State of New York

Public Service Commission

Brief on Exceptions of the Citizens Advisory Panel

Case 94-E-0952 - In the Matter of Competitive Opportunities

Regarding Electric Service

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I. Introduction and Summary

The Citizens Advisory Panel ("CAP")[1] submits this brief on exceptions in reply to the Recommended Decision ("RD") issued December 21, 1995 by Administrative Law Judge Judith A. Lee and Ronald Liberty, Deputy Director of the Energy and Water Division ("ALJs") in case 94-E-0952 In the Matter of Competitive Opportunities Regarding Electric Service.

CAP's interest in this proceeding and the restructuring of New York's electric utility industry is to ensure reliable, safe, and environmentally sound electric service at least cost to customers and society in an equitable and fair manner.

CAP has been an active party throughout the case, participating in numerous all party meetings and work group sessions, submitting comments on the Proposed Principles To Guide The Transition To Competition (Opinion No. 94-27), submitting proposed changes to Models Descriptions, as well as filing initial comments and reply comments endorsing a Wholesale PoolCo Model.[2]

CAP welcomes the RD as a sensible recommendation that stresses the need for the Public Service Commission ("PSC" or "Commission") to proceed deliberately, yet cautiously when implementing far-reaching changes in the structure of New York's electric utility industry. In recommending initial introduction of competition in the generation sector

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[1] The Citizens Advisory Panel, was established by order of the Federal Eastern District Court to study and advise LILCO and the public concerning ways to improve electrical service, to mitigate rate increases, to control energy costs and to assist ratepayers to conserve energy. CAP is an active party to this proceeding, the current LILCO electric rate case, as well as other cases before the Commission.

[2] CAP is a member of the Public Interest Intervenors (PII) an ad hoc group of public interest organizations concerned with New York State's energy future. CAP joins in and supports the separate comments that are being filed in this docket by PII. However, CAP is submitting these additional and separate comments to express its views and positions from a consumer advocate perspective and to emphasize the particular concerns of Long Island residents and businesses.

only, the ALJs correctly place the potential for rate reductions at the wholesale level and clearly recognize the risks to consumers and the environment inherent in direct retail access.

However, CAP takes exception to the ALJs' conditional endorsement of a Flexible Retail PoolCo model[3]. As the RD itself recognizes, direct retail access carries numerous risks and should not be allowed unless it is in the best interest of all customers. The record in this case has not yet demonstrated that retail competition is in the best interest of all customers. Therefore, the question of *whether* retail access shall be implemented still remains. Until then, the Commission should implement the RD's recommendations regarding establishment of wholesale competition and not prejudge the appropriateness of direct retail access.

Throughout this proceeding CAP has stressed that changes in New York's electric utility structure must benefit all consumers, not just large industrial customers which would clearly stand to gain from direct retail access. The ALJs' RD makes clear that although retail competition provides the benefit of greater choice to customers such a model carries inherent risks. The RD correctly demands that the state should only move to direct retail access if it can be credibly demonstrated that all customers stand to benefit:

> *"[R]etail access brings with it significant risk and requires considerable caution, and should be provided only if it is in the best interest of all consumers."*[4]

CAP thoroughly agrees with the ALJs' finding and urges the Commission to take the necessary steps to move towards competition at the generation level. CAP agrees with

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[3] e.g. RD at 111.
[4] RD at 107

the RD that it has not been demonstrated that direct retail access is in the best interest of all consumers and that direct access should be provided only after it can be reasonably assumed that all customer classes would benefit equitably. To that effect, CAP proposes that the Commission direct parties to the collaborative process in this proceeding to develop a set of clear standards to be used at some future point in time to determine whether direct retail access should be implemented. The ALJs' recommendation to implement a wholesale model before considering retail access is consistent with the need to proceed deliberately, yet cautiously.

On the contentious issue of strandable costs, CAP's position throughout this proceeding has been that the Commission must provide utilities a fair opportunity to recover investments rendered obsolete as a result of restructuring but that it cannot be assumed that utility investors will recover 100% of stranded investments. Customers, as well, have a reasonable expectation, and deserve a reasonable opportunity to pay only for investments which are providing a benefit to them. We therefore fully agree with the ALJs' interpretation of the Commission's principles[5] when they write:

> *"While the utilities are not entitled to a guarantee of 100% recovery of the total of all strandable costs, they are entitled to present a case or make arguments showing why it would be reasonable for recovery to be allowed, given the Commission's requirements for mitigation and the utilities' market opportunities. Further, there must also be a "reasonable*

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[5] Case 94-E-0952, Opinion No. 95-7 (issued June 7, 1995) Appendix C, Principle Nos. 1,2, and 9

opportunity" for consumers to realize savings and receive reasonable prices."[6]

CAP also agrees with the ALJs' recommendation that strandable costs be recovered through a non-bypassable wires charge at the distribution level and the procedural proposal of the RD that level and timing of recovery of stranded costs be determined in separate proceedings.

To ensure that the Commission's principles that competition "further the economic and environmental well-being of New York State" and to "preserve research, environmental protections, cost effective energy efficiency and fuel diversity"[7] are followed, the ALJs stress the importance to include a recovery mechanism for costs of universal benefit programs in their recommended model:

"A non-bypassable systems benefits charge, imposed on all customers using the distribution system, appears to be a fair way of ensuring that such programs can be continued."[8]

CAP, along with Public Interest Intervenors ("PII") and other parties, has recommended such a systems benefit charge to ensure continued funding for energy efficiency and other public interest policies that provide system-wide benefits. CAP fully supports the ALJs' recommendation to include such a mechanism that would ensure that benefits of competition are not achieved by sacrificing universal system benefits and foregoing of public policy goals.

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[6] RD at 80
[7] Opinion No. 95-7, Principle Nos. 1 and 3
[8] RD at 84

Regarding the transmission and distribution ("T&D") utilities' obligation to serve, CAP supports the ALJs' recommendation that T&D companies must continue to have the obligation to reliably serve all customers at just and reasonable rates. The RD recognizes the fact that electricity is not merely a commodity, but an essential and necessary service for all New Yorkers. The ALJs' statement that:

> *"[i]t is not sufficient to claim that the market will provide reasonably priced electricity to all New Yorkers, especially given the lack of experience with energy services companies being available to deliver services in all areas of the state."*[9]

presents a clear rebuttal to arguments made by some parties during the proceeding that markets will automatically ensure supply where demand exists. CAP has repeatedly argued that energy service companies ("ESCOs") face numerous market entry barriers that need to be removed first to allow for a full competitive market for such services. The RD correctly asks for more than mere faith that 'the market will take care of it' when stating that:

> *"[t]he record in this proceeding does not support the existence of effective competition in the market for energy services..."*[10]

As such it is clear that T&D companies must continue to be obligated to perform services for their customers, including insuring appropriate voltage levels, resolving complaints, portfolio management and provision of energy efficiency services.

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[9] RD at 86
[10] RD at 87

Equally laudable is the ALJs' insistence that consumer protections be maintained for both residential and non-residential customers. Here again the RD correctly points out that:

> *"[t]he current market cannot be relied upon to ensure that consumer complaints and concerns will be promptly resolved."*[11]

Finally, the RD recognizes the paramount importance of public input and education as part of this proceeding and recommends a specific three-part program for public involvement. CAP welcomes such public involvement efforts and has stressed previously that a broad public debate on a restructuring of the industry has not yet unfolded. CAP has cautioned that the results of limited focus groups and surveys to date can only be interpreted as a starting point for public opinion and initial awareness. As the debate unfolds, public awareness will grow and public opinion may change dramatically. CAP has warned that such a shift in public opinion occurred in a matter of equal importance -- widespread public acceptance of nuclear power followed by a complete reversal of public opinion and resulting changes in public policy. Therefore, regulators and policy makers are well advised to proceed carefully and should not mistake initial public opinion polls based on minimal public awareness for a mandate to institute sweeping and possibly irreversible changes that may meet widespread sentiment when the public debate unfolds.

II. Discussion

CAP's interest in this proceeding and the restructuring of New York's electric utility industry is to ensure reliable, safe, and environmentally sound electric service at least cost to customers and society in an equitable and fair manner.

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[11] RD at 87

CAP believes that the current system needs modification to better meet these goals. CAP is, however, concerned that a restructuring of the electric system, an essential infrastructure for all New Yorkers, reflect and protect the public interest. CAP has previously warned that a new system designed to accommodate large industrial users will be fundamentally flawed if it disadvantages the majority of customers (residential and smaller to medium size commercial users).

CAP therefore, along with other consumer interest groups[12], has stressed the following objectives:

- A restructured electric system shall benefit all consumers equitably and fairly, and shall not shift costs or benefits from one customer group to another.

- A restructured electric system shall provide a fair opportunity for utilities to recover investments that are rendered obsolete as a result of restructuring. Such costs, however, shall not be borne by residential and small business customers alone or disproportionally.

- A restructured electric system shall ensure, rather than jeopardize, implementation of policies that sustain economic development, protect the environment and achieve long term societal goals such as energy efficiency, alternative fuels, and affordability of service.

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[12] A coalition of consumer and environmental groups (consisting of the American Association of Retired Persons, Citizens Advisory Panel, Citizens Utility Board, Natural Resources Defense Council, Pace Energy Project, and others) released a "Consumers' Statement on Restructuring New York's Electric Utility System" calling on elected representatives, regulators and policy makers to consider these goals.

- A restructured electric system shall continue to offer service to all and meet or exceed current standards of safety, reliability, and customer service and provide means to resolve customer complaints.

- A restructured electric system shall be designed and implemented only with the full participation and input of the public in all aspects of planning and transition.

CAP believes that the Commission's principles as stated in Opinion No. 95-7[13] of this proceeding and the RD will guide the transition to a more competitive electric industry to ensure that the above objectives can be met and the public interest be protected.

A. Balancing Caution with Speed

CAP welcomes the RD as a sensible recommendation that stresses the need for the Commission to proceed deliberately, yet cautiously when implementing far-reaching changes in the structure of New York's electric utility industry. Regulators must proceed carefully and should not mistake initial public opinion for a mandate to institute irreversible changes that may meet widespread opposition when the public debate unfolds. Furthermore, the Commission must maintain a broad perspective and not expect competition to be a panacea that will magically solve the dilemma of high energy cost in New York State. The proposal currently before the board of trustees of the Long Island Power Authority ("LIPA") provides a good example how the problem of high electric costs can be tackled through a combination of measures. The proposal consists of a package of measures designed to reduce the burden of excessive electric costs on Long

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[13] Case 94-E-0952, Opinion No. 95-7 (issued June 7, 1995) Appendix C

Island including, but not limited to, introduction of competition. Among other elements, the plan calls for the separation of generation from T&D assets to allow for wholesale competition (with LIPA as T&D owner), a reduction and refinancing of stranded costs with LIPA bonds, elimination of federal tax obligations, and the establishment of aggressive energy efficiency programs.[14] Similarly, at the state level, introduction of competition represents but one tool that is best used in conjunction with other measures to cut energy costs in the long term. The sizable potential for savings from cost effective energy efficiency measures in New York State must not be ignored in the momentary excitement over the discovery of competitive efficiencies.

B. Risks vs. Benefits of Retail Access

In recommending initial introduction of competition in the generation sector only, the RD chooses the wholesale competition as the model which, in accordance with the Commission's principles[15], is most likely to result in economic efficiencies, both long and short term, and ensures that resulting savings are equitably passed on to all customers. The ALJs correctly locate the potential for rate reductions at the wholesale level and clearly recognize the risks to consumers and the environment inherent in direct retail access. The RD makes clear that although retail competition provides the benefit of greater choice to customers such a model carries inherent risks:

> *"Retail competition has the potential to benefit all customers by providing greater choice among their electricity providers as well as*

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[14] A letter from LIPA to CAP and NRDC dated January 11, 1996 clarified LIPA's commitment to energy efficiency efforts as means to lower electric costs.
[15] Opinion No. 95-7

increased pricing and reliability options. But retail access brings with it significant risk and requires considerable caution, and should be provided only if it is in the best interest of all consumers."[16]

CAP believes that the risks of a Retail Model far outweigh its benefits. CAP sees the Retail Model with its direct access, potential for cost shifting, multitude of financial contracts, and no obligation to serve as inherently biased against the majority of consumers. Additionally, CAP believes that this model would be detrimental to the long term economic and environmental well-being of the state, since it treats electric service as a commodity, with lowest short term price being the overriding principle. Furthermore, concerns exist regarding reliability of the bulk power system.

The Retail Model does not meet CAP's essential model attributes[17] and presents specific risks in the following areas:

1. Minimizing Energy Cost/Maximize Economic Benefits

While retail competition could be expected to lower costs to large customers, it would not necessarily lower costs to all customer classes. The model offers direct access to generators for all consumers, but in reality only large consumers would have such an opportunity. Smaller and medium-size customers could only access the market through an aggregator or ESCO. Economic efficiencies achieved at the wholesale level would not have to be passed on to all customers. They could flow exclusively to large industrial

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[16] RD at 107

[17] See CAP's initial comments in this proceeding, filed October 23, 1995

customers or get absorbed by aggregators and ESCOs acting as middlemen for the majority of customers.

The model treats electricity as a commodity, focusing on rate reductions, instead of minimizing energy costs statewide. The model is likely to hinder continued implementation of energy efficiency improvements, thereby unnecessarily increasing the amount of energy needed for New York State's economic well-being. The Retail Model would violate the Commission's first principle to "*further the economic and environmental well-being of New York State.*"[18] Instead, this model would only further the economic well-being of large industrial users in New York State. It would set back environmental progress by largely eliminating energy efficiency efforts and leaving implementation of long term public policy and planning objectives to short term oriented market forces.

2. Customer Equity Issues

The Retail Model fails CAP's customer equity test[19]:

(1) No Cost Shifting

The model fails this criterion since it provides ample opportunities for cost shifting from larger to smaller customer classes.

(2) Equal Opportunities

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[18] Opinion No. 95-7 (issued June 7, 1995) Appendix C
[19] See CAP's initial comments in this proceeding, filed October 23, 1995

The model does not provide all customer classes an equal opportunity to participate in the market but creates drastically different opportunities for different customer classes. In addition, the Retail Model may increase price volatility, which would disadvantage smaller customers due to their limited financial flexibility.

(3) Assurance of Service at Reasonable Price

Since the model relies on unregulated market providers for electric service at the customer end, an obligation to serve would not even exist. Some proposals envision a provider of last resort, which in all likelihood would offer substandard or expensive service.

(4) User Friendliness

To take advantage of the model's features (spot price purchases, contracts for differences, etc.) would require considerable sophistication or expert assistance. While large customer will have the expertise and resources to navigate the system successfully, the model would be confusing to the average user.

(5) Neutral System Design

The Retail Model is a system envisioned by large industrial users and custom tailored to the needs of that customer class. Addition of safeguards to make this model more appealing to residential and small business customers cannot overcome the inherent fact that this model is ill suited to the majority of consumers in the state.

3. Encouraging Efficient Consumption/Minimize Societal Cost

The overall goal of a transition to a more competitive industry structure is not to merely lower rates, but to lower electric bills and long term energy costs to contribute to a healthy economy and environment in New York State. The Retail Model with its view of electricity as a commodity and narrow focus on rates is on a direct collision course with the Commission's first principle:

> "*Competition in the electric power industry will further the economic and environmental well-being of New York State. The basic objective of moving to a more competitive structure is to satisfy consumers' interests at minimum resource cost. Prices should therefore accurately reflect resource costs, and consumers should have a reasonable opportunity to realize savings and other benefits from competition.*"[20]

The Retail Model's focus on lowest short term commodity prices provides ample incentives to shift true resource costs to a later point in time or to other areas (e.g. taxes) thereby inaccurately reflecting resource costs. CAP does not believe that a Retail Model would ensure implementation of policies that sustain economic development, protect the

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[20] Opinion No. 95-7 (issued June 7, 1995) Appendix C

environment and achieve long term societal goals such as energy efficiency and alternative fuels.

4. Safety, Reliability and Affordability of Service

CAP believes that a Retail Model would fail to offer affordable service to all and that the model may not be able meet current standards of reliability.

The model would not include an obligation to serve and offers no guarantees of reasonably priced service. As such, the model would not comply with the Commission's second principle:

"*[A] basic level of reasonably priced service must be maintained for all New Yorkers.*"[21]

nor with the Commission's mandate, that "*all New Yorkers must have access to reliable and reasonably priced electric service provided safely, cleanly and efficiently*".[22]

5. Customer Service and Consumer Complaints

The Retail Model would have difficulty to provide an adequate forum to resolve consumer complaints; since the entities dealing directly with customers would be unregulated and not required to provide such fora. The quality of customer service would depend on the ESCO the customer has chosen or has access to. CAP believes that any new industry structure must continue to provide equitable customer service, and provide means to resolve customer concerns and complaints comparable to today's mechanisms.

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[21] The first part of this principle states that the Commission should strive to minimize "bill shock" for any class of customers. As previously expressed, CAP agrees with the principle but is concerned with the use of the term "bill shock" since it implies that restructuring will increase bills for some customer classes.
[22] Case 94-E-0952, Opinion No. 94-27 at 10.

6. Proper Price Signals and Incentives

In contrast to a regulated environment where decisions of market participants are primarily controlled by regulatory rules, incentives and disincentives, a competitive market relies primarily on price signals to effectuate these decisions. In a more competitive industry structure it is therefore increasingly important to ensure that price signals are most accurate. Distorted price signals would result in costly and possibly disastrous market failures. This means that the more a model relies on market forces, the more must long term, societal, or environmental externality cost be incorporated into market prices. Of all competitive models, the Retail Model would rely to the largest extent on price signals. It appears highly unlikely, however, that a Retail Model would ensure full incorporation of societal and externality cost into market prices.

7. Fair Allocation of Transition Cost

CAP agrees with the principle that a restructured electric system shall provide a fair opportunity for utilities to recover investments that are rendered obsolete as a result of restructuring. Such costs, however, shall not be borne by residential and small business customers alone or disproportionally. The Retail Model could easily result in disproportional allocation of stranded costs, since certain customer classes could obtain direct access and possibly by-pass stranded cost contribution.

8. Consumer Representation at All Stages

CAP has stressed the need for broad consumer input both during the process of designing a new structure and once the new structure is in place. Regarding the latter, an essential

attribute of a model would be whether a model allows for full public input into planning and other decisions.

The Retail Model, largely relying on deregulated competitive suppliers, would make consumer input in planning decisions difficult or impossible. Information needed to review planning decisions would be considered confidential in the face of competition.

C. *Strict Standards for a Move to Retail Access*

Throughout this proceeding CAP has stressed that changes in New York's electric utility structure must benefit all consumers, not just large industrial customers which would clearly stand to gain from direct retail access. The RD correctly demands that the state should only move to direct retail access if it can be credibly demonstrated that all customers stand to benefit:

> *"[R]etail access brings with it significant risk and requires considerable caution, and should be provided only if it is in the best interest of all consumers."*[23]

CAP agrees with the RD that it has not been demonstrated that direct retail access is in the best interest of all consumers and that direct access should be provided only after it can be reasonably assumed that all customer classes would benefit equitably. To that effect, CAP proposes that the Commission direct parties to the collaborative process in this proceeding to develop a set of clear standards to be used at some future point in time to determine whether direct retail access should be implemented.

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[23] RD at 107

Such standards could include a showing that upon allowing direct retail access:

- System is unbiased and provides all customer classes an equal opportunity to participate and benefit;
- Benefits would ensue even for customers who choose not to have retail access;
- Cost-shifting would not occur;
- Implementation of energy efficiency and other public policy objectives would not be hindered;
- Obligation to serve would be maintained;
- Safety, reliability, and customer service quality would not be compromised;
- Consumer complaint forum would continue to be available;
- Full public participation and input in the planning process would be maintained.

CAP takes exception to the ALJs' conditional endorsement of a Flexible Retail PoolCo model[24]. As the RD itself recognizes, direct retail access carries numerous risks and should not be allowed unless it is in the best interest of all customers. The record in this case has not yet demonstrated that retail competition is in the best interest of all customers. Therefore, the question of *whether* retail access shall be implemented still remains until the above standards can be met by direct retail access scenarios.

D. No Guaranteed Recovery of Stranded Costs

CAP has maintained throughout this proceeding that the Commission must provide utilities a fair opportunity to recover investments rendered obsolete as a result of

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[24] e.g. RD at 111.

restructuring but that it cannot be assumed that utility investors will recover 100% of stranded investments. Customers have a reasonable expectation, and deserve a reasonable opportunity as well, to pay only for investments which are providing a benefit to them. We therefore fully agree with the ALJs' interpretation of the Commission's principles[25] when they write:

> *"While the utilities are not entitled to a guarantee of 100% recovery of the total of all strandable costs, they are entitled to present a case or make arguments showing why it would be reasonable for recovery to be allowed, given the Commission's requirements for mitigation and the utilities' market opportunities. Further, there must also be a "reasonable opportunity" for consumers to realize savings and receive reasonable prices."*[26]

CAP also agrees with the ALJs' recommendation that strandable costs be recovered through a non-bypassable access or wires charge at the distribution level. We agree with the RD that this charge should not be based on kwh usage but be a demand or fixed customer charge. However, the charge must be equitable to all customer classes and "bill-shock" must be avoided.

Given that this proceeding is under way and utilities and other parties are well aware of the coming changes of the industry structure towards a more competitive environment, CAP stresses the need for utilities and independent power producers ("IPPs") to make

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[25] Opinion No. 95-7 (issued June 7, 1995) Appendix C, Principle Nos. 1,2, and 9
[26] RD at 80

every effort possible to mitigate strandable costs. As such, CAP welcomes the RD's statement that:

> *"Utilities and IPPs alike should use creative means to reduce the amount of strandable costs before they can be considered for recovery."*[27]

(Emphasis added)

The procedural proposal of the RD that level and timing of recovery of stranded costs be determined in separate proceedings should be followed.

E. System Benefits Charge

To ensure that the Commission's principles that competition "further the economic and environmental well-being of New York State" and to "preserve research, environmental protections, cost effective energy efficiency and fuel diversity"[28] are followed, the ALJs stress the importance to include a recovery mechanism for costs of universal benefit programs in their recommended model:

> *"A non-bypassable systems benefits charge, imposed on all customers using the distribution system, appears to be a fair way of ensuring that such programs can be continued."*[29]

CAP, along with Public Interest Intervenors ("PII") and other parties, has recommended such a systems benefit charge to ensure continued funding for energy efficiency and other public interest policies that provide system-wide benefits. CAP welcomes the ALJs'

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[27] RD at 75
[28] Opinion No. 95-7, Principle Nos. 1 and 3
[29] RD at 84

recommendation to include such a mechanism to ensure that benefits of competition are not achieved by sacrificing universal system benefits and foregoing of public policy goals. CAP stresses that the Commission's responsibility is to ensure implementation of public policy goals. No matter how great the pressure from certain customer groups may be to reduce rates, the implementation of an industry structure that would forego the public policy goals would be short-sighted and contrary to the Commission's mandate.

F. Obligation to Serve: ESCO Market Must Develop

CAP supports the ALJs' recommendation that T&D companies must continue to have the obligation to reliably serve all customers at just and reasonable rates. Availability and affordability of service to all New Yorkers is an obvious essential attribute of any model to restructure the state's electric utility industry. Electrical service is a basic necessity to the livelihood, health and safety of all New Yorkers and the Commission's mandate, that "*all New Yorkers must have access to reliable and reasonably priced electric service provided safely, cleanly and efficiently*"[30] as well as the Commission's first principle make this statement clearly.

The RD recognizes the fact that electricity is not merely a commodity, but an essential and necessary service for all New Yorkers. The ALJs' statement that:

> *"[i]t is not sufficient to claim that the market will provide reasonably priced electricity to all New Yorkers, especially given the lack*

[30] Case 94-E-0952, Opinion No. 94-27 at 10.

of experience with energy services companies being available to deliver services in all areas of the state."[31]

presents a clear rebuttal to arguments made by some parties during the proceeding that markets will automatically ensure supply where demand exists. CAP has repeatedly argued that energy service companies ("ESCOs") face numerous market entry barriers that need to be removed to allow for a full competitive market for such services. The RD correctly asks for more than mere faith that 'the market will take care of it' when stating that:

"[t]he record in this proceeding does not support the existence of effective competition in the market for energy services..."[32]

As such it is clear that T&D companies must continue to be obligated to perform services for their customers, including insuring appropriate voltage levels, resolving complaints, portfolio management and provision of energy efficiency services. It is important that the portfolio management function be maintained, requiring the T&D company to provide a least cost mix of demand-side and supply-side resources to their customers. To provide incentives, or remove disincentives, for the T&D company to pursue such portfolio management, the Commission should continue to "decouple" profits from sales. T&D companies should be able to provide customers a greater spectrum of services. Provision of consumer choice of service and pricing options, as stated in the Commission's fifth principle:

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[31] RD at 86
[32] RD at 87

"Any new electric industry structure should provide:

(a) increased consumer choice of service and pricing options;"[33]

must, however, not be interpreted as to allow sub-standard service to customers who cannot afford a basic level of service. CAP is concerned that misguided application of this principle could lead to a discriminatory system where low-income customers, senior citizens, and financially stressed businesses would be faced with a choice between reliable service quality which they cannot afford and sub-standard 'third-world' service.

G. Consumer Protection Must Be Ensured

CAP believes that any new industry structure must continue to provide adequate consumer protections as well as a forum to resolve customer concerns and complaints. The ALJs rightfully insists that consumer protections be maintained for both residential and non-residential customers and correctly point out that:

"[t]he current market cannot be relied upon to ensure that consumer complaints and concerns will be promptly resolved."[34]

The Commission's fifth principle[35] also clearly recognizes the need for continued customer protection mechanisms. The Commission's regulatory function to ensure that service is provided safely, reliably, non-discriminatory and in the public interest is essential today. CAP believes that in a more deregulated environment, the Commission's role to

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[33] Opinion No. 95-7
[34] RD at 87
[35] Opinion No. 95-7

provide such protections and a forum for consumer complaint resolution (as well as consumer input in planning decisions) may become even more important.

H. Widespread Public Input and Participation is Called For

Finally, the RD recognizes the paramount importance of public input and education as part of this proceeding and recommends a specific three-part program for public involvement. CAP welcomes such public involvement efforts and has stressed previously that a broad public debate on restructuring of the industry has not yet unfolded. CAP has cautioned that the results of limited focus groups and surveys to date can only be interpreted as a starting point for public opinion and initial awareness. As the debate unfolds, public awareness will grow and public opinion may change dramatically. CAP has warned that such a shift in public opinion occurred in a matter of equal importance -- widespread public acceptance of nuclear power followed by a complete reversal of public opinion and resulting changes in public policy. The history and politics of nuclear power should be a warning to policy makers and provide a lesson here: Initially, the concept of using state-of-the-art technologies to provide clean electricity, too cheap to meter, appealed to the majority of people. Similar to the issue at hand, expert opinions on nuclear power varied widely. And just as we have no previous experience with a competitive electric industry structure, policy makers, experts, and citizens had to rely on limited experience, borrowing from other industries, thus learning the hard way. The nuclear power industry, having a clear stake in widespread and rapid commercialization of its technology, did everything it could to convince policy makers and the public of the merits of nuclear power. Yet, after

the public became more aware of the risks of nuclear power, and when predictions of low rates did not materialize, did public opinion turn against nuclear power.[36]

Therefore, regulators and policy makers are well advised to proceed carefully and should not mistake initial public opinion polls based on minimal public awareness for a mandate to institute sweeping and possibly irreversible changes that may meet widespread sentiment when the public debate unfolds.

III. Conclusion

CAP supports most elements of the RD as a sensible proposal in the belief that a wholesale competition model best meets the essential attributes required to restructure New York's electric system in accordance with the Commission's mandate and principles. The basic objectives of restructuring must be (1)the minimization of energy cost with maximized economic benefits; (2)fair and equitable treatment of all customer classes; (3)encouragement of efficient consumption and minimization of long term societal cost; (4)the continued safety, reliability and affordability of service; (5)adequate customer service and a forum for consumer complaints; (6)the provision of proper price signals and incentives to reward utility performance; (7)a fair mechanism for the allocation of transition costs; and (8)the continued participation of all stakeholders in decision making processes.

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[36] See e.g. David P. McCaffrey, The Politics of Nuclear Power: A History of the Shoreham Nuclear Power Plant, Kluwer Academic Publishers (1991):
National Harris and Gallup surveys showed that in 1971, 57% favored nuclear power and only 25% opposed it, whereas in 1980 support had dwindled to 28% and opposition grown to 63%.

CAP rejects RD's conditional endorsement of a Flexible Retail PoolCo model. As the RD itself recognizes, direct retail access carries numerous risks and should not be allowed unless it is in the best interest of all customers. The record in this case has not yet demonstrated that retail competition is in the best interest of all customers. Therefore, the question of *whether* retail access shall be implemented still remains. Until then, the Commission should implement the RD's recommendations regarding establishment of wholesale competition and not prejudge the appropriateness of direct retail access.
As previously stated in this proceeding, CAP sees the Wholesale PoolCo Model as the most honest model since its economic efficiencies are real in that they result from market efficiencies as opposed to sham savings achieved through shifting of costs from one customer class to another.

For the majority of electric service customers, the Wholesale PoolCo Model is the model most likely to answer consumers' demands for a more efficient industry structure while adequately addressing consumers' concerns regarding fairness and equity issues.

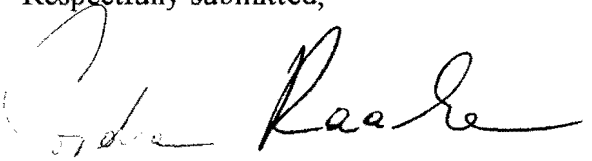
Finally, CAP does not believe that Long Islanders, or New Yorkers, will see drastic bill reductions through the introduction of a more competitive system alone, no matter which model is implemented. CAP believes that all available means to lower electric bills must be employed to satisfy customers' demands and the Commission's principles. While the use of competitive market forces is one remedy to be applied, CAP believes that competition is not a panacea. Energy efficiency provides the state with a unique tool to lower customer bills while fostering New York State's economy and environment. CAP therefore urges this Commission to give serious consideration only to a solution that

would yield sustainable long-term bill reductions based on real market efficiencies and employs full implementation of energy efficiency measures.

CAP warns that public opinion is at a minimal level and cannot be relied upon as a mandate to institute sweeping changes. CAP welcomes and supports the RD's recommendation to provide for extensive public outreach and education.

CAP recommends that the Commission proceed deliberately, yet cautiously by taking all necessary steps to implement competition at the wholesale level, as outlined above. At this point, the Commission should not go any further than the RD's first proposed stage of transition to wholesale competition. CAP urges the Commission to develop strict standards that must be met before direct retail access can be provided.

Respectfully submitted,



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