayre

CASE 12-E-0503 - Proceeding on Motion of the Commission to Review Generation Retirement Contingency Plans.

ORDER INSTITUTING PROCEEDING AND SOLICITING INDIAN POINT CONTINGENCY PLAN

(Issued and Effective November 30, 2012)

BY THE COMMISSION:

BACKGROUND

Recent experience suggests that the development of Reliability Contingency Plans to address reliability concerns in the event of generator retirements is an important initiative that the Department and the Commission should encourage. In particular, the value of a Reliability Contingency Plan to address reliability concerns associated with the closure of the nuclear power plants at the Indian Point Energy Center is

increasingly apparent. This conclusion was also expressed by the Governor's Energy Highway Task Force Blueprint.[1]

In this order, we are commencing a proceeding to solicit a Reliability Contingency Plan for the Indian Point Energy Center (Indian Point Contingency Plan). The Indian Point Contingency Plan is due by February 1, 2013, with any comments on the plan due by February 22, 2013. The need for any follow-up will be determined following our review of the Indian Point Contingency Plan. The development of additional Reliability Contingency Plans for other facilities will be addressed in the future.

DISCUSSION

The potential retirement of a significant electric generating facility, such as the Indian Point Energy Center, requires significant advanced planning.[2] Specifically, the size, location, and uncertainties regarding the potential retirement of

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[1] Specifically, the Energy Highway Blueprint made the following findings with respect to retirements:

1) The proposed closure of power plants that are required to maintain system reliability can potentially impose additional costs on customers when the closing plant must be kept online at above market prices; and,

2) Either by virtue of plant size, location, or uncertainties regarding the timing of potential retirements, the electricity market may not be in a position to respond adequately to the shutdown of certain power plants once retirement is announced – as is the potential case with the Indian Point Energy Center, a 2,040 MW nuclear power plant located in the lower Hudson Valley.

Energy Highway Blueprint, p. 42. See, http://www.nyenergyhighway.com/Content/pdf/Blueprint_FINAL.pdf

[2] We interpret the term "retirement" broadly to include shut-downs, abandonments, mothballing, and other circumstances where a generating unit is taken out of service for a substantial period of time, excluding scheduled maintenance and forced outages.

the Indian Point Energy Center warrant such planning activities at this time. We agree there is a need to develop a contingency plan now to ensure reliability in the event the Indian Point Energy Center is ultimately retired.[3]

The Indian Point Facility

The Indian Point Energy Center is located in Buchanan, N.Y., just south of Peekskill, N.Y. and approximately 30 miles north of the State's major load center in New York City. The facility consists of two base-load nuclear generating units, referred to as Units 2 and 3, which are owned by Entergy Nuclear Indian Point 2, LLC, and Entergy Nuclear Indian Point 3, LLC, respectively (collectively, Entergy). Each unit is capable of generating approximately 1,020 MW, and at this size, is among the largest generating facilities in New York State.

There is currently significant uncertainty as to whether Entergy will be able to obtain the necessary permits and approvals to keep the Indian Point Energy Center operational over the long-term. Units 2 and 3 operate under licenses issued by the U.S. Nuclear Regulatory Commission (NRC) that expire at the end of 2013 and 2015, respectively; Entergy has applied for 20-year license extensions. We understand that the NRC is holding its final decisions on the license applications in abeyance while it evaluates nuclear waste storage issues.

Moreover, before the NRC may re-license the Indian Point Energy Center, Entergy is required to obtain a Water Quality Certification (WQC) from the N.Y. Department of Environmental Conservation (DEC) pursuant to §401 of the federal Clean Water

[3] In directing the development of this plan, the Commission is not making any determinations or taking any positions regarding the potential closure of the Indian Point Energy Center.

Act.[4] On April 2, 2010, the DEC issued a Notice of Denial of Entergy's application for a WQC. The DEC's decision was based primarily on the lack of a closed-system cooling technology to minimize harm to fish and fish eggs. On April 30, 2010, Entergy requested a hearing to formally challenge the DEC's decision.

Entergy has also sought to renew its State Pollution Discharge Elimination System (SPDES) permit from DEC to allow the Indian Point Energy Center to continue to discharge thermal pollutants into the Hudson River. The DEC is currently undertaking an administrative review of the WQC and SPDES issues on a joint record, and it is uncertain when DEC's review will be concluded, what the ultimate disposition of the issues will be, or what the impact of that disposition will be on the feasibility of the continued operation of the Indian Point Energy Center.

A loss of the Indian Point units, which, when operating, supply over 2,000 MW, could result in significantly reduced reliability at the time of retirement and for several years thereafter until replaced.[5]

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[4] 33 U.S.C. §1341. The Clean Water Act requires that an applicant must receive a certificate from the State in which the project is located stating that the project meets State water quality standards.

[5] New York City and southeastern New York rely not only on the energy produced by the Indian Point Energy Center, but also on its supply of "reactive capability" to support energy transfers into the downstate region from upstate and from the neighboring electric systems operated by the New England Independent System Operator and PJM Interconnection. Reactive power refers to the background energy movement in an AC system arising from the production of electric and magnetic fields, which can produce substantial voltage changes. Reactive capability ensures this energy movement is balanced between sources of generation and points of demand so that the electric system can be operated within acceptable limits.

Reliability Contingency Plan

We will direct Consolidated Edison Company of New York, Inc. (Con Edison), as the local transmission owner, with the assistance of the New York Power Authority (NYPA), as authorized by its Board of Trustees, to develop a contingency plan for the potential closure of Indian Point upon the expiration of its existing licenses by the end of 2015. Con Edison is also directed to file its plan with the Commission. We expect that DPS Staff will work with Con Edison and NYPA to develop such a contingency plan.

The Reliability Contingency Plan should take into account the status of proposed power plants and AC and DC transmission projects, as well as the potential impacts of energy efficiency, distributed renewable generation, demand response, and combined heat and power projects.[6]

The contingency plan we are describing should include the form of Request for Proposals (RFP) that would be issued to procure needed resources to address system reliability needs by the summer of 2016,[7] along with "halting mechanisms" in the event it becomes apparent that the Indian Point Energy Center remains operational and replacement capacity is not required as of that

[6] Simultaneously with this order, we have initiated a proceeding under Case 12-T-0502 to consider certain AC transmission upgrades recommended by the Energy Highway Task Force. While we expect those upgrades may alleviate the reliability impacts of the retirement of the Indian Point units, we cannot be certain at this time when those upgrades will be available.

[7] Although the license for Indian Point Unit 3 expires December 12, 2015, this would occur when system demands are expected to be down. Accordingly, the reliability needs would not need to be addressed until the subsequent peak demands are anticipated in the summer of 2016.

time.[8] The RFP process will ensure that any process to procure replacement capacity or comparable facilities will be competitive, and, together with the halting mechanism, will assist the Commission in controlling ratepayer cost exposure. The contingency plan should identify the potential projects that could be used to address reliability needs in the near-term or long-term, assuming the Indian Point Energy Center is retired at the end of 2015. To the extent available, suggestions should be included in the contingency plan where opportunities may exist to improve current regulatory processes to accelerate the development schedule, recognizing that there is a need to meet an aggressive timeline in the event Indian Point is retired.

In addition to the points noted above, the Indian Point Contingency Plan should also address the following items:

1. Identification of the specific point or points in time when, for planning purposes, it is assumed that Indian Point Units 2 and 3 will be retired.
2. An analysis, for planning purposes, of the extent, timing, and characteristics of the reliability needs that would arise if Indian Point Units 2 and 3 were retired.
3. Identification and assessment of the generation, transmission, and other resources that are currently under development that could, when completed, contribute to meeting the identified reliability needs.
4. Analysis of the extent to which the reliability needs arising from the retirement of Indian Point

[8] Halting mechanisms refer to provisions by which the development of a replacement solution may be deferred, delayed, or canceled if it becomes apparent that the Indian Point Energy Center will not be required to close. These mechanisms would serve to protect ratepayers from incurring unnecessary costs.

Units 2 and 3 are mitigated by energy efficiency, distributed renewable generation, demand response, or combined heat and power initiatives.

5. Opportunities for the economic repowering of existing power plants to obtain significant environmental benefits through reduced emissions or the reuse of already developed utility land and transmission infrastructure.
6. An assessment of the procurement approaches that could be used to identify, evaluate, and competitively select the resources to meet the identified reliability needs, including potential RFP bidding structures, such as: (1) a fixed price Power Purchase Agreement; (2) a contract for differences; and, (3) Renewable Portfolio Standard-like contractual support.
7. Based on the previous assessment, a detailed description, including timing, of the procurement approach, RFP, and competitive selection process that would be undertaken to plan for a potential or known retirement of Indian Point Units 2 and 3.
8. A description of the major terms of the development agreement that would be offered to project(s) selected through the RFP.
9. An identification of the halting mechanisms that would be incorporated in any agreements to develop projects, including how the project developer may be compensated for the development work completed prior to the halting.

10. A description of the major milestones that will be used to measure the progress of the project(s) selected through the RFP.
11. A description of other actions which must be taken by the Commission or other State or local agencies to implement the Indian Point Contingency Plan, or to support the implementation of projects identified for development through the plan, including, for example: 1) actions which may be taken by the NYISO or by the Federal Energy Regulatory Agency; 2) federal, state or local permitting and compliance; and 3) actions needed to secure financing.

CONCLUSION

This proceeding is initiated to accelerate and prioritize the development of Reliability Contingency Plans that anticipate and plan for the potential retirement of significant generation resources in the State. Given the size, location, and the uncertainties surrounding the continued operation of the Indian Point Energy Center, an Indian Point Contingency Plan is being solicited initially on an expedited basis. Con Edison should collaborate with NYPA, DPS Staff, and any other appropriate entities, to produce an Indian Point Contingency Plan, as discussed above, for filing and review by the Commission on or before February 1, 2013.

Entities interested in receiving the Indian Point Contingency Plan should submit, by January 18, 2013, a "Request for Party Status," which is accessible by searching Case 12-E-0503 on the Commission's Web site at the following address: http://www.dps.ny.gov/New_Search.html. Any comments concerning the Indian Point Contingency Plan, which will be posted on the

Commission's Web site noted above, may be submitted by e-filing through the Department's Document Matter and Management System (DMM)[9] or to the Secretary at secretary@dps.ny.gov. Those unable to submit electronically may mail or deliver them to Hon. Jaclyn A. Billing, Secretary, New York State Public Service Commission, Three Empire State Plaza, Albany, New York 12223-1350. All comments shall be submitted by February 22, 2013.

All comments submitted to the Secretary will be posted on the Commission's Web site and become part of the official case record.

The Commission orders:

1. A proceeding is instituted to develop and review Reliability Contingency Plans that address potential retirements of electric generating facilities, as described in the body of this Order.

2. Consolidated Edison Company of New York, Inc., in consultation with the New York Power Authority, Department of Public Service Staff, and other appropriate agencies, is directed to file with the Commission and serve on the parties, by February 1, 2013, a Reliability Contingency Plan to address the possible closure of the nuclear generating facilities at the Indian Point Energy Center, as described in the body of this Order.

3. The Secretary at her sole discretion may extend or modify the deadlines set forth in this Order.

[9] Why Register with DMM, http://www.dps.ny.gov/DMM_Registration.html
How to Register with DMM, http://www.dps.ny.gov/e-file/registration.html

4. This proceeding is continued.

By the Commission,

Jaclyn A. Brilling
Digitally Signed by Secretary
New York Public Service Commission

(SIGNED) JACLYN A. BRILLING
Secretary