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February 22, 2013

Hon. Jeffrey A. Cohen
Acting Secretary
NYS Public Service Commission
Three Empire State Plaza
Albany, New York 12223

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

Comments of the Retail Energy Supply Association

Dear Secretary Cohen:

On or about February 1, 2013, Consolidated Edison Company of New York, Inc. (“Con Edison”) and the New York Power authority (“NYPA”) jointly submitted the *Compliance Filing of Consolidated Edison Company Of New York, Inc. and New York Power Authority With Respect To Development of Indian Point Contingency Plan* (“Filing”) in response to the *Order Instituting Proceeding And Soliciting Indian Point Contingency Plan* issued in this proceeding on November 30, 2012 (“Order”).

The Retail Energy Supply Association (“RESA”)¹ submits these comments in response to the portions of the Filing related to the cost recovery of Transmission Owner Transmission Solutions (“TOTS”) and selected generation projects.

¹ RESA’s members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

In connection with recovery of the costs associated with the TOTS transmission projects, the Filing proposes that once approved by FERC, the TOTS related revenue requirement “be recovered from *all* LSEs in the NYISO’s control area...” As proposed, the NYISO will be responsible for billing and collecting these charges from all LSEs based on their energy consumption and location. Each LSE would then recover this charge directly in their retail rates from consumers.²

A similar approach is advocated for the NYPA selected generation projects, as the Filing states that as these costs cannot allegedly be recovered through the NYISO tariff, the Commission could require “... LSEs and utilities that are allocated costs pursuant to the implementation of this plan to modify their retail rate mechanisms, to the extent necessary, to recover such costs from their retail customers...” and the Commission should require that those LSEs and utilities remit any such costs recovered from their retail rate customers to NYPA.³

RESA disagrees with this approach to cost recovery. The Commission should not apply cost recovery to all LSEs including ESCOs, in connection with customers that obtain delivery service from the utility. As explained herein it is more reasonable for the Commission to allow for full recovery of the TOTS and generation project charges as part of the utilities’ delivery rates applied to all consumers (full service and those on retail access) which currently includes transmission, generation and distribution costs, or as an equal non-bypassable charge assessed to all consumers as part of the utility delivery rate structure.

Con Edison/NYPA view the TOTS and NYPA generation projects as needed to serve the public interest and necessary to maintain the reliability of service in New York State.⁴The primary purpose of this proceeding and the resulting submission by Con Edison/NYPA is to address concerns regarding the reliability of electric service occasioned by the potential forced closure of the Indian Point power plants. Essentially, the contingency plans and construction of the TOTS facilities are not derived from the inter play of competitive market forces, but are instead directed to meeting the public policy and public interest goals enunciated by New York State. As the Commission noted:

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.....In this order, we are commencing a proceeding to solicit a Reliability Contingency Plan for the Indian Point Energy Center (Indian Point Contingency Plan).⁵

As the Commission further explained:

The potential retirement of a significant electric generating facility, such as the Indian Point Energy Center, requires significant

² Filing, p. 23.

³ Filing, p. 25.

⁴ Filing, p.30.

⁵ Order, pp. 1-2.

advanced planning. Specifically, the size, location, and uncertainties regarding the potential retirement of 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.⁶

It is thus apparent that the actions contemplated in the Filing are designed to address certain specified public service goals and concerns. The Commission in the past has established a well-designed and comprehensive cost recovery mechanism to ensure recovery of costs for such public interest projects.

In 2003 the Commission implemented the statewide Renewable Portfolio Standard (“RPS”) pursuant to which the level of generation in the State had to achieve a set level of renewable power by certain targeted dates. To achieve these RPS goals, costs would be incurred to implement the project and provide for reimbursement and recovery for above-market generation costs. The Commission authorized full cost recovery of these charges through an equivalent volumetric charge that would be included in the utility delivery rate and applied to all customers including full service utility customers and those taking commodity service from an ESCO.⁷

The Commission followed a similar approach in connection with the establishment and funding of the Energy Efficiency Portfolio Standard (“EEPS”) in 2008. To promote the public policy of improving energy efficiency in New York, the Commission authorized the utilities working with NYSERDA to implement a variety of programs that would improve end-use efficiency by residential, commercial and industrial customers. The Commission authorized the investor owned utilities to commence collection, through the System Benefits Charge (SBC), of the funding needed support the EEPS.⁸ Thus, the entire EEPS cost recovery mechanism was centered on the SBC that was included as part of the utility delivery rate structure and applied to all delivery customers.

These cases underscore that for public interest related projects the established full cost recovery mechanism involves the application of an equivalent non-bypassable volumetric charge that is incorporated in the utility delivery rate or separately stated within the delivery rate billing structure, and applied to all delivery customers even those that are served by an ESCO. The charges are not divided between all LSEs including ESCOs and then separately billed to retail customers.

⁶ Order, pp. 2-3

⁷ Case 03-E-01888- Proceeding on Motion of the Commission Regarding a Renewable Portfolio Standard, *Order Regarding Retail Renewable Portfolio Standard* (issued September 24, 2004) , Appendix E.

⁸ Case 07-M-0548 - Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio Standard, *Order Establishing Energy Efficiency Portfolio Standard and Approving Programs* (issued June 23, 2008) at p. 3

In light of this established precedent, the Commission should not adopt the proposed cost recovery approach for the TOTS and NYPA generation projects presented in the Filing, under which the costs would be allocated to each LSE including ESCOs and then separately applied to retail customers under a retail rate mechanism. The Commission should instead follow established precedent and provide for cost recovery through inclusion of a volumetric charge or a separate non-bypassable charge in the utility delivery rate that would be applied to all customers --- full service and those served by ESCOs.

This approach is also most efficient as the utility serves all customers, whereas ESCOs only currently serve a portion of the customer base. It therefore allows for one source to bill and reach all retail customers. Further, it will minimize overall administrative costs as it and it will allow for cost recovery from a single mechanism rather than requiring recovery from many diffuse sources, each of whom will need to establish a separate billing mechanism.

In addition, in contrast to the utilities the ESCOs do not have a regulated retail rate mechanism that allows for automatic recovery of these charges that may be subsequently applied by the Commission. The ESCOs are subject to term contracts with customers that may not allow for recovery of these charges that were unknown when the contracts were entered into. In contrast, utilities can on a prospective basis include within rates and recover from all ratepayers the charges associated with TOTS and the selected generation projects.

In view of the foregoing considerations, RESA recommends that the Commission adopt a cost recovery mechanism consistent with the comments presented herein.

Respectfully submitted,

Retail Energy Supply Association

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