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Via E-Mail

Honorable Jeffrey C. Cohen, Acting Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Re: Case 12-E-0503 - *Proceeding on Motion of the Commission To Review Generation Retirement Contingency Plan*

Dear Acting Secretary Cohen:

NRG Energy, Inc. (NRG) appreciates the opportunity to provide comments on the Indian Point Contingency Plan submitted by Con Edison and the New York Power Authority ("Plan"). As discussed below, the Commission should:

(i) Reject the Plan's proposal to recover costs associated with early development of Transmission Owner Transmission Solutions ("TOTS") starting in April 2013 and subject both entities submitting RFP Proposals and TOTS to the same risk in being responsible for their project costs up until the Commission designates such projects to move forward.

(ii) Require DPS Staff to oversee the RFP process with the assistance of an independent outside consultant.

(iii) Treat TOTS cost submittals as firm bids.

(iv) Reject the Plan's proposal to constrain contracting structures and milestones.

(v) Reject the Plan's proposal to earmark 100 MW for demand response and energy efficiency projects and include these resources as part of the RFP.

As background, NRG is a Fortune 300 company and is one of the nation's largest, most diverse power companies with over 46,000 MW of generation, including over 4,000

MW in New York. NRG operates six wholesale generation facilities located throughout New York which consist of Arthur Kill Power LLC, Astoria Gas Turbine Power LLC, Dunkirk Power LLC, GenOn Bowline, LLC, Huntley Power LLC, and Oswego Harbor Power LLC. Additionally, Green Mountain Energy Company, Energy Plus Holding LLC and Reliant Energy Northeast LLC are wholly-owned subsidiaries of NRG that are active in New York's competitive retail markets. NRG directly employs over 900 people and generates enough electricity to power over 5 million households in New York.

Additionally, NRG has proposed investments in new generation projects worth over $3 billion, including the Astoria Repowering Project in Queens, the Bowline 3 Project located in the town Haverstraw, and the Dunkirk Repower in Chautauqua County New York. NRG's business interests include renewable power development, primarily in solar PV, combined heat and power including district heating, various forms of distributed generation and deployment of electric vehicle charging infrastructure.

As an owner of existing large scale generation, a developer of new power projects, and a retail energy provide, NRG has a significant interest in supporting the State's efforts as outlined in the Energy Highway Blueprint and the effort under this proceeding to develop a Reliability Contingency Plan to address reliability concerns associated with the potential closure of the nuclear power plants at the Indian Point Energy Center. As a result, NRG provides comments herein on the Indian Point Contingency Plan submitted in this proceeding by Con Edison and NYPA.

While NRG does not take a position on the closing of Indian Point, NRG understands that the New York Independent System Operator's 2012 Reliability Needs Assessment concluded that violations of transmission security and resource adequacy criteria would occur in 2016 if the 2000 MW Indian Point Plant were to be retired at the end of 2015. Given the dramatic and immediate reliability impact that would occur from a retirement of this magnitude, it is reasonable that New York would anticipate and plan for the potential retirement of such significant generation resources in the State. However NRG urges the Commission to provide an equal opportunity to new resources to address this need and offers the following specific comments on the Contingency Plan as discussed below.

I. The Plan's Proposal for Preliminary Cost Recovery Starting in April Should be Denied.

The Commission should reject the Plan's proposal to allow utilities cost recovery for the development of TOTS beginning in April 2013. Approval of such recovery would put utilities and private developers on unequal footing. Utilities should bear the risk for costs associated with early development of their TOTS up until the Commission authorizes the TOTS to move forward. Under the current schedule, the Commission is expected to issue its order designating the combination of RFP Proposals and/or TOTS that it authorizes to move forward on or about the first halting date on September 30, 2013. Cost recovery for TOTS beginning in April 2013 would be premature. Private developers will put their capital at risk as they fund the upfront cost of any RFP Proposal put forward for consideration by the Commission and utilities should be expected to do the same. In order to create a level playing field between all possible reliability solutions and promote a truly competitive process, utilities proposing TOTS should not be granted an advanced cost recovery guarantee. As the Commission found in a recent order regarding cost recovery of certain unplanned charges to Con Edison, single cost elements, such as development costs associated with a transmission project should not be preauthorized in isolation without appropriate scrutiny in a more fulsome proceeding:

> Under our standard rate making practices the Company is at risk for actual costs that exceed the forecasted costs on which rates were based, while at the same time the Company can retain revenues provided for costs that are lower than forecasted. Therefore, the requested relief for a single cost element, as the Company has proposed, cannot properly be addressed in isolation, but instead must be examined along with all other costs in a formal rate case proceeding. Also, the total forecasted incremental charges do not exceed the materiality threshold for deferred accounting treatment. This threshold is understood to be 5% of net income available for common shareholders, and, for Con Ed this is far above the incremental charges associated with the PJM OATT.[1]

While the Plan redacted what it identifies as the Estimated Partial At Risk Costs for each of its proposed halting dates, such costs incurred up to the first halting point on September 30, 2013 should be handled in the same manner as the Commission found to be appropriate in the above referenced proceeding. Allowing utilities early cost recovery is unnecessary and would amount to disparate treatment among the utility and private developer proposals submitted in the RFP.

II. An Independent Consultant(s) Should be Hired to Assist in the RFP Solicitation and Evaluation Process.

The Plan proposes that NYPA will conduct the RFP and DPS staff will evaluate the projects that respond to the RFP together with the TOTS, calling upon the assistance of the NYISO, Con Edison, and NYPA. In light of the fact that NYPA and Con Edison are proponents of the TOTS, which will compete with the submitted RFP proposals, it would be more appropriate, and in the best interests of New York

[1] CASE 09-E-0428 – Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service. Order denying petition for recovery of charges (Issued and Effective February 14, 2013).

ratepayers for the DPS staff to take a more direct role in the oversight of the RFP process with the aide of an independent outside consultant or consultants for administration of the RFP, assistance in the project evaluation process, and any technical power systems engineering analysis that may be necessary throughout the project review and selection process. We are confident that firms with expertise in these areas are obtainable and could work jointly along with other independent agencies like the NYISO to support DPS staff in a fair and unbiased manner.

III. TOTS Cost Submittals Should be Treated as Firm Bids.

The Commission should find that the cost of the Transmission Owner TOTS that are submitted to this process should be treated as firm priced bids on the same basis as the RFP proposals. To the extent that the TOTS are proposed with a bandwidth on the pricing, cost recovery should therefore be strictly limited to the lowest nominal bid amount with no opportunity for recovery above that amount. Alternatively, if cost recovery is to be considered on that bandwidth, then the upper bound must be assumed in the evaluation and comparison to any RFP proposals, which are being required to submit firm bids. Without this treatment an apples-to-apples comparison will not be possible as private developer proposals would likely reflect a risk premium for unanticipated cost overruns or costs incurred beyond their control and thus would be unfairly disadvantaged as compared to utility bids with guaranteed cost recovery.

IV. Additional Contracting Structures and Milestones Should be Permitted.

Exhibit E of the Plan limits generation project pricing to two forms: a CFD to fix the total cost of the project and an RPS like fixed dollar amount that the project would require per month in addition to the market revenues it expects to realize. Neither of these options is viable. *First*, an RPS like incentive payment is not a workable option for combustion turbine and combined cycle generation projects and such an approach would not be financeable. *Second*, a CFD, while financeable, would put all of the risk on the rate payers who will ultimately pay for these projects. Other combinations of capacity and energy arrangements would better allocate the risks among rate payers and project developers and these alternatives should not be foreclosed.

Additionally, the Plan includes a "one-size-fits-all" approach to the halting dates, which assumes that the self-declared natural stopping points for the TOTS should be applied to any transmission or generation proposal. The timing of significant financial and construction commitments will likely differ for different types of projects and therefore each developer should be permitted to propose their own logical halting points. While the recommendations here may result in different contracting structures and halting dates across the RFP submittals, these factors can surely be addressed in an objective manner by the sophisticated entities that will have been charged with running this project selection process.

V. Demand Response and Energy Efficiency (DR/EE) Resources Should be Competitively Bid.

The Plan includes a 100 MW carve out from the total need and a proposal to sole source the development of associated resources to Con Edison with a guaranteed return on its investment. The selection of DR/EE resources should be done as part of the overall RFP selection process in order for the Commission to consider and compare the cost-benefit of these options against all other submitted transmission and generation RFP proposals. At a minimum, if a portion of the need is earmarked for DR/EE, those MW should be procured under a competitive RFP process rather than sole sourced to Con Edison. That process should allow for participation by various forms of distributed generation such as solar PV and combined heat and power.

Thank you for your consideration.

Respectfully submitted,

/s/ Bradley Kranz

Bradley Kranz
Vice President
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cc: active parties (via email)