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**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. 07-08-24 - DPUC Investigation of the Process and Criteria for Use in  
Implementing Section 50 of Public Act 07-242 – Peaking Generation

Ms. Rickard:

Pursuant to the DPUC's Notice of Scope of Proceeding and Request for Written Comments dated September 5, 2007, in the above referenced docket, the New England Power Generators Association, Inc. (NEPGA) hereby respectfully files the following comments.<sup>1</sup> 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. In furtherance of that mission, NEPGA supports properly designed competitive markets that enable all resources to compete on a level playing field and to be subject to the competitive pressures of the marketplace to discipline costs. Therefore, NEPGA is categorically opposed to any actions by a state seeking to procure new generation that does not include a competitive process, with market discipline, for determining the most economic projects.

**I. BACKGROUND**

Section 50 of Public Act 07-242 directs the DPUC to receive, review and approve, approve with modifications, or reject proposals to build peaking units within 120 days of its receipt of complete proposals. The DPUC is required to approve all proposals unless it

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<sup>1</sup> 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.

demonstrates, based on the principles of General Statutes of Connecticut § 16-19e (Conn. Gen. Stat.), that a proposal is or proposals are not in the interest of ratepayers. Section 50 also requires that the DPUC: 1) consistent with the principles of §§ 16-19, 16-19b and 16-19e, approve cost of service plans and set a return on equity for approved projects; 2) establish guidelines for the approved projects' participation in the ISO New England (ISO-NE) markets; and 3) establish procedures that approved projects must follow for future contested annual retail rate cases governing the peaking units.

## **II. COMMENTS OF NEPGA**

The public policy behind competitive procurement of power supplies financed with private capital is implicitly sound in that it drives innovation and efficiency in the power sector, more accurately reflects the underlying value of electrical production, including environmental externalities, and encourages the development of new energy infrastructure and necessary environmental improvements to existing energy infrastructure without subjecting ratepayers to the risk of stranded costs or cost overruns. 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.<sup>2</sup> It is imperative that the benefits of the competitive market are not compromised as a result of this proceeding.

### **A. The DPUC's Process for Choosing a Plan to Build Peaking Generation Must Maintain a Strict Consistency with Competitive Market Rules.**

The restructuring of the ISO-NE market has been the product of many years of negotiations and discussions among a wide range of market participants: utilities, regulators, customers, generators and other stakeholder groups. 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. 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 obtain needed peaking capacity. These market mechanisms, and evolving improvements, are implemented through a process that encourages full participation by all stakeholders with the ultimate goal being the development of vibrant and sustainable electricity markets. NEPGA recommends that the selection of qualifying plans be delegated by the DPUC to be made by an independent third party, which is uniquely qualified to evaluate the peaking generation proposals on cost, technology and specific locational need.

Recent improvements to the wholesale electricity markets include, *inter alia*: (1) the forward and real-time operating reserves markets that are intended to ensure that sufficient

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<sup>2</sup> 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.

resources are available to produce electricity during various system contingencies<sup>3</sup>, and (2) a forward capacity market with locational requirements that will cause capacity to be procured to meet system-wide and locational reliability needs three years forward. These improvements, along with the underlying locational marginal priced energy markets, are designed to ensure that the lowest cost supplies are dispatched to meet immediate locational load demands throughout the region and to establish price signals to attract efficient investments in new capacity and energy resources in the right areas within the New England region. NEPGA contends that it is premature to interpose regulatory changes into these developing markets, and further maintains that any such market interference will only erode the success of the markets. The ISO has reported that the qualification process for the Forward Capacity Market includes approximately 2,500 megawatts of combustion turbine peaking capacity projects proposed within Connecticut.<sup>4</sup> In fulfilling its responsibilities under § 50 of Public Act 07-242, NEPGA requests that the DPUC maintain competitive market principles by ensuring that any plan to build peaking generation is capable of delivering the respective ISO-NE market products in a manner that does not distort the existing markets.

### 1) System Planning

The amount of megawatts of peaking generation that are needed in any region within New England should be left to the market to decide, based on information provided by ISO-NE in its analyses of the power system, and on the value of such resources presented in the markets. ISO-NE dedicates considerable resources to performing system analyses, and each year it produces a series of reports that analyze the performance of the bulk power markets and options that have been proposed to address current and future needs. Recently, ISO-NE concluded, among other things, that additional system capacity is needed by 2010 and that the preferred location of that capacity was in the Southern and Western sections of Connecticut and Massachusetts.

### 2) Fixed Terms

As a method of practice, the development and construction of electrical generation infrastructure in the competitive market has been successfully facilitated through the execution of turnkey construction contracts that are entered into between a project developer and an engineering and construction firm.<sup>5</sup> Turnkey contracts have been necessary to facilitate the

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<sup>3</sup> The Locational Forward Reserve Market is a seasonal auction where suppliers sell reserves that they are obligated to provide in real-time. These resources must be provided from either an online resource with unused capacity or an offline resource capable of starting quickly.

<sup>4</sup> Presentation of ISO-NE at the Regional System Plan meeting, Boston, September 6, 2007.

<sup>5</sup> A turn-key contract is defined as a project in which all the owner need do is “turn the key” in the lock to open the building with nothing remaining to be done and all risks to be assumed by contractor. Blacks Law Dictionary 1516 (6th ed. 1990) (citing Glassman Const. Co., Inc. v. Maryland City Plaza, Inc. D.C.Md., 371 F.Supp. 1154, 1159) (emphasis added); in the energy industry it is wherein the [contractor] undertakes to furnish everything and does all work required to complete [the project], place it on production, and turn

financing of such intensive projects so that one entity takes total responsibility for the design and execution of the complex engineering project. Project financiers require that the budgetary and scheduling risk is distributed away from the lender and developer and properly directed to firms with expertise in these very specialized projects. Financial institutions insist on limiting their transactional uncertainty by allocating performance risk to the project's developers, engineers and constructors. The DPUC must guarantee Connecticut consumers the same protections by requiring fixed pricing and schedule terms as a minimum peaking project criterion in all proposals pursuant to § 50.

### 3) Risk Allocation

All of the risk of eligible peaking generation plans, including liability for project cost and scheduled completion and delivery obligation dates, must stay with the project proponent to remain consistent with competitive market fundamentals and provide maximum protection for Connecticut consumers. The firm obligations upon the proponent must have the sanctity of a formal contract, with appropriate performance standards and remedies for breach.

#### a) Firm Plan Cost

The most notable feature of the competitive market regime is that new generation investments have been made by private generators, not regulated utilities or their customers. Unlike the previous regulated system where customers could be shouldered with millions of dollars of costs from uneconomic "stranded" investments, merchant energy companies recover their costs only from the market value of the products they provide. As a result of increased construction costs, utility plant capital costs have risen dramatically in monopolized markets.<sup>6</sup> For example, in May 2005, Duke Energy Carolinas<sup>7</sup> requested approval from the North Carolina Utilities Commission (NCUC) to construct two 800 megawatt coal-fired units at Duke's existing Cliffside plant for a total cost of two billion dollars (\$2,000,000,000). In March 2007, Duke Energy calculated the latest cost for a single unit would be \$1.8 billion, an 80% increase from the original estimate from only six months earlier. This type of risk must be shifted away from Connecticut consumers and remain properly allocated with project proponents.

NEPGA does not agree that a consultant is necessary to review or establish the validity of a good faith estimate. The most certain way to establish if an estimate is a "good faith" estimate is to only allow the selected plan proponent to recover costs that are in the project budget contained in the proposal. This is common treatment for cost recovery in the commercial market for this type of transaction, as well as the way a capacity resource is qualified in the ISO-NE

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it over ready to turn the key and start [the project] running. *Id.* (citing *Totah Drilling Co. v. Abraham*, 64 N.M. 380, 328 P.2d 1083, 1091) (clarification added).

<sup>6</sup> See, Electric Power Supply Association, *PowerFact*; July 25, 2007.

<sup>7</sup> Duke Energy owns and operates vertically integrated utilities in North Carolina and South Carolina serving approximately 2.3 million customers with a generating capability of approximately 19,900 megawatts. See generally, <http://www.duke-energy.com/about-us/power-plants.asp>