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October 23, 2007

VIA FIRST CLASS MAIL AND ELECTRONIC FILING

Louise E. Rickard
Acting Executive Secretary
State of Connecticut
Department of Public Utility Control
Ten Franklin Square
New Britain, CT 06051

**Re: Docket No. 07-06-62 - DPUC Report to the Connecticut General Assembly on
Electric Reliability**

Ms. Rickard:

Pursuant to the DPUC's Request for Written Comments dated October 2, 2007, in the above referenced docket, the New England Power Generators Association, Inc. (NEPGA) hereby respectfully files the following comments.¹ NEPGA is the largest trade association representing competitive electric generating companies in New England. NEPGA's member companies represent approximately 23,000 megawatts of generating capacity throughout New England, and over 7,000 megawatts of generating capacity in Connecticut. NEPGA's mission is to promote sound energy policies which will further economic development, jobs, and balanced environmental policy. NEPGA appreciates that reliability is an essential requirement of a robust Connecticut economy and ardently recommends that the DPUC and the Connecticut General Assembly not preclude market solutions to achieve the highest standards in electric reliability. NEPGA requests that all further correspondence, communications and other documents relating to this matter be served upon the undersigned as follows:

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The views expressed in these comments do not necessarily represent the positions of each of NEPGA's members. In addition, nothing in these comments should be deemed to waive any rights that NEPGA or any of its members may have to challenge the administrative, procedural or substantive validity of the proposed regulations in any forum.

I. BACKGROUND

Section 9 of Public Act 07-242, An Act Concerning Electricity and Energy Efficiency (Act), requires the DPUC, in consultation with the Connecticut Siting Council (CSC), to assess ways in which the state can ensure and enhance the reliability of electric generating facilities located in the state during periods of peak electric demand. Specifically, § 9 of the Act requires an investigation into the following areas:

- (1) The current compliance status of electric generation facilities with existing on-site dual fuel storage and operational requirements;
- (2) The existing inventory of fuel storage and fuel delivery resources available to supply electric generating facilities located in the state;
- (3) The amount of fuel delivery and storage infrastructure that would be necessary to ensure the reliable operation of in-state generating facilities during periods of peak electric demand;
- (4) The value for and appropriate level of firm fuel delivery contracts, and
- (5) The types of incentives that can be offered to electric and gas market participants to enhance the reliability of electric service during periods of peak electric demand.

II. COMMENTS OF NEPGA

NEPGA's activities as a trade association advancing energy policies do not require the association to maintain information related to asset characteristics. As such, NEPGA is unable to comment substantively on the specific issues related to compliance, existing storage and delivery abilities, or the existing commodity and transportation contracts. However, NEPGA appreciates the opportunity to provide the following comments regarding existing market conditions, applicable regulations and market incentives. NEPGA encourages the coordination of existing federal, state and regional policy to ensure that the appropriate capacity is built to ensure continued reliability.

A. The DPUC Should Not Require The Public Disclosure Of Commercially Sensitive Information As A Method Of Compliance With Reliability Standards.

The processes and methods used to comply with adequate reliability standards cannot give any market participant an unfair competitive advantage through public disclosure of proprietary information of a competitor(s). The DPUC's and the CSC's investigation should take advantage of information that is compiled pursuant to existing reporting requirements and fully comply with the provisions for confidentiality that have been set forth by those provisions.

The CSC currently obtains an annual report that contains, or should contain, much of the information requested by this docket:

Every person engaged in... electric generation services²... shall, annually, on or before March first, file a report on a forecast of loads and resources... **Upon request, the report shall be made available to the public.** The report shall include, as applicable...for each private power producer having a facility generating more than one megawatt ... a statement including the name, location, size and type of generating facility, the fuel consumed by the facility and the by-product of the consumption. **Confidential, proprietary or trade secret information provided under this section may be submitted under a duly granted protective order.. The council shall conduct a review in an executive session of any confidential, proprietary or trade secret information submitted under a protective order during such a hearing.** *See, Conn. Gen. Stat. § 16-1(32) (2007) (emphasis added)*

NEPGA requests that the legislative report be produced from the aforementioned report to the greatest extent possible in that duplication of reporting requirements adds an administrative burden and expense to reporting entities.³ NEPGA further requests that all information obtained through this docket be afforded the same protections as confidential, proprietary or trade secret information that is provided pursuant to Conn. Gen. Stat. § 16-1(32).

B. Wholesale Generators Are Subject to a Comprehensive Oversight Process That Ensures Reliability.

Under existing law several federal agencies regulate and oversee the energy markets, including the Federal Energy Regulatory Commission (FERC). Regional Transmission Organizations (“RTOs”) and Independent System Operators (“ISOs”) administer, subject to FERC-approved tariffs, markets that enable participants to engage in a wide range of electricity trading activity. The North American Electric Reliability Council and its Regional Reliability Councils maintain mandatory compliance standards, as approved by FERC. The Energy Policy Act of 2005 gave FERC significant new responsibilities and granted it significant new authority to discharge these responsibilities by modifying the Federal Power Act, the Natural Gas Act, and the Public Utility Regulatory Policies Act of 1978. FERC regulates electric power and natural gas, including the sale of power at wholesale, interstate sales of natural gas, the interstate transmission of power and transportation and storage of natural gas. The Natural Gas Act provides the FERC authority to regulate the transportation and sale of natural gas in interstate

² "Electric generation services" means electric energy, electric capacity or generation-related services, Conn. Gen. Stat. § 16-1(32) (2007).

³ NEPGA notes that the CEAB suggested that the CSC also consider introducing additional standard filing requirements to collect information on capacity, energy and operating reserve capabilities in the State and within each ISO-NE defined load pocket within Connecticut. *See, Comments of The Connecticut Energy Advisory Board on the CSC's Draft Report on the Ten-Year Forecast of Connecticut Loads and Resources, Docket No. F-2007, 7-8 (July 12, 2007).*

commerce including transportation, storage rates and terms, construction and operations, and provides FERC with broad authority to ensure that market manipulation does not hamper reliability.⁴

Of particular relevance to this proceeding is an investigation that FERC initiated in October 2006.⁵ FERC sought to examine whether scheduling and compensation mechanisms of the ISO/RTOs needed to be revised to ensure that gas-fired generators could obtain gas when their generation is needed for reliability and whether they are adequately compensated when gas prices are volatile. In the order instituting the investigation, FERC pointed to practices that ISO-New England had adopted in response to a cold snap in January 2004, as providing a good starting point for other organized markets. The ISO/RTOs and other parties responded to FERC's request for comments. Based on ISO-NE's and other filings, FERC concluded that no additional procedures were warranted in New England "to ensure that gas-fired generators can obtain gas when necessary for reliability."⁶

Another relevant initiative under this proceeding is FERC Order 698.⁷ In compliance with the Federal Power Act, FERC issued Order 698 that requires gas-fired power plant operators and pipelines to establish procedures to communicate material changes in circumstances that may affect hourly flow rates. Further, the standards require that, upon request, a gas-fired power plant operator must provide to the appropriate independent electric balancing authority or electric reliability coordinator pertinent information regarding its service levels for gas transportation (firm or interruptible) and for gas supply (firm, fixed or variable quantity, or interruptible). The generators have been providing gas supply and transportation information for the ISO to meet its November 1, 2007, deadline to show compliance with communication protocols.

State utility commissions have regulatory authority over local gas distribution companies, intrastate pipelines and natural gas sales to retail consumers by utilities and marketers, including rules governing retail marketing and the allocation to retail marketers of utility rights to pipeline and storage capacity.⁸ Most importantly, the physical siting of electrical generation,

⁴ It shall be unlawful for any entity, directly or indirectly, to use or employ, in connection with the purchase or sale of natural gas or the purchase or sale of transportation services subject to the jurisdiction of the Commission, any manipulative or deceptive device or contrivance, *See*, 15 U.S.C. § 717c-1, regarding prohibitions on market manipulation. (emphasis added)

⁵ Order Instituting Inquiries into Gas-Electric Coordination Issues, 117 FERC P. 61,094 (2006).

⁶ Order Terminating Section 206 Proceedings, 120 FERC P61, 206 (2007).

⁷ FERC issued a final order in Docket No. RM96-1-027 (Order 698) on June 25, 2007.

⁸ For example, in order to meet their reliability obligations, the DPUC requires each gas local distribution company (LDC) to secure enough natural gas supply to meet firm sales customer requirements based on the coldest day in the last 30 years.

transmission, or distribution facilities (except for hydroelectric projects)⁹ remains the jurisdiction of the state and/or local authorities and, therefore, allows individual states to legislate and regulate for the efficient development of reliable resources . NEPGA believes Connecticut can best achieve its goals by working directly with the available agencies that are charged with maintaining grid reliability, to ensure existing units perform as expected, while facilitating development of new generation through judicial exercise of its siting authority. Connecticut has taken a proactive involvement in the development of energy resources through the planning functions of the Connecticut Energy Advisory Board (CEAB)¹⁰ and the CSC.

While it is understandable that acute market conditions, such as those experienced by the region in January of 2004, can result in a greater scrutiny of energy policies, NEPGA believes that the existing regulatory structure provides an appropriate balance to meet the diverse needs of Connecticut's stakeholders. Connecticut regulators should work within the existing regulatory scheme to incent the siting of diverse supply side resources and ease air permit restrictions during periods of a shortage event so as not to prevent facilities from operating on more abundant fuel sources.

C. Wholesale Generators Participate in an Organized Regional Market Designed for Reliability and Resource Development.

The organized energy market in New England has implemented mechanisms for valuing reliability services such as those provided by resources with multi-fuel capability or other high-reliability fuel supplies. NEPGA's member companies have been actively involved in the design and development of the competitive wholesale market in New England during the last ten years and are confident in the market's ability to incent the development of reliable resources. New England's energy markets have developed the necessary framework to support resource development through robust competition.

1) Forward Capacity Market

On June 16, 2006, FERC approved a contested settlement agreement within NEPOOL establishing a forward capacity market ("FCM") to provide a market mechanism to support the development of sufficient future electricity generating capacity in New England. The FCM functions through the operation of forward capacity auctions in which electricity suppliers will purchase forward capacity from existing or new generation. The ISO has reported that the

⁹ While hydro licenses are regulated by FERC, state and local permits are still needed for construction. For instance, under Section 401 of the Clean Water Act, FERC cannot issue a new license until the state has certified that the project meets state water quality standards.

¹⁰ The CEAB submits a comprehensive energy plan each year to the joint standing committees of the Connecticut General Assembly regarding matters relating to energy, environment and transportation, *See*, Public Act 03-140.

qualification process for the FCM includes approximately 2,500 megawatts of combustion turbine peaking capacity projects proposed within Connecticut.¹¹

Additionally, the FCM was designed to ensure that demand response programs could participate directly in the markets with traditional supply resources. The ISO market rules have been structured so as to be as inclusive and flexible as possible to create the greatest opportunity for demand response resources to participate.¹² In the first phase of qualifications, demand resource capacity suppliers in New England submitted almost 2,500 MW of new demand resources to participate in the first Forward Capacity Auction scheduled for February 2008, and 190 projects representing nearly 2,200 MW still remain active. This resource will be particularly valuable to Connecticut's disproportionate growth in peak demand.¹³

In order to maintain the reliability of the bulk power system ISO-NE requires strict accountability from market participants. Because of the importance placed upon availability and reliability in the ISO-NE FCM, existing resources that are unavailable in shortage events¹⁴ get reduced capacity payments equal to five-percent of the unit's annual auction capacity payment per event. This presents a very strong incentive for resources to be available at times of system stress, and will encourage supply resource owners to make arrangements for a reliable fuel supply.

2) Locational Forward Reserve Market

New England's Locational Forward Reserve Market ("LFRM") also provides a structure for the region to efficiently value the operating reserve capability that is necessary to reliably operate the system, and place specific obligations on providers of reserve services. Just as with the FCM, the LFRM places substantial penalties on resources that are called on to activate in response to a system need but fail to do so. A back-up fuel supply is one means for an LFRM unit to increase its ability to respond reliably and avoid penalties.

3) Scarcity pricing

New England has implemented scarcity pricing mechanisms for reserves and energy that significantly advance the objective of enabling efficient real-time pricing that reflects the

¹¹ Presentation of ISO-NE at the Regional System Plan meeting, Boston, September 6, 2007.

¹² e.g., the amount of capacity offered by a demand resource can be as small as 100 kW. *See*, ISO-NE Market Rule 1, §III.13.1.4.1. Demand Resources

¹³ In 2005, the peak electric load for the state was approximately 7,135 MW, which was 4.1% higher than the previous peak of 6,851 MW experienced in Connecticut in 2002. *See*, Review of the Ten Year Forecast of Connecticut Electric Loads and Resources 2006-2015, 4, Connecticut Siting Council, (Nov. 14, 2006)

¹⁴ A Shortage Event is any period of thirty or more contiguous minutes of system-wide Reserve Constraint Penalty Factor activation, **defined as being short of operating reserves**. *See*, ISO New England Inc., Original Sheet No. 7317G, FERC Electric Tariff No. 3, § III.13.7.1.1.1, Market Rule 1 – Standard Market Design. (emphasis added).

fundamental supply-demand balance when reserve margins get thin. Scarcity pricing is based on the theory that under scarcity conditions generating units will receive higher compensation. Quite simply, when supply conditions are tight and drop below a pre-determined threshold level, the value of additional energy rises. This additional revenue helps to incentivize investment in new generation, promotes overall system reliability, and sends the right price signals to active demand response programs. The additional value of energy produced at these times of scarcity is a further incentive for supply resources to consider back-up fuel supplies to ensure their ability to operate.

D. Environmental Regulations Should be Consistent With Connecticut's Reliability and Economic Requirements.

The federal and state governments have implemented many environmental policies aimed at reducing emissions from electric generating facilities and effectively capturing the cost of environmental emissions in the price of power. While these programs are beneficial to the overall environment, they often have the unintended effect of compromising electric reliability and substantially increasing consumer costs. Connecticut statute requires a Certificate of Environmental Compatibility and Public Need from the Connecticut Siting Council for the construction of many types of energy facilities, including electrical generating facilities and gas transmission lines.¹⁵ Within these provisions, Connecticut possesses the authority to balance the need for responsible environmental stewardship with the economic needs for cost effective and reliable electricity. NEPGA encourages the Connecticut permitting authorities to maintain the greatest amount of flexibility in executing its siting and air permitting authority so as to allow new and existing facilities to operate on multiple fuels consistent with the greater intent of the Connecticut Legislature.¹⁶

The most aggressive environmental program affecting Connecticut is the Regional Greenhouse Gas Initiative (RGGI).¹⁷ RGGI will cap and then reduce carbon dioxide (CO₂) emissions from electric generating facilities by forcing generating units to purchase CO₂ allowances at auction to enable the facility to operate. The unpredictable nature and costs of purchasing auction allowances could have the adverse impact of harming system reliability in Connecticut. ISO-NE summarized the effects on the New England electricity market as follows:

The RGGI cap-and-trade program would create CO₂ emission allowances needed by generators, which would have a market value. This value would be reflected in the generator bid prices, similar to how SO₂ and NO_x allowances are reflected today. This additional generator cost could shift the dispatch of the generators and

¹⁵ Conn. Gen. Stat. § 16-50k. Certificate of environmental compatibility and public need.

¹⁶ *See generally*, Conn. Gen. Stat. § 16-50g

¹⁷ Connecticut signed the RGGI Memorandum of Understanding signed on Dec 20, 2005, capping CO₂ emissions at 10,695,036 tons starting in 2009.

their CO₂ emissions, and potentially affect electric system operation and reliability in New England.¹⁸ (emphasis added).

NEPGA believes that the overall goal of regulations to limit carbon emissions is an important one, but Connecticut cannot ignore the fundamental market operations that are critical to the reliable operation of the bulk power generation system. Environmental regulations must be implemented consistent with the regional power markets and must not penalize electrical generating units, particularly those with dual fuel capabilities that have been permitted to mitigate restrictions during periods of high demands, in instances of extreme market pressures that necessitate the dispatch of all supply side resource in order to maintain the operation of the bulk power system. NEPGA also suggest that environmental programs have greater transparency so that consumers are able to quantify the cost impacts of such regulations.

E. The DPUC can Remedy Insufficient Market Incentives through the Market Stakeholder Process.

Within ISO-NE there are market mechanisms that currently exist and that are being developed and implemented to meet the local reliability needs of the region through competitive market signals, and NEPGA supports that process as the most appropriate mechanism to maintain reliability. There is an effective process available to Connecticut regulators, legislators and stakeholders to participate actively in the development of additional market incentives and products within the existing electricity markets to ensure the appropriate levels of reliability within the state.¹⁹ The NEPOOL Participants Agreement contains a detailed stakeholder review process by which initiatives for changes to the design of the New England markets, or rules affecting the operation of the New England markets can be implemented. The working relationship between the ISO-NE staff, management, and board, and their willingness to meet with market participants and stakeholders has fostered an atmosphere whereby the respective organizations can communicate their particular expectations for and needs from the market. NEPGA encourages the DPUC and the Connecticut legislature to propose market initiatives that would be beneficial to providing market solutions to Connecticut's fuel-diversity and reliability issues.

From a practical perspective, a competitive wholesale market for power in New England has delivered benefits to customers and the region that would have been impossible under the regulated structure that had been in place for many years. This success has been the product of substantial new investment in efficient generating plants. The efficient energy infrastructure improvements procured through the competitive market have led to a decrease in fuel-adjusted electricity prices in New England of approximately 7% from 2000 to 2006.²⁰ These units are

¹⁸ See generally, Evaluation of Impact of Regional Greenhouse Gas Initiative CO₂ Cap on the New England Power System, Platts, et. al.

¹⁹ See, Participants Agreement between ISO-NE, NEPOOL and Individual Participants, §10.

²⁰ 2006 Annual Markets Report, ISO-NE, June 11, 2007, at 40, 41. The fuel-adjusted average electric energy price normalizes the electricity market clearing prices for the variation in the prices of fuels used by price-setting generating units.

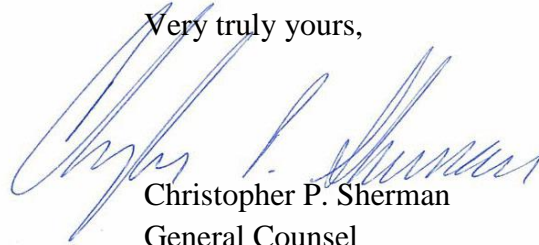
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cleaner and more efficient, so emissions of key pollutants have gone down even as electricity consumption throughout the region has increased. New England facilities have reduced the emissions of NO_x by 32%, SO₂ by 48% and CO₂ by 6%. Despite the success of competitive electricity markets in attracting new investments, New England has a declining reserve margin and a corresponding need for energy resources; therefore, now is the time to move forward with substantial investments in energy infrastructure of all types in Connecticut and throughout New England.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Chris P. Sherman", is written over the typed name and title.

Christopher P. Sherman
General Counsel