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April 13, 2001

**VIA FEDERAL EXPRESS**

Hon. Janet H. Deixler  
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3 Empire State Plaza, 14<sup>th</sup> Floor  
Albany, NY 12223-1350

Re: Case 00-M-0504 - Proceeding on the Motion of the Commission Regarding  
Provider of Last Resort Responsibilities, the Role of Utilities in Competitive Energy  
Markets, and Fostering the Development of Retail Competitive Opportunities

Dear Secretary Deixler:

Enclosed are an original and twenty-five (25) copies of the Dynegy Marketing and Trade's Initial  
Brief in the above-referenced matter. Please date stamp and return the additional two (2) copies  
of this filing in the envelope provided.

If you have any questions, please contact me at (202) 408-0700 or via e-mail at  
lauderdale@bh-law.com.

*Melissa L. Lauderdale*

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Attorney for Dynegy Marketing and Trade

Enclosures  
cc: Active Parties

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April 13, 2001

**VIA FEDERAL EXPRESS**

Jeffrey E. Stockholm, Administrative Law Judge  
Joel A. Linsider, Administrative Law Judge  
Michael Corso, Chief Residential Advocacy  
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Re: Case 00-M-0504 - Proceeding on the Motion of the Commission Regarding  
Provider of Last Resort Responsibilities, the Role of Utilities in Competitive Energy  
Markets, and Fostering the Development of Retail Competitive Opportunities

Dear Judges:

Enclosed is Dynegy Marketing and Trade's Initial Brief in the above-referenced matter. Pursuant to your instructions, a copy of this brief has also been served to you electronically. Twenty-five (25) copies are being served via FEDEX on the Office of Secretary in compliance with the Commission Rules of Procedure. E-mail and hard copies are being provided via first class mail to all parties on the official Active Parties List in accordance with the attached Certificate of Service.

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Enclosures  
cc: Active Parties

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

Proceeding on the Motion of the Commission	)	
Regarding Provider of Last Resort	)	
Responsibilities, the Role of Utilities in	)	CASE 00-M-0504
Competitive Energy Markets, and Fostering the	)	
Development of Retail Competitive Opportunities	)	

**INITIAL BRIEF  
OF  
DYNEGY MARKETING AND TRADE**

As part of the New York Public Service Commission's ("Commission") ongoing work on Provider of Last Resort ("POLR") issues, a prehearing conference was held on March 14, 2001, "...to determine the progress made in negotiations and to establish a process and schedule for the balance of the proceeding."<sup>1</sup> At the prehearing conference, Administrative Law Judges ("ALJs") Jeffrey E. Stockholm and Joel A. Linsider and other parties in this proceeding, developed a number of questions suggested for inclusion in the parties' briefs, in addition to comments on Staff's second Straw Proposal. On March 16, 2001, the ALJs published a list of questions as a suggested starting point for the initial briefs, to be filed by April 13, 2001. Accordingly, Dynegy Marketing and Trade ("Dynegy") hereby submits its Initial Brief on POLR issues.

**I. VISION**

**A. WITH MINOR MODIFICATIONS, THE COMMISSION SHOULD ADOPT THE STRAW PROPOSAL.**

Dynegy joins Amerada Hess Corporation, the Small Customer Marketer Coalition, SmartEnergy, Inc. and TXU Energy Services in generally supporting the adoption of the policy

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<sup>1</sup> Case 00-M-0504, Proceeding on the Motion of the Commission Regarding Provider of Last Resort Responsibilities, the Role of Utilities in Competitive Energy Markets, and Fostering the Development of Retail Competitive Opportunities, Notice of Prehearing Conference (issued December 21, 2000).

guidelines codified in Straw Proposal 2, dated February 26, 2001 ("SP2"). Dynegy offers the recommendations and modification as noted below. Overall, SP2 constitutes the most reasonable approach to addressing and resolving the critical issues under review in this proceeding.

As directed by the Commission, this proceeding was instituted primarily to examine the future of competitive natural gas and electricity markets and the role of the regulated utilities in such markets; to identify obstacles and propose corrective action; and to provide recommendations regarding the POLR.<sup>2</sup> SP2 addresses these issues in a creative and comprehensive fashion. This document, which incorporates the views and inputs of numerous diverse parties, articulates a clear vision of the future role of competitive markets, identifies with some specificity the concrete steps needed to achieve this desired competitive state, explains what the role of utilities will be during the transition process and in the end-state, and provides a framework for creating a viable POLR model.

As a wholesale marketer who sells electricity, natural gas and financial products to New York utilities and marketers, Dynegy is one of many players in the New York energy market. To succeed in tomorrow's energy market, all of the market participants need to deploy their assets and formulate business plans that reflect the realities of the marketplace. None of these critical activities can be implemented without the existence of a blueprint that clearly defines the policies that the Commission will apply to promote a vibrant competitive market as well as the requisite conditions that must be met in order to facilitate the utilities' exit from the merchant function. With the modifications discussed below, the Commission should adopt SP2 as a policy statement to provide the needed direction for all market participants.

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<sup>2</sup> Order at 6.

## **B. WORKABLY COMPETITIVE WHOLESALE MARKETS EXIST TODAY.**

One of preconditions for the utilities exiting the merchant function is that workably competitive wholesale markets exist. While Dynegy agrees that this should be a prerequisite, the prerequisite has already been met. The New York Independent System Operator ("NYISO") Market Advisor found that wholesale prices "have not been unreasonably high given fuel price increases and large unit outages" and that the New York markets have been competitive "except for several isolated instances".<sup>3</sup> While there is room for improvement, the New York ISO and the entire New York wholesale market operate sufficiently well for the electric utilities to exit the merchant function. Nevertheless, as we discuss below, consumers should not be thrown into the market place during the transition to competition without an adequate understanding and opportunity to purchase products that protect them from potential volatility. The laws of supply and demand have not been repealed, and the current New York market is sending the signal that more supply needs to be brought on-line or prices will remain high and the market experience extreme volatility.<sup>4</sup> Dynegy looks forward to participating in the development of the precondition metrics to evaluate the preconditions for utilities exiting the merchant function and the comparison of the market to those metrics.

## **C. THE SP2 ESCO AND MARKETER DEFINITIONS SHOULD BE REVISED TO MORE CLEARLY FOCUS ON RETAIL MARKETERS.**

The ESCO and Marketer definitions, as proposed in SP2, are unclear and should be modified clearly to exclude wholesale marketers. The proposed definition states an ESCO

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<sup>3</sup> David B. Patton, Presentation to Federal Energy Regulatory Commission Technical Conference (January 22, 2001), in "Annual Assessment of the New York Electric Markets 2000" at 59 (presentation materials available on at [http://www.nyiso.com/services/documents/filings/pdf/ferc\\_tech\\_conference/meeting\\_materials.html](http://www.nyiso.com/services/documents/filings/pdf/ferc_tech_conference/meeting_materials.html)).

<sup>4</sup> See also *Forward* to NYISO Report "Power Alert: New York's Energy Cross Roads," (March 2001) (NYISO demonstrates how the addition of approximately 8600 MW of capacity by 2005 and the development of price sensitive load programs through the marketplace can "...improve the natural environment and moderate the wholesale price of electricity").

"means an entity that can perform energy and customer service functions in any competitive environment, including buying and reselling of electricity and natural gas and assistance in the efficiency of its use."<sup>5</sup> Discussions with Staff during the collaborative process indicated that Staff did not intend to propose definitions that bring wholesale marketers under the Commission's regulation of retail marketers. Dynegy suggests using the following definition to clearly differentiate between wholesale and retail activities: ESCO means an entity that markets and sells energy, in the form of natural gas or electricity, directly to end-use customers for their own consumption, and may also provide other energy related services, including providing assistance in the efficiency of energy use. This definition would separate marketers who participate in the wholesale market from those that participate in the retail markets by distinguishing entities that purchase energy for their own consumption versus those that make purchases for the purpose of reselling the energy. This modification should be made to the definition of marketer as well.

## **II. MARKET TRANSITION**

### **A. COMMODITY RATEMAKING MECHANISMS SHOULD BE APPROPRIATE TO THE CUSTOMER CLASS.**

Utilities should have different commodity ratemaking mechanisms for different classes of customers. There is a tension between exposing customers to the volatility of the market to encourage them to choose an ESCO and ensuring that customers without adequate choices are protected from the volatility of the day-ahead and spot commodity markets. The balancing point between those two concerns is different for each class of customers, in part because the choice of supplies and products varies by customer class and commodity. For example, industrial gas

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<sup>5</sup> Straw Proposal II at 7.

customers clearly have more supply options than residential electricity customers.

Consequently, the need for the utility to provide price protection to residential electricity customers is much greater. Having the utility protect customers from price volatility should be viewed as a necessary, but transitional role for the utility until customers are offered a sufficient variety of products.

To implement practically this class distinction, Dynegy suggests that all energy customers perhaps be given a choice of fixed price options to choose from ranging from a six-month fixed price to a two-year fixed price energy and capacity product and that a variety of market participants bid to stream those products to the customer while the utility continues to provide all customer service. For example, Dynegy might win the bid to sell two-year fixed price supply to one class of customers and Enron might sell six-month fixed price supply to another class. In addition, this process should also account for and take advantage of the favorable supply contracts that many utilities have in the State and can be used to provide price protection until they terminate. Except for low income customers for whom a special program may be necessary, at the end of the fixed price contract the customers would be exposed to market prices. The options can be tailored appropriately for each class and commodity. Such a program would provide customers protection from price volatility for a specific time, then force them to either choose an ESCO for price protection or be exposed to the market, assuming the retail marketers start offering a variety of products to that class of customers. During the fixed price period, the customer's bill should include a comparison to the market price they would be charged without the fixed price option so that the customers can appreciate the protection that a fixed price product provides.

**B. AN ELECTRICITY POLICY STATEMENT ON HEDGING SIMILAR TO THE GAS POLICY STATEMENT ON HEDGING SHOULD BE ISSUED.**

The New York electricity utilities need guidance from the Commission on how they should structure their supply portfolio during the transition to competitive retail markets. Without this guidance, the utilities are afraid to act for fear of making a mistake and the customers are unnecessarily bearing part, and in some cases, all of the price risk associated with day-ahead market volatility. That volatility can be significant. The risks associated with hedging are asymmetrical. If a summer were cooler than normal, then the average market price for energy might turn out to be lower than the hedged price, but the potential loss on the hedges has some reasonable limits, as prices can realistically only go so low. For example, if someone purchased a \$50 per MWhr fixed price contract, then the average price of electricity over the term of the contract can theoretically only drop by \$50, although there is some range well above zero at which it could reasonably settle. In comparison, if a large generator unexpectedly experiences a forced outage and we have normal to extreme weather conditions, the market price can rise to approximately \$1000 per MWhr, the day-ahead bid cap for NYISO administered markets. It just takes a few \$1000 per MWhr days to significantly increase customer prices. With such an asymmetrical risk, customers have relatively little to risk and a great deal to gain, potentially, if they are protected from price volatility by hedging.

This is not to say that the Commission should be in the business of approving every single decision a utility makes, but rather that there should be written guidelines on what the Commission will consider when it reviews the utility's decisions for prudence. The Statement of Policy Concerning Gas Purchasing Practices provided this guidance to gas utilities:



While we are not directing any particular mix of portfolio options, volatility of customer bills is one of the criteria, along with other facts such as cost and reliability, that LDCs should consider in their gas supply purchasing strategies. Excessive reliance on any one gas pricing mechanisms or strategy does not appear to reflect the best management of the gas portfolio. Any utility without a diversified gas pricing strategy will have to meet a heavy burden to demonstrate that its approach is reasonable.<sup>6</sup>

This policy has worked well for the gas utilities and the Commission's adoption of a similar policy for electric utilities would provide needed direction for the electric utilities and price protection for the customers through the use of physical and financial products that protect against forward price exposure.

These products are available in the New York energy market today and the Commission should encourage their use by the utilities to protect customers. Dynegy has offered and will continue to offer products to New York market participants that allow load serving entities who are inherently short power (when commitments to serve load exceed commitments to buy supply) to manage their supply position in a manner that will minimize customers' exposure to price risk.

### III. CONCLUSION

Today, the degree of entry of ESCOs in the residential market has not been sufficient to justify completely turning this customer class over to the market place. The Commission must establish a step-by-step approach, such as SP2, to establish rules that give ESCOs confidence to enter the market and customers reasonable opportunities to choose from various products offered by ESCOs. During the transition period there should be customer price protection because price spikes due to scarcity of supply conditions are possible and can be costly to consumers. The

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<sup>6</sup> Case 97-G-0600, In the Matter of the Commission's Request for Gas Distribution Companies to Reduce Gas Cost Volatility and Provide for Alternative Gas Purchasing Mechanisms, Statement of Policy Concerning Gas Purchasing Practices (issued April 28, 1998) at 4-5.

need for this protection should be analyzed on a class-by-class basis to evaluate whether the marketplace is providing sufficient protection. Dynegy thanks the Commission for the opportunity to participate in the development of this report and looks forward to continuing the process of developing competitive energy markets in New York.

Respectfully submitted,

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By:



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DATED: April 13, 2001

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the following document upon each person designated on the official service list compiled in this proceeding and as listed below.

Dated at Washington, D.C. this 13th day of April 2001.



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