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VIA HAND DELIVERY

Honorable Jaclyn A. Brilling
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Re: Case 07-G-0299 - In the Matter of Issues Associated with the Future of the Natural Gas Industry and the Role of Local Gas Distribution Companies - Capacity Planning and Reliability

Dear Secretary Brilling:

Multiple Intervenors, an unincorporated association of approximately 50 industrial, large commercial and institutional energy consumers with manufacturing and other facilities located throughout New York State, hereby files an original and ten (10) copies of this letter as its Reply Comments in response to the Notice of Comment Schedule issued by the New York State Public Service Commission ("Commission") on March 14, 2007, in Case 07-G-0299, *In the Matter of Issues Associated with the Future of the Natural Gas Industry and the Role of Local Gas Distribution Companies – Capacity Planning and Reliability.* Multiple Intervenors received comments from the following parties: Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Direct Energy Services, LLC, Dominion Transmission, Inc., Hess Corporation ("Hess"), Intelligent Energy, National

Energy Marketers Association ("NEMA"), KeySpan Energy Delivery New York and KeySpan Energy Delivery Long Island, National Fuel Gas Distribution Corporation ("NFG"), New York State Electric & Gas Corporation ("NYSEG"), New York State Energy Marketers Coalition ("NYSMC"), Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid"), Northeast Gas Association ("NGA"), Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation ("RG&E"), Shell Trading Gas and Power Company, Small Customer Marketer Coalition, Texas Eastern Transmission, L.P., and UGI Energy Service, Inc. ("UGI").

Multiple Intervenors anticipated and addressed the arguments made by these parties and will respond only to a couple of points. Specifically, Multiple Intervenors is opposed to the request of Hess, NYSEG and RG&E that mandatory capacity assignment should apply to all core customers being served by energy service companies ("ESCOs"). In addition, Multiple Intervenors will respond to comments that advocate additional LDC incentives. For the reasons set forth below and in its Initial Comments, Multiple Intervenors requests that the Commission clarify that the proposed capacity requirements set forth in the Department of Public Service Staff White Paper on capacity planning and reliability are not applicable to large commercial, industrial, and institutional customers that otherwise qualify as "core" customers and that these customers will continue to be permitted to choose the level of service on the interstate system that best fits their complex needs.[1] Moreover, Multiple

[1] Case 07-G-0299, *In the Matter of Issues Associated with the Future of the Natural Gas Industry and the Role of Local Gas Distribution Companies – Capacity Planning and*

Intervenors urges the Commission to refrain from adopting any particular rate design or LDC incentive mechanisms in this proceeding.[2]

A. Mandatory Capacity Assignment Should Not Be Applicable to Large Commercial, Industrial, and Institutional Core Customers

As recognized by several parties, and consistent with Commission precedent, core customers include customers that take either: (a) firm sales service, and lack installed equipment capable of burning fuels other than gas; or (b) firm transportation service.[3] Moreover, back-up and standby services provided to firm transportation customers are core market services. Many members of Multiple Intervenors are firm transportation customers and, therefore, qualify as core customers.

Reliability, "Staff White Paper on Capacity Planning and Reliability" (issued: March 14, 2007) ("White Paper").

[2] In addition, NGA states that it supports the allocation of capacity costs to all customers on an equitable basis. However, as set forth in Multiple Intervenors Initial Comments, the Commission should clarify that any costs associated with the mandatory capacity release programs will not be collected from Pre-Aggregation Transportation Customers. (Multiple Intervenors Initial Comments at 6-7).

[3] Case 93-G-0932, *Proceeding to Address Issues Associated with the Restructuring of the Emerging Competitive Natural Gas Market – Short-Term Curtailment Procedures – Petition for Rehearing*, Opinion 94-26, "Opinion and Order Establishing Regulatory Policies and Guidelines for Natural Gas Distributors" (December 20, 1994) at 1, 15; "Order Adopting Short-Term Curtailment Procedures" (December 3, 1996) at 1 n. 1.

In its Initial Comments, Hess argues that "the mandatory capacity release program should apply to all firm customers without caveat."[4] Similarly, in their Initial Comments, NYSEG and RG&E argue that the application of mandatory capacity assignment of interstate pipeline capacity "should apply to all core customers . . . being served by ESCOs."[5] In general, NYSEG and RG&E propose to implement a mandatory capacity assignment program for all core customers by November 1, 2011, at the latest.[6] As set forth below and in its Initial Comments, it is Multiple Intervenors position that the proposed mandatory capacity assignment requirements set forth in the White Paper should not be applicable to large "core" customers.

As set forth in Multiple Intervenors' Initial Comments, a customer characterized as "core" at the distribution level should continue to be permitted to choose between secondary firm or primary firm at the upstream pipeline level without jeopardizing its "core" status.[7] In Opinion No. 94-26, the Commission recognized that "the reservation of gas supplies should not be the sole basis for the core/non-core distinction."[8] A customer's level of service on the

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[4] Hess Initial Comments at 4.

[5] NYSEG/RG&E Initial Comments at 2.

[6] *Id.* at 14.

[7] *See* Case 97-G-1380, *In the Matter of Issues Associated with the Future of the Natural Gas Industry and the Role of Local Gas Distribution Companies*, Order Revising Pipeline Capacity Requirements for Marketers (August 28, 2000) at 6; *see also* Order Denying Petition for Rehearing and Granting Petition for Clarification (November 20, 2000).

[8] Op. No. 94-26 at 15.

interstate system should not affect its "core" status on the LDC system. For example, a firm customer that has secondary firm capacity on the interstate pipeline runs the risk of not getting gas to the LDC system. As Multiple Intervenors established in its Initial Comments, the customer may employ other risk management strategies to cover this potential or may simply be willing to assume this risk. In any event, the customer's status on the interstate system should not deprive it of the right to secure firm service on the LDC system if it has paid for it.

Moreover, the utilities' comments demonstrate that the LDCs no longer hold capacity to serve large commercial, industrial and institutional customers. As NYSEG and RG&E state, "[n]either [Company] currently has sufficient capacity to serve all core customers under a mandatory assignment program."[9] In fact, on the RG&E system, the peak day needs of large core customers "are currently served using pipeline capacity obtained by the ESCO, except for 10% of the ESCOs contract demand . . ."[10] Thus, as National Grid states "if the LDC has reduced its own capacity contracts in response to load served by marketer-held capacity, the LDC may not be able to obtain the necessary capacity to comply with mandatory assignment."[11] If marketers serving these large customers are required to provide service through capacity-owned by the LDC, there is likely to be a capacity shortage, at least

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[9] NYSEG/RG&E Initial Comments at 14.

[10] *Id.* at 6.

[11] National Grid Initial Comments at 7.

for the near future, that will adversely impact natural gas capacity, overall system reliability and the cost of capacity.

As Multiple Intervenors demonstrated in its Initial Comments, an essential element of the Commission's vision of a competitive natural gas industry includes increased customer choice of gas suppliers and service options.[12] Large commercial and industrial customers should continue to be permitted to choose the level of service at the interstate system that best fits their complex needs. As UGI states, "[t]hese customers . . . often possess their own pipeline capacity or alternative means of energy supply."[13] Customers that have been for years contracting for secondary firm on the interstate system should not now be required to contract for primary firm on the interstate system. The maintenance of continued reliable and affordable natural gas service to large commercial and industrial firm transportation customers is essential to the economic viability of these customers and the ability of New York State to attract and retain business. Large customers should not be forced to pay for a premium service if they are willing to accept the risks associated with secondary firm services.

[12] Case 97-G-1380, *supra*, Policy Statement at 4.

[13] UGI Initial Comments at 2. In fact, the LDCs often look to these customers and their capacity to enhance the reliability of their systems.

B. The Commission Should Not Approve New LDC Incentives in the Context of this Proceeding

In their Comments, several parties advocate the provision of incentives to each LDC for working cooperatively with gas marketers.[14] Multiple Intervenors is not convinced of the necessity or prudence of any such LDC incentives. In any event, given that the structure, methodology, design and cost of any such incentive are unknown, the Commission should not endorse the implementation of any incentives in this proceeding. Instead, to the extent that a review of potential incentives is deemed necessary, such a review should be conducted in the context of utility-specific rate proceedings. Only in such rate proceedings can the necessary analysis of proposed rate design changes, and their impacts on customers, be properly assessed.

Please call me if you have any questions.

Very truly yours,

COUCH WHITE, LLP

James S. King

James S. King

JSK/sem
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[14] *See* NYSEMC Initial Comments at 4; NEMA Initial Comments at 6; Intelligent Energy Initial Comments at 2-3.