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Energy Plan Comments
NYSERDA
17 Columbia Circle
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VIA EMAIL

RE: Draft Scope of 2009 New York State Energy Plan

Dear New York State Energy Planning Board Members and Energy Coordinating Working Group:

The National Energy Marketers Association (NEM)¹ hereby submits comments on the Draft Scope of 2009 New York State Energy Plan [hereinafter "Draft Scope"]. Pursuant to Executive Order No. 2² issued by Governor Paterson earlier this year, the State Energy Planning Board was convened and charged with the task of developing a State Energy Plan by June 30, 2009. The Executive Order enumerates a list of elements to be included in the Energy Plan.³ The Draft Scope states that those elements will be addressed in technical assessments⁴ and issue briefs.⁵ The elements to be included in the Energy Plan are extensive and necessarily reflect the concerns held by New York energy consumers with climate change, demand reduction, energy efficiency, conservation and green energy resources and technologies. NEM shares these demand-related concerns, and NEM members are actively developing new products and services to address these concerns

¹ NEM is a national, non-profit trade association representing leading retail suppliers of natural gas, electricity as well as energy, telecom and financial related products, services, information and advanced technologies to millions of homeowners, small businesses and large industrial consumers throughout the United States, Canada and the European Union. NEM's membership includes wholesale energy suppliers, independent power producers, suppliers of distributed generation, energy brokers, power traders, global commodity exchanges, demand side and load management firms, direct marketing organizations, customer service and related information technology providers. NEM members also include inventors, patent holders, systems integrators, and developers of advanced metering, solar, fuel cell, lighting and power line technologies.

² Executive Order No. 2, Establishing a State Energy Planning Board and Authorizing the Creation and Implementation of a State Energy Plan.

³ Executive Order No. 2, Section 3.

⁴ "Proposed technical assessments include: Energy Efficiency; Renewable Energy; Electricity; Natural Gas; Petroleum; Coal; Demand Forecasts and Price Forecasts." Draft Scope at 3.

⁵ Proposed issue briefs include: meeting future energy needs, energy infrastructure needs, siting new energy infrastructure, energy costs and economic development, health impacts of energy use, environmental justice, meeting transportation needs and alternative transportation options, climate change, environmental impact and regulation of energy systems and regional energy issues. Draft Scope at 3-5.

through advanced technology in reliance on competitive market structures that the New York Public Service Commission has carefully crafted over the past decade.

An important element that is missing from the Draft Scope however is the explicit recognition of the role competitive retail natural gas and electric markets have and will play in the realization of the State's long-term energy planning goals. Indeed, this theme should be an integral part of the technical assessments and issue briefs. While possible to infer this theme throughout the Draft Scope, NEM recommends that such a critical component of this State's energy policy for over ten years should be prominently considered and highlighted throughout the Draft Scope and eventual final 2009 Energy Plan. This is appropriate given:

- 1) The energy planning objectives set forth in previous State Energy Plans and retail market development realized as a result thus far;
- 2) New York Public Service Commission policy leadership that has encouraged significant retail market development and removed barriers to participation for consumers and marketers;
- 3) The high attendant costs and risks associated with regulatory market intervention; and
- 4) The role of competitive markets as catalysts for energy product and service innovation.

I. The 2002 Energy Plan Objectives Have Served Consumers Well and Should Be Continued in the 2009 Energy Plan

The 2002 State Energy Plan set forth five energy planning objectives:

- 1) Supporting the continued safe, secure, and reliable operation of the State's energy and transportation systems infrastructures.
- 2) **Stimulating sustainable economic growth, technological innovation, and job growth in the State's energy and transportation sectors through competitive market development** and government support.
- 3) Increasing energy diversity in all sectors of the State's economy through greater use of energy efficiency technologies and alternative energy resources, including renewable-based energy.
- 4) Promoting and achieving a cleaner and healthier environment.
- 5) **Ensuring fairness, equity, and consumer protections in an increasingly competitive market economy.**⁶ (Emphasis added).

The objectives set forth six years ago bear as much merit today, and perhaps more, given the significant achievements realized in the State in increasing the availability of and participation in meaningful energy choice programs. Furthermore, Section 2.1 of the 2002 State Energy Plan pertains to "Promoting Energy Industry Competition." It unequivocally stated,

⁶ 2002 State Energy Plan, Section 1.3 Energy Policy Objectives and Recommendations.

The pursuit of effective competition, wherever practicable, in the provision of natural gas and electricity services is the policy of the State of New York. Such competition has the potential to reduce energy costs over the long term, increase customer choices and satisfaction, provide economic development advantages, enhance system reliability, promote technological changes and improvements, and improve environmental quality.⁷

New York State's commitment to competitive retail market development has worked. The most recent retail energy choice participation statistics posted on the New York Public Service Commission (NYPSC) website plainly illustrate the progress that has been made since 2001.⁸ As of February 2008, over one million customer accounts were participating in electric choice, representing 15.4% of accounts and 43.8% of load.⁹ As of January 2008, over 600,000 accounts were participating in natural gas choice, representing 14.8% of accounts and 42.2% of load.¹⁰ In Spring 2007, the NYPSC reported that over 100 energy marketers were eligible to do business in the State,¹¹ and that in each of the six major combined utility service territories there were at least six electric and six gas marketers actively serving customers.¹² The increase in migration, particularly for mass market customers, and marketer participation over the seven-year period has been dramatic and presents compelling evidence in support of the NYPSC's efforts to foster consumer energy choice.

Marketers have made a significant resource investment in the utility service territories to serve consumers with an increasingly expanding array of energy products and services. And energy competition has engendered significant price savings for New York

⁷ 2002 State Energy Plan, Section 2.1 Promoting Energy Industry Competition at page 2-1.

⁸ The 2002 State Energy Plan is a useful point of comparison in this regard. The 2002 State Energy Plan reported with respect to retail electric choice, that at the end of 2001 that "[o]verall, 5% of customers, representing nearly 20% of load, had switched from their local utilities to retail service providers," and that specifically, "over 25% of the load in the non-residential sector, but only 5% of the residential load has switched as of that date." 2002 State Energy Plan, Section 3.4 Electricity Resource Assessment at page 3-81. The 2002 State Energy Plan also reported with respect to retail natural gas choice, that at the end of 2001 about 373,000 residential and non-residential customers had switched to a competitive supplier, representing about 10.4% of the total volumes delivered to customers by LDCs. At that time, most large volume natural gas customers had already switched to a competitive supplier. "In total, about 50% of the gas consumed in New York is gas purchased from non-utility suppliers." 2002 State Energy Plan, Section 3.5 Natural Gas Assessment at page 3-154.

⁹ Specifically, as of February 2008 over fourteen percent of residential electric customers, and fifty eight percent of large commercial and industrial electric customers have migrated.

¹⁰ Specifically, as of January 2008 nearly fourteen percent of residential natural gas customers and nearly fifty percent of large transport customers (accounting for 82.4% of load) have migrated.

¹¹ By comparison, the 2002 State Energy Plan noted that 26 ESCOs were then selling electricity to retail customers and that there were 25 active natural gas marketers in the downstate area and 15 in the upstate area. 2002 State Energy Plan, Section 3.4 Electricity Resource Assessment at page 3-82; 2002 State Energy Plan, Section 3.5 Natural Gas Assessment at pages 3-154 and 3-155.

¹² NYPSC Case No. 07-M-0458, Review of Retail Access Policies, issued April 24, 2007, at page 4. The U.S. Energy Information Administration reported, with respect to retail natural gas markets, "New York has by far the largest number (46) of active marketers, with customers in some parts of the State having a choice of more than 20 marketers and 50 different price offerings." U.S. Energy Information Administration, Natural Gas Residential Choice Programs, U.S. Summary 2007, available at: http://www.eia.doe.gov/oil_gas/natural_gas/restructure/state/us.html

consumers as well. The typical residential retail customer experienced a drop in total real electric price of an average of 16% between 1996 and 2004, and most commercial and industrial customers benefited from similar energy bill decreases.¹³ Likewise, consumers buying natural gas from marketers paid less than LDC customers during 2002-05.¹⁴ The Draft Scope and 2009 Energy Plan should properly recognize that competition is the ultimate form of economically efficient price mitigation.

In contrast, regulatory mandates have historically increased, not decreased, the overall long-term cost of energy supplies. Regulatory cross-subsidies through a utility cost-of-service pricing structure for otherwise competitively available products, services and technologies are far less efficient and equitable than similar policies implemented through broader-based tax incentives. Additionally, the new capital needed to implement infrastructure upgrades can be achieved by greater, rather than less, reliance on competitive capital markets. As competitive functions and consumers migrate to the competitive energy markets, marketers become better able to compete in the competitive capital markets, which heretofore have also been a challenge to lower priced offerings.

II. NYPSC Policy Leadership Has Encouraged Significant Retail Market Development, Removed Barriers to Participation and Should Be Recognized in the Energy Master Plan

The 2002 State Energy Plan noted that obstacles to consumer participation and marketer participation in energy choice were numerous, and cited obstacles including lack of utility rate unbundling, lack of availability of consolidated billing, high financial security requirements, volatile wholesale markets, continuation of utilities in competitive functions, and narrow profit margins.¹⁵ It was subsequent to the release of the 2002 State Energy Plan that the NYPSC issued its groundbreaking Retail Policy Statement tackling these and other issues head on.¹⁶

The NYPSC's Retail Policy Statement adopted a Vision Statement as follows:

The provision of safe, adequate, and reliable gas and electric service at just and reasonable prices is the primary goal. Competitive markets, where feasible, are the preferred means of promoting efficient energy services, and are well suited to deliver just and reasonable prices, while also providing customers with the benefit

¹³ New York State Department of Public Service, Staff Report on the State of Competitive Energy Markets: Progress to Date and Future Opportunities, March 2, 2006, page 2. See also Joskow, Markets for Power in the United States: An Interim Assessment, The Energy Journal 2006, page 27, Figure 6 (showing approximate 14% decrease in real residential prices from 1996-2004).

¹⁴ U.S. Energy Information Administration, Natural Gas Marketer Prices and Sales To Residential and Commercial Customers: 2002–2005, issued June 2007, at page 13. In this report, EIA examines data from marketers in the States of Maryland, New York, Ohio, and Pennsylvania and concludes that on average, residential and commercial customers purchasing natural gas from marketers paid less than customers purchasing natural gas from local distribution companies in these States from 2002 through 2005.

¹⁵ 2002 State Energy Plan, Section 3.4 Electricity Resource Assessment at page 3-82.

¹⁶ NYPSC Case 00-M-0504, Competitive Opportunities Proceeding, Statement of Policy on Further Steps Toward Competition in Retail Energy Markets, issued August 25, 2004.

of greater choice, value and innovation. Regulatory involvement will be tailored to reflect the competitiveness of the market.

The Retail Policy Statement identified utility best practices to foster retail market development and consumer migration. The best practices have been implemented (in varying degrees) in the different utility service territories such as purchase of receivables, marketer referral programs, unbundling utility bills, improving marketer access to customer account numbers, customer load auctions, outreach and education initiatives, market match and market expo programs, energy fairs, utilities designation of ESCO ombudsmen, customer awareness surveys, ESCO satisfaction surveys, utility migration incentives, and utility lost revenue recovery. The NYPSC also established an Office of Retail Market Development that was charged with overseeing the implementation of these best practices. The success of the implementation of the NYPSC's Retail Policy Statement is underscored by the robust consumer participation and marketer participation statistics discussed above.

The NYPSC undertook a review of its retail access policies in 2007 and has not, as of yet, issued final findings in that regard.¹⁷ As discussed in NEM's Comments in that proceeding,¹⁸ the retail access programs are only in their relative infancy having been evaluated in individual utility rate plan proceedings as well as other generic cases which delayed ultimate implementation. These successful programs should be recognized and continued, particularly in view of consumer interest and participation levels achieved to date and yet to be achieved, as well as the stakeholders' meaningful resource commitment to continued market development. To the extent that the programs are portrayed as transitory in nature, rather than reliable market features, it further increases the attendant regulatory risks and thereby discourages the exact marketer investment of resources that is required to ensure the on-going availability of energy choice options.

NEM members and the industry at large view New York as a leading national model¹⁹ of retail energy market development. For example, drawing upon New York's example, utility purchase of receivable programs, as well as marketer referral programs are being examined²⁰ and implemented²¹ in other jurisdictions. The NYPSC's Office of Retail

¹⁷ NYPSC Case 07-M-0458, Review of Policies and Practices Intended to Foster the Development of Competitive Retail Energy Markets.

¹⁸ Available at: http://www.energymarketers.com/Documents/nem_cmts_retail_access_final.pdf

¹⁹ See U.S. Energy Information Administration, Natural Gas Residential Choice Programs, U.S. Summary 2007, available at: http://www.eia.doe.gov/oil_gas/natural_gas/restructure/state/us.html

²⁰ Maryland Public Service Commission RM17; Pennsylvania Public Utilities Commission Docket Nos. I-00040103, Investigation into the Natural Gas Supply Market and M-00072009, Electric Retail Markets Working Group.

²¹ As required by recently enacted Illinois law, 220 ILCS 5/16-118(c) (on utility POR programs) and 220 ILCS 5/20-130(e) (on marketer referral programs).

Market Development has since been emulated in other jurisdictions,²² most recently in Illinois,²³ and is currently being considered in Pennsylvania.²⁴

Current environmental goals coupled with an energy pricing crisis is, like past crises, a “wake up” call to implement more reliance on demand reduction, efficiency and infrastructure upgrades as well as environmental impact mitigation. However, the most efficient and equitable means to accomplish these multi-purpose policy goals requires a greater reliance on both price discipline and the statewide economies of scale that marketers can bring to help the State accomplish these goals. Hundreds of better-capitalized entities competing for millions of new consumers lowers the cost of capital and therefore the delivered price of energy than a few state-backed cost-plus regulated entities.

The continued commitment to retail market development in New York State as an integral means of achieving the State’s long-term energy goals is clearly supported by the progress achieved to date. The Draft Scope and 2009 Energy Plan should recognize, incorporate, continue and enhance this policy.

III. Regulatory Market Intervention, With High Attendant Costs and Risks, Should Be Avoided

Also of relevance to the Energy Plan is the NYPSC’s recent decision on electricity resource planning.²⁵ Significantly, as part of its decision, the NYPSC reiterated its policy, “supporting competitive markets and market mechanisms, where feasible, as the most efficient means to serve the public interest. . . . competitive markets wholesale and retail, where feasible, help ensure the provision of safe and adequate service at just and reasonable rates.”²⁶ The NYPSC initiated a collaborative to provide recommendations on a process for Commission review of regulated backstop projects, noting its expectation that “competitive markets can deliver reliable, secure, cost-effective, and environmentally acceptable electricity supplies,” thereby obviating, or minimizing, the need for Commission intervention.²⁷ The NYPSC favored permitting competitive market forces, rather than regulatory intervention, to identify and meet the need for new capacity resources. Likewise, the Energy Master Plan objectives should avoid the unintended consequences, high economic costs and significant investment risks associated with regulatory market intervention, particularly in a well functioning market that has proven

²² The Texas Public Utilities Commission has since created an electric Retail Market Oversight office. The New Jersey Board of Public Utilities has a Bureau of Market Development and System Reliability, and the Michigan Public Service Commission has a Competitive Energy Division.

²³ The Illinois Office of Retail Market Development was created by the legislature. Illinois Retail Electric Competition Act, 220 ILCS 5/20-110.

²⁴ Pennsylvania Public Utilities Commission Docket Nos. I-00040103, Investigation into the Natural Gas Supply Market and M-00072009, Electric Retail Markets Working Group.

²⁵ NYPSC Case Nos. 07-E-1507 and 06-M-1017, Order Initiating Electricity Reliability and Infrastructure Planning, issued December 24, 2007.

²⁶ Id. at pages 4-5.

²⁷ Id. at page 14.

itself to be “workably competitive” and quite successful for more than a million and a half New Yorkers.

Given the discipline that market-based policies bring to the energy market, obligating captive ratepayers to the higher costs and risks associated with utility long term contracting may undermine the enormous progress that has been made in market-based, energy supply and energy demand-related investments.²⁸ Prices go up and down. Indeed, obligating captive utility customers to long-term contracts at today’s historically high prices seems inherently risky, raising concerns of future stranded costs or non-bypassable charges that merely increase total energy costs. Moreover, locking customers into long-term utility rates is directly contrary to achieving meaningful demand response and conservation goals that are intrinsically linked to market-based pricing signals.

IV. Competitive Markets Are Catalysts for Energy Product and Service Innovation

The 2002 State Energy Plan and the NYPSC have recognized the role that competitive energy markets play in bringing innovation to consumers and the marketplace and the Draft Scope and 2009 Energy Plan should as well. The 2002 State Energy Plan stated that, “competition can produce innovations and bring forth technologies and new services that will result in customer benefits.”²⁹ Reflecting on experience gained from another industry’s restructuring, with the introduction of competition in the telecom industry, consumers have benefited from technological innovation, for example, allowing for mobile phone service, internet, GPS and email access from a single cell phone. It is beyond dispute that these advances would not have been realized under a regulated telephone monopoly regime.

Simply stated, one of the reasons for energy deregulation is the interplay of companies that are flexible and nimble enough to design and price customized products that are tailored to meet customer needs. The NYPSC’s Power to Choose website³⁰ currently explains to consumers the marketer pricing and service options available that may include fixed price products, variable price products, indexed or capped price products and value-added benefits such as green power products, appliance repair and service contracts. These price and product innovations can continue to be expected to be realized from the competitive energy marketplace. For example, marketers in other jurisdictions offer airline miles or energy rewards with enrollment wherein the marketer offer may not be the lowest price but clearly offers additional value.

The Draft Scope and 2009 Energy Plan should recognize the increasingly competitive nature of a host of energy functions and products. In so doing, it can ensure a role for competitive providers and thereby enhance the ability to reach related State energy goals. For example, marketers have and will continue to play an instrumental role in crafting products to achieve demand response goals for consumers. Likewise, competition in

²⁸ The NYPSC concluded that, “utility long-term contracts may be required to support new construction to maintain reliability, if adequate reliability is not provided by the wholesale market or to be judiciously used to achieve other policy goals.” Id. at 21.

²⁹ 2002 State Energy Plan, Section 3.4 Electricity Resource Assessment at page 3-80.

³⁰ <http://www.energyguide.com/finder/NYFinder.asp?referrerid=209&sid=481>

energy efficiency programs should result in enhanced opportunities for consumer participation and customized offerings.³¹

V. Conclusion

NEM urges the Board and ECWG in the Draft Scope and final 2009 Energy Plan to continue to recognize the importance of retail energy competition to consumers, and other stakeholders, for the achievement of State energy policy goals. This is consistent with NYPSC precedent, previous State Energy Plans and is supported by the significant consumer and marketer participation achieved in retail markets. Over one million and a half consumers in the State have voted with their pocketbooks in favor of retail energy competition. Likewise, energy marketers have made a significant investment of resources, creating in-state jobs, supporting local and the statewide economy. These constituencies' interests should be represented in the Draft Scope and 2009 Energy Plan.

Sincerely,

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³¹ In the NYPSC's recently adopted energy efficiency portfolio standard, it determined that, "Independent program administrators or service providers may potentially offer the possibility of additional diversity and competitive pricing. Program portfolios should have the flexibility to accommodate innovative proposals brought forward by competitive providers." NYPSC Case 07-M-0548, Order on Energy Efficiency Portfolio Standard, issued June 23, 2008, at page 49.