

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on March 14, 2013

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
Maureen F. Harris
James L. Larocca
Gregg C. Sayre

CASE 12-E-0503 - Proceeding on Motion of the Commission to
Review Generation Retirement Contingency Plans.

ORDER UPON REVIEW OF PLAN TO ISSUE REQUEST FOR PROPOSALS

(Issued and Effective March 15, 2013)

BY THE COMMISSION:

INTRODUCTION

In an order issued on November 30, 2012, we initiated this proceeding to develop Reliability Contingency Plans that address concerns in the event of generator retirements. The Commission initially sought a Reliability Contingency Plan addressing the potential closure of the Indian Point Energy Center (IPEC) upon the expiration of its existing licenses at the end of 2015.¹ We directed Consolidated Edison Company of New York, Inc. (Con Edison), as the local Transmission Owner, to develop, with the assistance of the New York Power Authority (NYPA), such a plan and file it by February 1, 2013. The November 30 Order indicated, in part, that one element of the

¹ Case 12-E-0503, Generation Retirement Contingency Plans, Order Instituting Proceeding and Soliciting Indian Point Contingency Plan (issued November 30, 2012) (November 30 Order).

Indian Point Reliability Contingency Plan should include the prompt issuance of a Request for Proposals (RFP) that would be issued to identify the resources which could be procured to address potential reliability needs.

On January 14, 2013, a meeting was held by Con Edison and NYPA to provide their preliminary concepts for a reliability contingency plan, and to obtain initial input from interested stakeholders. On February 1, 2013, Con Edison and NYPA jointly submitted a filing in compliance with our November 30, 2012 Order (Filing). The Filing suggested an IPEC Contingency Plan whereby Con Edison and NYPA would pursue the initial development of three Transmission Owner Transmission Solutions (TOTS), while also soliciting generation and other transmission proposals through a RFP to be issued by NYPA. The Filing further described an Energy Efficiency/Demand Reduction/Combined Heat and Power (EE/DR/CHP) set-aside program through which at least 100 MW of the anticipated need would be met through EE/DR/CHP projects.

The Filing requested specific actions by the Commission, including: 1) an order in March 2013 requesting NYPA to issue an RFP for new generation and transmission solutions; 2) an order in April 2013 directing the development of an EE/DR/CHP program and certain transmission projects, approving the allocation and cost recovery of prudently incurred costs, and finding, on a preliminary basis, that the proposed TOTS meet public policy requirements; and, 3) an order in September 2013 selecting a final set of transmission and/or generation projects, and making further findings in connection with an

authorization of cost allocation and cost recovery.² This Order, which approves the proposal by Con Edison and NYPA to issue an RFP in connection with their IPEC Contingency Plan, is in response to the first of these three requests.

Upon review of the Filing and the comments, we accept the Filing as responsive to our November 30 Order and consistent with Con Edison's responsibilities to ensure safe and adequate service. In addition, and in particular, we confirm that the issuance of an RFP, as modified by this Order, should proceed as promptly as possible. As we indicated in our February 13 Notice, other aspects of this Filing will be addressed in future orders. Thus, we plan to address the proposed development of the TOTS projects and the proposed cost allocation and cost recovery for these projects at our April 2012 session. We also expect to address the Filing's proposal for a 100 MW EE/DR/CHP program at that time.

THE FILING

Con Edison and NYPA propose three components in the Filing. One component consists of three TOTS projects that Con Edison and NYPA assert could be implemented by the summer of 2016. A second component entails an RFP process which would identify new generation proposals and new transmission proposals

² On February 13, 2013, we issued a Notice Soliciting Comments (February 13 Notice) to clarify our intent that the February 22, 2013 deadline for comments concerning the Filing applied to the first requested action item (*i.e.*, the issuance of the RFP, and related matters, such as the RFP terms, conditions, process, and timeline). The February 13 Notice also indicated that separate notices will be published in the State Register inviting comments on the second requested action items for April 2013 (See, State Register notice of proposed rulemaking published February 20, 2013), and the third requested action items for September 2013, including comments on proposals received in response to the RFP.

(other than the TOTS) that could meet the 2016 in-service date. The Filing contemplates that Department of Public Service Staff (DPS Staff) will evaluate both the TOTS and the results of the RFP in making a recommendation regarding the combination of projects that should move forward. The third component of the Filing describes Con Edison undertaking a targeted EE/DR/CHP program to achieve 100 MW of permanent peak demand reduction by the summer of 2016.³

The Filing envisions that the Commission would issue an order in March 2013 addressing the proposal to issue an RFP, and identifying any preferred terms and conditions. To implement this portion of Con Edison and NYPA's Filing, NYPA would then issue the RFP in mid-March 2013, and thereafter, schedule a bidders' conference to address potential respondents' questions. As described in the Filing, proposals responding to the RFP would be due approximately 45 to 60 days after its issuance.

Con Edison and NYPA propose that RFP respondents will be required to provide written submissions setting forth, in as much detail as possible, the information requested in the RFP. A sample of the type of information that will be solicited in the RFP was set forth in Exhibit E of the Filing. Con Edison and NYPA would submit the same information regarding the TOTS to DPS Staff, so that all proposals can be evaluated by DPS Staff on a comparable basis.

The proposed RFP would also include a form of Power Purchase Agreement (PPA) that would set forth provisions related to, among other matters, the posting by the project proponent of security instruments to assure that development meets project

³ As proposed by Con Edison and NYPA, these 100 MW would be in addition to existing EE and DR targets.

milestones, and halting mechanisms. Respondents to the RFP would be required to identify any requested changes or additions to the process, the project agreements, or any other requirements.

The RFP would also require respondents proposing generation solutions to submit pricing in two forms. One would be in the form of a contract for differences (CFD) in which the total cost of the project is fixed, but the monthly payment due would be reduced by the amount of the market revenues available to the project for that month. The other required bid form would state a fixed monthly payment that the project developer requires on a dollar per-month basis in addition to the market revenues it expects to realize.

The Filing recommends threshold criteria for an initial screening of responses, including: 1) the proposal was received on time and in the proper format; 2) the proposal is able to meet the summer 2016 deadline; 3) any generation proposal would provide at least 75 MW (Unforced Capacity) of incremental capacity; 4) any generation and/or transmission proposal would be interconnected to NYISO Load Zones G-K; and, 5) the proposal includes a commitment on firm pricing through December 31, 2013. Submissions meeting these criteria would then be subject to a more complete evaluation process by DPS Staff.

Con Edison and NYPA suggest that, in order to select the overall solution that will reasonably be able to meet the entire deficiency need and will minimize the cost to ratepayers, portfolios of proposed projects could be assembled and evaluated based on criteria which include: 1) the extent to which a portfolio, and individual projects within that portfolio, will help ensure that the reliability of the electric system is maintained or enhanced in the event of IPEC's closure; 2)

deliverability; 3) cost-effectiveness and long-term public policy benefits to the State, including metrics such as production cost analysis; 4) environmental considerations including emissions impacts and use of existing rights-of-way; and, 5) the ability to provide opportunities for economic development and job creation. The Filing recommends that the solution that offers the best overall value to New York ratepayers based on the comprehensive evaluation process be recommended by DPS Staff for potential implementation.

DISCUSSION

Numerous comments were received from parties representing a diverse range of interests. Parties provided specific comments regarding the adequacy of the Filing, cost allocation and recovery matters, the RFP proposal, the amount of the projected capacity deficiency, the in-service need date/lead-time, the eligibility of resources, environmental issues, cost containment, the halting mechanisms/project milestones, the availability of natural gas, the evaluation of projects, the effects on competitive markets, and other contingency plans. Each of these topics is discussed below.

In addition, several parties raised broad concerns regarding the potential impacts of implementing the Filing on ratepayers, businesses, the economy, the environment, and competitive energy markets. The Commission acknowledges and appreciates these thoughtful comments. With regard to those parties that question whether IPEC should be closed, we emphasize that this issue will be addressed in other forums, and this proceeding will not reach such a determination.⁴ This

⁴ The Commission previously indicated that it "is not making any determinations or taking any positions regarding the potential closure of [IPEC]." November 30 Order, n. 3.

proceeding is designed to ensure timely planning and analysis is done by the relevant load-serving entities so that adequate facilities are available to provide reliable electric service in the event that IPEC becomes unavailable in the near future.

With respect to the suggestion by some parties that Con Edison and NYPA should defer to the reliability planning processes of the New York Independent System Operator, Inc. (NYISO) and not assume that IPEC will become unavailable, we respectfully disagree that those processes are adequate to address our reliability concerns. While the NYISO has identified reliability violations of transmission security and resource adequacy criteria by the summer of 2016 if the IPEC units were retired at the expiration of their current licenses, the NYISO currently assumes in its reliability planning that IPEC will remain available. Although we expect the NYISO planning process to adequately address most generation unit retirements, the potential closure of the IPEC presents unique circumstances. Given the size of the risks to reliability, if the IPEC plants were to be shut down, and given that the lead-time necessary to prepare for their replacement would likely be insufficient if we were to wait for the NYISO to request a reliability "backstop" solution,⁵ we find that prudent planning should anticipate such a contingency at this time.

Adequacy of the Filing

The Filing submitted by Con Edison and NYPA substantially addresses the Commission's interest in assuring that a plan is being developed to ensure safe and adequate service in the event IPEC ceases operations. First, it identifies three transmission projects – the TOTS – that Con Edison and NYPA propose to implement by the summer of 2016.

⁵ NYISO Open Access Transmission Tariff, Attachment Y.

This proposal meets our objective by providing solutions that will contribute toward addressing the potential reliability deficiency that would arise in the summer of 2016 with the shutdown of IPEC at the end of 2015.⁶ Second, consistent with our November 30 Order, the Filing proposes a competitive RFP process to identify new generation and transmission proposals that could meet the same summer 2016 in-service deadline. Last, Con Edison proposes programs to achieve an additional 100 MW of peak demand reduction above its existing energy efficiency commitments in the same time frame, consistent with our clean energy policies.

We find that Con Edison and NYPA's proposal to proceed on parallel tracks, with the goal of identifying resources that can be available by the summer of 2016, meets the basic objectives of our November 30 Order. This process will identify timely solutions to the projected IPEC reliability deficiency. For these reasons, we approve here the proposal to issue an RFP, with the modifications discussed below, and expect NYPA to move forward with it as promptly as possible.

Cost Recovery Matters

In the Filing, Con Edison and NYPA set forth their views as to the appropriate mechanism for allocating and recovering the costs of developing and implementing the TOTS and any other projects that may ultimately be needed. NYPA asks us to ensure recovery of the full costs it incurs to develop the IPEC Contingency Plan and administer the RFP process, to the extent those costs are not recoverable from NYPA customers. NYPA seeks assurance that we will require our jurisdictional

⁶ For purposes of the IPEC Contingency Plan, we accept Con Edison and NYPA's determination that the deficiency would amount to 1350 MWs. See Filing, pp. 9-10 and Discussion, infra, at p. 12.

utilities to reimburse NYPA for the costs it incurs in implementing the IPEC Contingency Plan that are not recoverable through existing NYISO tariff rules.⁷ Similarly, Con Edison asks us for assurance that the costs of preparing the IPEC Contingency Plan and assisting in the evaluation of proposals will be recovered.⁸

Con Edison and NYPA state that they are working with other parties to establish a federal rate that would apply to certain transmission projects, including the TOTS, through an entity identified as NY Transco.⁹ However, Con Edison and NYPA acknowledge that this avenue to cost recovery is not yet effective, and may not become effective until after Con Edison and NYPA have expended significant funds on project development. For this reason, Con Edison and NYPA ask us to provide a State-approved cost recovery mechanism for recovering both their near-term project development costs (incurred prior to September 2013) and the longer-term costs of developing and implementing the projects that result from DPS's evaluation of the RFP results.¹⁰

Because we expect to address these questions in a future order, we decline to address them here, and defer action on those parts of the Filing that seek approval or adoption of any cost recovery and cost allocation mechanisms.¹¹ We cannot,

⁷ Filing at p. 22.

⁸ Filing at p. 23.

⁹ The New York Transmission Owners discuss their plans for a NY Transco and for establishing a FERC-approved rate in Case 12-T-0502.

¹⁰ Filing at pp. 22-23.

¹¹ Similarly, we defer action on the proposals related to the organization and structure of NY Transco and the ownership of the TOTS, to the extent they are made in the Filing.

at this preliminary stage in the planning process, decide the specific approach that we will take to the allocation and recovery of these different categories of costs. We have sought public comment on the filing companies' cost recovery proposals, and we will respond to those proposals in due course.¹² We observe, however, that the jurisdictional utilities' participation in preparing the Filing and developing their TOTS relates to their core responsibilities to maintain safe and adequate service.

In any event, we will not decide on a cost allocation and recovery methodology until we have carefully reviewed the filing companies' proposals and any alternatives that are presented to us. At the same time, we are aware of the need to move quickly in order to ensure the IPEC closure contingency is fully addressed, and we will do so.

The RFP Proposal

As discussed above, the Filing envisions that NYPA will issue an RFP for new generation and transmission solutions, subject to any changes the Commission makes to the general description of the RFP terms, conditions, process, and timeline described in the Filing. Con Edison and NYPA further propose that DPS Staff should evaluate the RFP responses and the TOTS and then make a recommendation to us in time for action in September 2013.

We find that the issuance of an RFP for generation and transmission solutions is a reasonable initial step in ensuring the provision of safe and adequate service, as required under the Public Service Law. We largely accept the proposal to

¹² A notice soliciting comments was published in the State Register on February 20, 2013. See, n. 2, supra.

conduct an RFP on the terms and schedule suggested in the Filing, with some modifications.

While we generally approve the elements that would be incorporated into the RFP, we reject aspects of the review and evaluation process described in the Filing. We are primarily concerned with proposals to limit or define the roles of DPS Staff and this Commission. We agree with and accept the proposal in the Filing to conduct a threshold analysis of the RFP responses using the review criteria of timeliness, ability to meet the in-service deadline, minimum incremental capacity contribution, connection to NYISO Load Zones G-K, and firm pricing through December 31, 2013.¹³ The results of this analysis should be supplied promptly to DPS Staff for its review.

We also expect that NYPA, in its role as process administrator, will screen the timely proposals for completeness and conformance to the RFP requirements. Thereafter, we expect DPS Staff to conduct an independent review of the qualifying RFP responses and the TOTS. DPS Staff may utilize the evaluation process listed in the Filing, but is not required to do so; we expect Staff will evaluate the RFP proposals and the TOTS in a manner that will assist us in determining what portfolio of resources will meet our reliability objectives at the least cost and with the greatest benefit to ratepayers and to the public interest. For this reason, we reject those aspects of the Filing that purport to define the post-screening evaluation process.

We also find that responses to the RFP should be due within 45 days after issuance of the RFP. While the Filing proposed that responses would be due approximately 45 to 60 days

¹³ Filing at pp. 20-21.

after RFP issuance, the tight time-frames for meeting the potential summer 2016 in-service date supports the use of the shorter time frame for responding to the RFP.

Amount of Deficiency

The Environmental Defense Fund indicates that it is unclear how Con Edison arrived at the magnitude of its capacity deficiency estimates. Entergy Nuclear Fitzpatrick, LLC, Entergy Nuclear Indian Point 2, LLC, Entergy Nuclear Indian Point 3, LLC and Entergy Nuclear Operations, Inc. (collectively, Entergy) points out that the IPEC Contingency Plan does not contain information that delineates the full scope and nature of the system impacts related to the potential closure of IPEC.

As stated in the Filing, the 1,350 to 1,375 MW deficiency was determined using the NYISO's 2012 Reliability Needs Assessment (RNA) base case assumptions with the mothballed Gowanus barge generators 1 - 4 added back, with 100 MW of incremental EE/DR subtracted, and with Danskammer generation retired. The deficiency resulted from the application of two different sets of New York State Reliability Council reliability criteria (i.e., both New York State criteria and New York City criteria). Both sets of criteria must be met since either set of reliability criteria could disclose a deficiency that must independently be met. Moreover, the total deficiency may in fact be larger than that derived separately from either set of criteria. The computation of the expected deficiency and/or explanation of the derivation of the deficiency (including the individual criteria violations and their specific system impacts) should be further updated and refined prior to the conclusion of DPS Staff's evaluation of RFP responses.

In-Service Need Date/Lead-Time

H.Q. Energy Services (U.S.) Inc. requests that the Commission adopt an RFP process that allows for proposed in-

service dates beyond June 2016. They claim that this will encourage greater participation in the RFP process and increase options to alleviate reliability concerns, while driving competition and lowering project costs.

The New York Energy Consumers Council, Inc. argues that the June 2016 in-service date does not consider that IPEC's existing licenses are valid beyond their expiration dates so long as an application for renewal is still under consideration.

West Point Partners, LLC requests clarification as to: 1) how the credibility of an in-service date commitment will be assessed; 2) how projects will be compared if a project has preferable features but is less likely to meet the in-service date than other less desirable projects that can more easily demonstrate compliance with the deadline; and, 3) what the consequences are of missing the deadline.

Cricket Valley Energy Center LLC argues that the in-service deadline should be adjusted given that there is no deadline for NYPA to enter into a contract and that a 36-month period is typically needed from contract execution in order to complete financing, construction, testing, and commissioning of a generation facility. They recommend that a deadline be established for NYPA to enter into a PPA, and that the in-service date be established 36-months thereafter. In the event that NYPA is unable or unwilling to enter into a contract, they suggest that Con Edison should be required to do so. Without such a deadline, they are concerned that the TOTS projects will by default become the only alternatives that can be implemented.

The November 30 Order specified that the contingency plan should be developed for an IPEC closure at the end of 2015, which, in turn, would result in a reliability deficiency beginning in June 2016. While a later proposed in-service date for solutions may result in a different set of solution options,

they would fail to address the potential summer 2016 deficiencies.

The feasibility of a submitted RFP proposal to meet the needs of the RFP, and the viability of its sponsor to implement that proposal in a timely manner, will both be evaluated by DPS Staff. These evaluations will be compared using similar criteria to DPS Staff's evaluations of the proposed TOTS projects and its assessment of the 100 MW EE/DR/CHP carve-out. The results of these evaluations and comparisons will be provided to us by DPS Staff.

We understand from the Filing that even if all three of the TOTS projects were implemented, they would not fully eliminate the reliability deficiencies resulting from an IPEC closure. Therefore, other proposed solutions will likely be needed. Indeed, the evaluation of the RFP responses may demonstrate that a suite of projects which is most beneficial to ratepayers may include less than all, or even none, of the TOTS projects, or more than 100 MW of EE/DR/CHP projects. MI suggests that the TOTS should not be treated separate from the RFP. We concur that the TOTS should be evaluated and compared with all other RFP proposals, and expect Con Edison and NYPA to provide the same level of information as will be required from RFP respondents in accordance with the RFP time frame.

With respect to setting a deadline for NYPA to enter into PPA contracts, sponsors of RFP proposals should specify their required contract execution deadline in order to timely implement their individual proposals.

Eligibility of Resources

Brookfield Renewable Energy Group suggests that the RFP should be available to both new and existing resources, as well as in-state and out-of-state resources. Cogen Technologies

Linden Venture, L.P. also supports the proposition that existing and out-of-state resources should be qualified for selection.

The Environmental Defense Fund maintains that the RFP should be open to energy efficiency, distributed renewable generation, DR, and CHP projects. They also maintain that the 75 MW threshold for generation blocks opportunities for CHP and distributed renewable generation to play a meaningful role in the IPEC Contingency Plan. Similarly, the Sierra Club argues that the 75 MW minimum for participation in the RFP precludes participation by distributed renewables.

NRG Energy, Inc. suggests that other forms of distributed generation, such as solar photovoltaic and CHP, should be allowed to bid into the RFP. They argue that this would allow the costs and benefits of these options to be compared against other RFP responses.

We disagree with the comments suggesting that the RFP should be broadened beyond soliciting proposals for transmission and generation projects above 75 MW. As demonstrated in the November 30 Order, we recognize the value of EE/DR/CHP projects for the IPEC Contingency Plan, and the Filing proposes a 100 MW carve-out for these projects. This carve-out is designed to assure that at least 100 MW of EE/DR/CHP projects would be developed as part of the IPEC Contingency Plan. At the same time, however, it would be unnecessarily complicated and burdensome to develop a response to the potential IPEC retirements that includes multiple small resources with potentially different cost and operational characteristics.¹⁴ As

¹⁴ Monitoring the development of multiple small resources to ensure they are constructed in a timely manner, and to safeguard against the potential reliability risks resulting from the potential retirement of the IPEC, would also be unnecessarily burdensome and could be riskier than if the plan relies on resources of a larger scale.

indicated in our February 13 Notice, we anticipate addressing the role and magnitude of the EE/DR/CHP carve-out and the integration of the carve-out with the other elements of the IPEC Contingency Plan in an upcoming order.

Our eligibility criteria do not distinguish between in-state and out-of-state resources. The focus of this initiative is planning to resolve a specific reliability deficiency within a given time-frame. We intend the RFP process to identify, and allow us to evaluate, those resources that can contribute to achieving that goal. We therefore see no need, at this time, to preclude out-of-state resources from responding to the RFP, so long as they contribute to solving the reliability need. We clarify that any resources, whether in-state or out-of-state, must incrementally contribute to what is already assumed for reliability purposes to ensure they would contribute toward meeting such reliability need.

The Town of Huntington (Town), New York, suggests the possibility that the 1500 MW Northport Power Station could be repowered to add 444 MW of power in the event IPEC closes in 2015. The Town contends that commercial operation should be possible within two and a half years, and asks that the Commission explore this option. The Commission notes that this facility will be able to respond to the RFP.

Environmental Issues

The New York State Department of Environmental Conservation (DEC) requests that the RFP terms and conditions indicate that environmentally beneficial and/or clean energy projects, such as renewable energy and repowering of existing generation facilities, will be given priority. DEC suggests that RFP respondents should be required to provide information explaining how a project would benefit the environment or support the State's clean energy goals.

DEC requests that information be solicited on the project emissions for criteria air pollutants on an annual and hourly basis, and for greenhouse gases on an annual basis. In addition, DEC suggests seeking information with respect to the air quality impacts that would result from emission reductions due to repowering or displacement of older, less efficient generating units.

Regarding the comparative evaluation process, DEC recommends that the threshold criteria for a project should demonstrate that: 1) there is a high likelihood of technical and financial feasibility; 2) the project is compatible with the clean energy and other public policy goals of the Energy Highway Blueprint; and, 3) the project is able to meet the in-service deadline. Finally, DEC suggests that environmental considerations used to evaluate projects explicitly include the impacts and benefits related to water usage, clean energy production and transmission, emissions impacts (criteria pollutants and greenhouse gases), as well as siting and the use of existing rights-of-way.

The Commission agrees with the DEC that RFP respondents should be required to provide information explaining how their projects would benefit the environment or support the State's clean energy goals. Accordingly, the RFP should solicit project emissions for criteria air pollutants and greenhouse gases, as well as quantification of emissions reductions due to repowering or displacement of older less efficient generating units, as indicated by DEC. We also note that the evaluation of RFP responses will explicitly consider the compatibility of a proposed solution with the clean energy and other public policy goals of the Energy Highway Blueprint.

Cost Containment

West Point Partners, LLC points out that it is unclear whether the TOTS cost estimates are not-to-exceed values. They argue that an accurate comparison of projects requires the same terms for the TOTS projects as would apply to the RFP respondents.

We understand the TOTS cost estimates to be good faith estimates, rather than "not-to-exceed" values. The TOTS projects are assumed to be traditional regulated investor-owned utility projects, subject to regulated rates of return and prudence standards. While the RFP projects may receive a certain amount of ratepayer funding to address the 2016 reliability concern, these developers do not have the same regulatory responsibilities as the Transmission Owners. While we direct DPS Staff to evaluate TO and RFP projects on as comparable a basis as possible, including considering differences in cost certainty, it is neither necessary nor appropriate to provide identical cost recovery provisions for each.

Payment Approaches

The Filing would require bidders proposing generation solutions to submit pricing in two forms. The first would be in the form of a CFD in which the monthly payment due would be reduced by the amount of the market revenues available to the project for that month. The second required bid form would state the fixed amount that the project developer requires on a dollar per month basis for support, which would be in addition to the market revenues it expects to realize.

NRG Energy, Inc. recommends that other types of project financing should be provided besides a CFD or fixed dollar amount, such as a combination of capacity and energy arrangements.

We understand NRG's interest in having the flexibility to propose the type of contract that works best for it. However, we must also consider the ratepayer's interest in having a practicable uniform, fair basis for evaluation and comparison of projects, particularly with respect to the financial requirements of project proponents. It is sensible for NYPA to propose a standard contract format that all participants must bid on. While this standard format need not be a CFD, per se, we see great benefit in a contract structure that adjusts payments based on market conditions, and particularly those deriving from whether or not IPEC is operating. Finally, we see some potential benefit in allowing bidders to supplement their responses with an alternative contract structure, if they believe such an alternative will provide additional benefits to the public. Thus, we find that each bidder should be required to bid on a single standard contract format, but also be allowed to provide one alternative proposal.

New York City asks that the Commission direct Con Edison to submit a draft PPA for it to review, and that we further direct Con Edison to refrain from proceeding with the RFP until such time as we have reviewed the terms and conditions of the PPA and provided interested parties an opportunity to do so as well. It notes that the RFP, as currently structured, calls for substantially more information than Con Edison and NYPA have provided to the Commission for the utility transmission projects. New York City suggests that this creates a problem in reviewing and comparing the RFP responses to the utility proposals. Moreover, it suggests the lack of detail regarding payments, deadlines, penalties, events of default, or other obligations of the parties provide obvious problems for bidders.

Given the short time left before the 2016 reliability need date, and the time required to construct new resources, we find that the detail provided in the Filing is sufficient at this time. We recognize, however, that further materials need to be provided to bidders in the RFP process and expect DPS Staff to work with NYPA and Con Edison on the final form of the RFP.

Halting mechanisms/Project Milestones

New York City notes that the Filing provides that no project could be terminated after December 31, 2014, and that there is no explanation as to why projects could not be cancelled after that date.

Consumer Power Advocates contend that halting mechanisms are unnecessary since risks are an intrinsic part of business management. They argue that such mechanisms will reduce the number of RFP responses or will escalate the costs which must be passed on the ratepayers because the mechanisms will be viewed as an additional risk. NRG Energy, Inc. suggests that each developer should be allowed to propose its own logical halting points, rather than adopting a uniform approach that assumes the TOTS stopping points should be applied to all other proposals.

We find that a halting mechanism, if carefully constructed, should not add any significant risk to a project. It simply provides for cost recovery by the project sponsor if circumstances change and the contract is cancelled. While we understand that NRG would prefer to be free to bid whatever they desire, providing a common series of dates (i.e., January 1, 2014, January 1, 2015, and January 1, 2016) against which all competing projects must bid halting costs will facilitate the competitiveness of the RFP process and enhance DPS Staff's ability to evaluate the RFP results. However, we expect that

DPS Staff and NYPA may seek to develop a contract format that also allows parties to negotiate halting costs between these dates.

Availability of Natural Gas

Cogen Technologies Linden Venture, L.P. (Cogen) notes the limited availability of natural gas and recommends that it be considered in selecting projects. We agree that the availability of sufficient natural gas is a factor that should be addressed in responses to the RFP.

Evaluation of Solutions

Cogen recommends that the criteria for evaluating projects should be as explicit as possible, and should include costs to ratepayers over a defined term, certainty of completion, reliability benefits, environmental justice, fuel accessibility, and value of contract-term price certainty. NRG Energy, Inc. suggests that DPS Staff should oversee the RFP process with the assistance of an independent outside consultant.

New York City contends that the Filing changes the traditional paradigm by proposing that the Commission, and not Con Edison or NYPA, decide the winners of the RFP process. New York City argues that there is no reason for the Commission to take on this role and that the Commission may exercise its authority by reviewing the projects after the fact.

Because Con Edison and NYPA have proposed transmission projects that may or may not be selected, we agree with NRG that DPS Staff should oversee the RFP evaluation process with the assistance of an independent outside consultant. We note that the proposed role of the Commission and DPS Staff here is similar to that which we have found to be appropriate in determining what regulated reliability "backstop" solution(s) should be implemented in connection with the NYISO's

Comprehensive Reliability Planning Process.¹⁵ The Filing recognizes the role of Con Edison and NYPA to provide their own proposed solutions and their analyses of other proposals, as needed, to assist the Commission and DPS Staff. However, consistent with the NYISO's Comprehensive Reliability Planning Process, we find that the Commission should play an integral role in determining what resources may be needed to address reliability needs in this case.

IPPNY contends that the Filing violates our policy that if a regulated backstop solution is required to meet a reliability need we will select a backstop solution after evaluating, on a comparable basis, the utilities' proposed regulated backstop solution and private developers' alternative regulated backstop solutions, which may include generation, transmission, and demand response.¹⁶ IPPNY argues that Con Edison's proposal to undertake 100 MW of EE/DR/CHP projects inappropriately bypasses this evaluation because the costs and benefits of these programs would not be compared to those of potential transmission and generation projects.

Unlike private developers, the Commission and the Transmission Owners have a responsibility under the Public Service Law to ensure reliability. The Filing is designed to provide the greatest reasonable opportunity for alternative regulated solutions (i.e., non-TO-sponsored projects that may receive out-of-market payments funded by utility ratepayers), given the reliability need. This process is generally

¹⁵ Case 07-E-1507, Long-Range Electric Resource Plan and Infrastructure Planning Process, Policy Statement on Backstop Project Approval Process (issued February 18, 2009).

¹⁶ IPPNY comments, pp. 17, 19. (citing Case 07-E-1507, Long Range Electric Resource Planning and Infrastructure Planning Process, Policy Statement on Backstop Project Cost Recovery and Allocation (issued April 24, 2008)).

consistent with the NYISO's reliability planning process, which requires responsible Transmission Owners to provide reliability backstop solutions, and with our Policy Statement on Backstop Project Approval Process. The utilities' TOTS projects will be evaluated simultaneously with the qualifying responses to the RFP.

Effects on Competitive Markets

IPPNY argues that the plan is "a vast intrusion into the competitive electricity markets" that the Commission has supported over the past 15 years.¹⁷ IPPNY maintains that if IPEC is not ultimately required to cease operations, substantial investment in new infrastructure will be funded by captive ratepayers and could artificially suppress energy clearing prices to the detriment of new and existing market-based projects.

IPPNY further contends that the Filing violates the Commission's and Federal Energy Regulatory Commission's longstanding policy that market-based solutions should be relied upon to meet electricity needs, which is also a central tenet of the NYISO's Comprehensive Reliability Planning Process. IPPNY asserts that this policy requires the NYISO to give market-based solutions every opportunity to meet an identified reliability need before it resorts to a regulated solution. IPPNY suggests that regulatory intervention is a threat to regulated markets and that using out-of-market contracts will greatly undermine the ability of investors to rely upon and respond to market signals that reflect the need for capacity additions.

Brookfield Renewable Energy Group is similarly concerned that out-of-market approaches to planning may adversely affect the market, impair investor confidence, and

¹⁷ IPPNY's comments at p. 16.

increase the risk for merchant generators. They suggest that the NYISO planning processes and capacity market design be reviewed to ensure they are adequate to address contingencies and provide appropriate price signals, and do not need to be bypassed. Further, they suggest that market mitigation measures must be in place to prevent undue impacts on existing merchant generating facilities and to the market as a whole, such as depressed market clearing prices.

We disagree with the contention that the IPEC Contingency Plan violates our long-standing policies. While we generally support the reliance upon market-based solutions to meet reliability needs in the first instance, the uncertainty regarding the IPEC relicensing is accompanied by significant market risk that hinders effective market responses. Merchant developers have naturally been reluctant to make investments based solely upon the potential closure of IPEC. Under these circumstances, we find that there is a need for a reliability backstop plan for the contingency in which IPEC is not relicensed. While we share these parties' concerns about the impacts to competitive markets, we must balance those concerns with our statutory responsibilities to ensure safe and adequate electric service. Under the circumstances present here, we find that the need for prudent planning for the unavailability of IPEC outweighs the potential adverse competitive market impacts.

We also disagree with IPPNY's contention that the IPEC Contingency Plan violates the principles of the NYISO's Comprehensive Reliability Planning Process. In fact, the NYISO's 2010 and 2012 Reliability Needs Assessments both identified serious reliability risks and the need for additional resources by 2016, if IPEC were to become unavailable at the expiration of its current operating licenses. Under its tariff provisions, the NYISO currently assumes IPEC will remain

available and thus has not yet triggered implementation of a reliability backstop solution. However, under our statutory obligation to ensure safe and reliable service, we find that the lack of a reliability backstop solution to this contingency represents an unacceptable risk to the State. Waiting for the IPEC relicensing issues to be resolved is unacceptable because, at that point, it may be too late to address the reliability needs in a reasonable manner.

Other Contingency Plans

The Sierra Club requests that the Commission request detailed local reliability analyses for the remaining coal plants in the State, including the S.A. Carlson, Huntley, and Somerset generating stations. They maintain that this will help avoid the need for costly and inefficient reliability support services agreements, such as those required for the Cayuga and Dunkirk plants, in the event the remaining plants announce plans to retire.

The November 30 Order specifically refers to the potential closure of IPEC in the event that the Nuclear Regulatory Commission (NRC) denies the relicensing of the plants, which we know will have a significant reliability impact in the most densely populated area of the State. While other generator retirements may have reliability impacts, they do not present the unique circumstances that we face here. Although other generator retirements may be temporarily postponed (until other reliability reinforcements can be implemented) with Reliability Support Services (RSS) contracts, this option may well not be available to us in the event the NRC does not relicense the IPEC.

The Dunkirk and Cayuga closures are each separately being addressed by the responsible Transmission Owners in a manner similar to the approach identified in the Filing. We

deem this approach to be more effective and efficient than if all potential retirements are considered in one omnibus study. However, we recognize the value in proactively addressing other potential generator closures separately to determine reliability impacts and to develop potential solutions that may be needed. In this regard and in the near future, we expect National Grid to identify any potential reliability impacts that may be associated with closure of the three generating facilities identified by Sierra Club.¹⁸

Other Matters

Various parties raised comments regarding the role of EE/DR/CHP, the implementation of cost allocation and recovery, the role and treatment of the proposed TOTS, and the economic and ratepayer impacts. These comments are beyond the scope of this order, or are otherwise premature. Therefore, we intend to address those comments in subsequent orders. We note that a notice was published in the State Register on February 20, 2013, soliciting comments on the aspects of the Filing identified as items 2(a) through 2(e) on pages 3 to 4, as discussed at those pages and elsewhere in the Filing.

State Environmental Quality Review Act (SEQRA)

The action that is the subject of this Order approving the filing parties' plan to issue an RFP is a "Type II action," not subject to environmental review under SEQRA.¹⁹ The action is a preliminary step in the planning process, by which we seek information about potential solutions to the reliability contingency that may arise with the shutdown of the IPEC. Our acceptance of this aspect of the IPEC Contingency Plan to

¹⁸ Case 12-E-0201, National Grid - Electric Rates.

¹⁹ 6 NYCRR § 617.2.

solicit proposals does not constitute a significant authorization for any specific proposal, and is not practically determinative of the solutions that may eventually be presented to us.²⁰ We therefore have no further responsibilities under SEQRA, at this time, as noted in 6 NYCRR § 617.6(a)(1)(i).

CONCLUSION

The potential retirement of IPEC raises significant reliability issues that could threaten the public health, safety, and welfare. Consequently, we have required Con Edison, with NYPA's assistance, to undertake sufficient planning to ensure the maintenance of safe and adequate service. The prompt issuance of an RFP, as proposed in the Filing, is a reasonable initial step in planning what resources could be available to meet the potential reliability need date of summer 2016. We expect to address the other aspects of the Filing in the near future.

The Commission orders:

1. Consolidated Edison Company of New York, Inc. and the New York Power Authority's Plan to issue a Request for Proposals is approved, subject to modifications, as discussed in the body of this order. The revised RFP should be provided to DPS Staff for its review and comment in advance of its issuance.
2. Responses to the Request for Proposals shall be filed with the Commission at the same time they are submitted to the New York Power Authority.

²⁰ See Citizens for Orderly Energy Policy, Inc. v. Cuomo, 78 N.Y.2d 398, 416-417 (1991); see also Programming & Systems, Inc. v. New York State Urban Development Corp., 61 N.Y.2d 738, 739 (1984); see also, Matter of East End Prop. Co. #1, LLC v. Kessel, 46 A.D.3d 817, 821 (2d Dep't 2007).

3. This proceeding is continued.

By the Commission,

(SIGNED)

JEFFREY C. COHEN
Acting Secretary