

New York State Public Service Commission
Case 12-G-0297 – Proceeding on Motion of the Commission to
Examine Policies Regarding the Expansion of Natural Gas Services

Comments Filed on Behalf of the
Empire State Petroleum Association, Inc.

I. Introduction

This submission is filed on behalf of The Empire State Petroleum Association, Inc. (ESPA or Association), in response to the New York State Public Service Commission's Order Instituting Proceeding and Establishing Further Procedures and the Notice of Technical Conference and Notice Soliciting Comments both dated November 30, 2012. These comments will address specific and related issues raised by the Commission in its Order establishing this proceeding and the Notice seeking public input.

II. Identification and Interest of ESPA and Its Members

The Empire State Petroleum Association Inc. (ESPA) is a statewide nonprofit trade association representing over 300 independent marketers, distributors, and retailers of vitally needed and consumed petroleum products. Our members are primarily responsible for storing and delivering most of the heating fuels, industrial fuels, motor fuels and other petroleum products within the state. In the heating fuels market, members provide a host of additional services to the public including the installation, maintenance, and servicing of residential and commercial heating

equipment, and the promotion and implementation of energy audits, energy efficiency programs and conservation measures.¹

Home heating oil dealers are mostly small to moderate sized, family-run businesses some of whom have been serving customers since the turn of the last century. They are not refiners or major oil companies, but are businesses that serve and are part of their local communities.

Statewide, there are approximately 700 companies directly employing approximately eight thousand workers which include both union and nonunion employees. These businesses provide fuel and related services to over 1.5 million residential and commercial customers and have a combined sale of heating fuel, equipment, repair and maintenance support and all other related services in excess of eight billion dollars annually.²

Heating oil distributors indirectly contribute to the state's economy through its interrelationships with other businesses and employees. Marketers are customers of many other enterprises such as fuel suppliers, barge and trucking companies, heating ventilation and air conditioning (HVAC) contractors, appliance and equipment manufacturers, energy efficiency businesses, professionals (engineering, environmental, tax, and other consultants) and general businesses such as office supply entities. The overall impact of the heating fuel storage and delivery industry is difficult to quantify because marketers support so many other businesses. However, it has been estimated that every existing heating oil job in New York State results in a total of 1.47 jobs statewide, that

¹ In addition to petroleum supply and services, a number of ESPA members have entered the competitive retail electric and natural gas markets. These members operate as Energy Service Companies (ESCOs) under the Commission's jurisdiction and offer consumers a full choice among energy products and services in New York State. Some members also sell propane. While these comments address the heating oil marketer's concerns with the contemplated approach of promoting natural gas over heating oil, ESPA's view of the energy marketplace includes its experience in all aspects of the competitive market.

² See "The Impact of the Heating Oil Industry on the Economy of New York State" by Roniger Economics, March 2013. A copy of this report accompanies this filing.

every dollar earned by industry employees results in a total of 1.68 dollars earned in the state, and every industry dollar of output results in a total additional amount of 1.83 dollars in value to the state.³

The heating oil industry also contributes significantly to the state's tax revenue. Petroleum business taxes and state and local sales taxes are collected on sales to commercial and industrial customers. Local sales taxes are collected on residential sales. Overall, heating fuel sales account for over \$300 million in tax revenues, which does not include income taxes paid by companies, owners and employees and, perhaps more significant to localities, local property and school taxes.⁴

In the heating fuel market, ESPA's members compete for the limited number of heating customers in a fiercely competitive marketplace. Their competitors are other oil dealers, other energy providers and public utilities. Competing against the monopoly utility is the most challenging because, as will be described below, the competitive market currently favors the utility.

ESPA members not only have to contend with a robust competitive market, they are also highly regulated by separate government agencies. In the state, petroleum dealers are subject to a myriad of state rules administered by the Departments of Environmental Conservation, Taxation and Finance, Transportation, Motor Vehicles, Agriculture and Markets, and the Office of

³ Roniger page 7.

⁴ Roniger pages 6 and 9.

Temporary and Disability Assistance.⁵ They are further regulated by federal agencies and local governments. This oversight is specific to the petroleum storage and delivery industry and does even include the regular legal and regulatory requirements associated with conducting business (i.e., Department of Labor rules).

The heating oil distribution industry has made considerable progress in areas of energy efficiency, consumer education, and maintenance of equipment that has resulted in a decrease in the amount of fuel being consumed by the average homeowner in recent decades. As discussed more fully below, oil heat marketers pushed for and successfully achieved the establishment of an ultra low sulfur standard for all heating oil sold to New York State consumers. Furthermore, ESPA, the National Biodiesel Board and others are pursuing enactment of a state law to require a biofuel blend for all heating oil statewide. Once in place, this cleaner burning fuel will not only further reduce emissions, improve heating system performance, and lessen customer maintenance costs, but will also permit the introduction and use of ultra-efficient equipment and technologies that will provide consumers with even greater savings.

ESPA has appeared in numerous state proceedings over the years before this Commission and others state agencies. The Association has also been an active participant in the state's energy planning proceeding beginning in the 1980s. Through its role in the competitive energy marketplace, ESPA has developed an intimate knowledge of the energy-related issues which are under consideration in this proceeding.

⁵ Members also participate in NYSERDA programs designed to benefit oil heat customers.

As the statewide trade association representing distributors and marketers who are responsible for storage and distribution of most of the heating fuels and transportation essential to New York State's economy, ESPA submits the following comments to provide the Commission with critical current information and a needed perspective in this proceeding⁶. The outcome of this Commission inquiry will affect not only the natural gas utilities, but also the potential viability of the heating oil industry, the state's entire energy marketplace, and consumers.

III. Initial Observations

The proceeding was commenced to obtain information and comments on how to expand the use of natural gas which the Commission perceives as the preferred fuel for consumers in the state. Although there are portions of the Order which seek information for expanding the natural gas infrastructure for possible economic development opportunities or to areas that are not served by natural gas (Order pp. 4-6), the chief and most immediate objective appears to be the conversion of existing heating oil customers to natural gas use. Among the reasons forming the basis for this approach are that natural gas is more environmentally and more economically preferable than heating oil. Based on these factors, it is assumed that conversions to natural gas are in the public interest. However, the questions and inquiries in this matter are based on both inaccurate and incorrect information and a number of misperceptions.

While interested parties are contemplating and designing a host of approaches to aggressively promote the conversion of oil heat customers to natural gas, there has been little consideration as

⁶ The Governor has embarked on an "Open for Business" approach to make the state more business friendly. The latest state budgets agreed to by the Governor and Legislature have been balanced, on-time and without new taxes. Recently, to help small businesses prosper, a "Statewide Small Business Outreach Initiative" was created because, as the Governor observed, "when small businesses do well, New York does well." ESPA urges the Commission to reflect on the state's commitment to maintaining and growing existing state businesses as it considers this matter.

to whether influencing the energy market is advisable or whether there are any negative consequences that could result from such efforts. A rush to action without fully and objectively inquiring into such issues could have dire consequences, not only for the oil heat market, but for the fuel diversity mix of the state, the reliability of all energy sources, the environment and consumers themselves. Attention should be paid to the greater factors involved in this potentially unprecedented intrusion into the energy marketplace before making recommendations or adopting possibly harmful policies and practices.⁷

By presenting information and a more comprehensive picture of the energy marketplace, ESPA hopes that the Commission will avoid decisions that could harm the heating oil market in particular and the state energy market in general. Instead, this proceeding should be focused on upgrading the state's natural gas infrastructure, curbing gas emissions, improving safety, increasing reliability, and cultivating economic development opportunities.

IV. Comments

Point A

The Order's Environmental Statements About Natural Gas and Home Heating Oil are Incorrect

The Commission's Order begins with the statement, repeated later, that natural gas is cleaner fuel than other fossil fuels used for home heating (Order pp. 1, 4). The basis for this opinion is an EIA report dated April 1999 titled "Natural Gas 1998 – Issues and Trends." This declaration does

⁷ ESPA has favorably viewed the state's efforts designed to increase the reliability, environmental standards, security, energy efficiency, and economic development of all segments of the energy market so long as government does not interject artificial preferences for one fuel over another.

not take into account recent advancements in the composition of heating oil that have placed home heating fuel on a path to becoming as, or more environmentally friendly than natural gas.

Recently, the home heating fuel industry sought and obtained enhancements to its product which have resulted in the use of ultra low sulfur heating oil and biofuel additives that have greatly reduced heating oil emissions. New York State enacted the first of its kind legislation mandating the use of ultra low sulfur heating oil (15 ppm or less) which commenced on July 1, 2012 and is in effect statewide. This landmark legislation was promoted by ESPA and other members of the heating oil distribution industry and was fully supported by health and environmental groups.

As of October 1, 2012, a New York City local law requires that all heating oil sold in the city must contain at least a 2% biodiesel blend in order to reduce emissions. Currently, members of the petroleum marketing and the biofuels industries are seeking a statewide mandate for biodiesel to be included in all home heating oil to further decrease emissions through state legislation.

With regard to the Commission's view that natural gas is environmentally preferable, ESPA arranged for a review of recent environmental studies to evaluate whether natural gas is a cleaner fuel. This review found:

The conclusion that "use of natural gas that displaces oil or coal consumption will result in lower overall emissions" is based on outdated data and thus leads to erroneous conclusions which the NYPSC should fully understand and evaluate before proceeding and which are the subject of this report.⁸

⁸ "Assessment of Liquid Fuel Emissions" prepared by Exergy Partners Corp. dated 2/15/13, page 3. A copy of the report accompanies the filing of these comments.

Much of the difficulty with most emissions data is that they reflect limited information from the burner tip. This does not provide an accurate view of a fuel's emissions profile:

... most efficiency standards and regulations that pertain to residential space heating and hot water appliances are "site-based" - that is, they only consider the impacts at the site where the energy is ultimately delivered. Given that the energy consumption and environmental impacts along the total energy production and supply chain are not included, reliance on site-based data can thus lead to inaccurate comparisons which may result in higher energy resource consumption, as well as higher levels of pollution.⁹

Ultimately, the report concluded that when all information is considered, ultra low sulfur heating oil, when combined with biodiesel, will have competitive emissions that are comparable to natural gas:

Based on studies by ICF International and testing performed at Brookhaven National laboratory, ultra-low sulfur heating oil and bio-blends emissions from modern appliances yield: CO₂ equivalent (CO₂e) lifecycle-emissions, nitrogen oxides (NO_x), sulfur dioxide (SO₂) and particulate matter (MP_{2.5}) emissions which are equal to or even less than those from natural gas appliances.¹⁰

In addition to a decrease in emissions, the improvements to heating oil will have a number of other desired benefits. Maintenance costs to customers will be reduced, heating system performance will be improved, and ultra-efficient equipment will be available for consumers. Also, the use of biodiesel blends will increase the state's use of a domestically produced renewable energy source.

⁹ Exergy page 4.

¹⁰ Exergy page 1.

It is evident that the Commission did not have the most recent information concerning heating oil's composition and environmental advancements. It also seems to have overlooked the potential negative consequences to the environment from the use of natural gas, particularly as there is a desire to massively expand its use within the state. This is significant because Department of Public Service Staff (Staff) has identified approximately 550,000 households within 100 feet of a gas distribution line and another 580,000 beyond a gas line but within the utility's service franchise (Order p.2). Logically, greater residential gas demand and increased use of the existing natural gas systems will have a greater environmental impact.

The concern with natural gas emissions was reflected in the "New York Energy Highway Blueprint" issued in 2012 which announced this proceeding. The New York Energy Highway Task Force (Task Force) recommended that the DPS work with natural gas utilities to identify and implement investments in infrastructure construction and repair¹¹:

Such actions can include projects entailing enhanced spending on replacement of leak-prone natural gas pipes, and conversion of heating customers from oil to natural gas. Replacement of older pipes reduces potential for leaks, improves safety, and leads to reduced emissions of methane, a contributor to global warming when it is leaked to the environment.

New York Energy Highway Blueprint, p.58¹²

This quote ends with a footnote reference which reads, "According to the U.S. Environmental Protection Agency, 'methane is over 20 times more effective in trapping heat in the atmosphere than carbon dioxide (CO₂) over a 100 year period.'"

¹¹ See action item at page 57.

¹² ESPA questions the call for the conversion of heating oil customers to natural gas in the midst of this statement. It is unclear how the conversions will help reduce leaks, improve safety, and reduce methane emissions. Vastly increasing the demand on the state's natural gas system without first ensuring that the system is able to meet the additional demand could exacerbate the problems sought to be corrected.

The Commission should first undertake efforts devoted to reducing gas transmission and distribution leaks, improving safety, and reducing gas emissions and should also take into account existing and near future advancements in the composition of heating oil before deciding whether to entice over one million customers to join the utilities' systems.

Point B

Reliance on the Current Prices of Fuels Should Not Form the Basis of State Policy

The most significant factor driving oil-to-gas conversions in the competitive marketplace today is the low cost of natural gas. The Order refers to this price advantage in its opening paragraph and mentions the potential cost savings to customers as a reason to search for additional ways to entice customers to convert. However, relying on price disparities for establishing long term policies and practices would be unwise:

It has been suggested that EIA's most recent long-term oil and gas price forecasts are, in part, justification for consideration of expansion of the residential natural gas customer base in New York. That forecast is for oil and gas price differentials to remain wide for years and decades to come. However, long-term oil and gas prices forecasts have changed dramatically over the years and are revised every year as new information becomes available...¹³

Long-term oil and gas price forecasts have been historically unreliable. At present, natural gas, as a commodity, is cheaper than heating oil. However,

[w]hich way prices will move for oil and gas in the future is uncertain, and will be affected by many factors that cannot be adequately modeled. However, in weighing

¹³ See, "Analysis of Oil and Natural Gas Markets" by Kevin J. Lindemer, LLC March 2013 page 4. This quote refers to Figures 2 and 3 contained in the report which accompanies these comments.

possibilities, it seems there is a growing probability that oil prices will move down in the future while natural gas prices may move up.¹⁴

There are a number of factors indicating that the current depressed price of natural gas and the higher price of heating oil will not continue. They include an increase in global oil reserves at a rate which could signal lower oil prices.¹⁵ Additionally, the growth of demand for oil has not met the supply of rising production. The global economy may be nearing a point where "economic growth will not require additional oil demand. At that point, oil demand ceases to grow and could decline."¹⁶ In contrast, the current natural gas surplus that is among the factors causing low commodity prices could be decreasing as demand for cheap gas increases. Natural gas is the fuel of choice by large volume users such as electric generating facilities and industrial customers.¹⁷ When this demand is coupled with the increase in gas exports, pressure on the industry could cause natural gas prices to rise and "the price differential between oil and gas will narrow."¹⁸

There is no guarantee that the price difference between oil and gas will continue and no foolproof manner to predict future prices. However, basing conversion policies on current prices could be detrimental to customers in the long run.

There are a growing number of signposts from both the oil and natural gas markets indicating that oil and gas prices may begin to converge over the next several years. Should the price premium for oil fall relative to natural gas, the fuel cost savings from switching to natural gas will erode.¹⁹

¹⁴ Lindemer page 11 citing figure 11 in the report.

¹⁵ Lindemer page 6 citing figure 4 in the report.

¹⁶ Lindemer, page 6.

¹⁷ Lindemer, Page 8.

¹⁸ Lindemer, Page 10. At present, there are least 21 LNG export projects that have been proposed.

¹⁹ Lindemer, Page 11.

It is well understood that products traded as commodities can experience volatile price fluctuations. Therefore, it would be imprudent to adopt marketplace intrusive initiatives to steer consumers away from one energy product to another based on dubious long-term predictions of prices.

Point C

New York State's Natural Gas Utilities Do Not Need Additional Incentives to Promote Oil-to-Gas Conversions

Natural Gas Utilities Already Possess a Tremendous Market Advantage.

Electricity, natural gas, heating oil, propane, and renewable energies all vie for heating customers in New York State's energy marketplace. Liquid fuels distributors and others must compete against their own industry members as well as monopoly utilities. The market inherently favors the public utility because they have defined service territories and do not have to devote time, money and resources to compete against other utilities for customers, at least in the transmission and distribution market.

Similarly, when a utility gains a new customer, it does not have to worry that another utility, or anyone for that matter, will take away that customer. Customers who convert to natural gas rarely, if ever, leave the utility. Therefore, following the attachment of a customer, the gas utility is spared the cost and effort of fending off competitors to retain that customer.

The public utility's name in the energy market also gives it an advantage. No independent small business has the same name recognition as the local public utility. This name recognition must be

considered when assessing the impact on competitors of any proposed recommendation or policy.

Finally, unlike oil marketers, public utilities are guaranteed a rate of return on their investment. They have a captured customer base from which to draw resources to compete in the energy marketplace. In all, a public utility's monopoly position and power in the marketplace is pervasive and unmatched.

Some Natural Gas Utilities Already Possess Ratepayer Funded Promotional Programs.

Some gas already utilities possess substantial ratepayer funded promotional budgets to encourage oil-to-gas conversions. In the cases of KeySpan New York and KeySpan Long Island these promotional amounts are massive. When last checked, these amounts were \$15 million and \$17 million annually respectively. While other businesses in the marketplace must bear their own costs of promotion, utilities are able to spread the cost of these promotional programs, which often include free equipment, rebates and other incentives across their existing customer base. No marketer can compete with this level of promotional funding.

In addition, gas utilities have ratepayer funded energy efficiency programs that offer high-efficiency equipment as incentives to potential conversion customers under the Commission's EEPS proceeding (Energy Efficiency Portfolio Standard 07-M-0548).²⁰ The amount of money

²⁰ The EEPS programs include many other efficiency initiatives as well. Some programs are administered by the utilities while others are managed by NYSERDA.

that is generated by each utility's systems benefit charge which is committed to energy efficiency improvements total in the tens of millions of dollars.²¹

By Commission Order, these efficiency funds may be offered to conversion customers.²² The use of these funds by conversion customers was revealed in a 2011 Staff produced "EEPS Program Review White Paper" dated July 6, 2011. The document disclosed the results of the Commission's policy on conversion customers:

KEDNY continues to work with heating contractors, builders, developers, and the plumbers Association to increase customer participation. The company projects acquiring 100% of its cumulative 2011 target. Forty percent of the projects are conversions from oil to gas. KEDLI reports that 74% of its residential gas HVAC rebates went to conversion customers.

Con Edison's residential HVAC program reports accrued energy savings of 20% of the program target, and has identified that a quarter of the projects are oil to gas conversions.

(Appendix 1 pages 13-14, emphasis supplied).

This report of the large number of rebates used for conversion customers rather than for energy efficiency improvements for the utilities' existing customers, demonstrates that energy efficiency funds were used to supplement promotional efforts. When utilities are using 25%, 40%, and, incredibly, 74% of their rebate budgets for conversion customers instead of existing customers, there is no need to augment these programs to further incentivize conversions. Even if the level of use did not continue in subsequent years, these numbers indicate that the potential exists.

²¹ Oil heat customers do not have access to these funds for energy efficiency equipment upgrades.

²² See Case 07-M-0548, Order Issued and Effective May 19, 2009 pp. 24-25.

Natural gas utilities possess tremendous power in the marketplace by virtue of their monopoly status, by not having to compete for customers among themselves, and by having access to large amounts of money that cannot be matched by their competitors. There is no need to provide further incentives in the competitive marketplace.

Point D

The Commission Should Not Interfere with the Free Operation of the Competitive Heating Fuel Market

ESPA reaffirms its long-standing position that the free operation of the energy marketplace without government bias favoring any energy source over another should be a guiding principle of the state's energy policy. Influencing customer choice by any state agency, especially this Department which oversees companies with great market power, will not ensure the provision of energy in the most efficient, secure and cost-effective manner. Government interference in the marketplace carries with it a legacy of limitations on consumer choice and harm to competitors. As such, whenever possible, ESPA believes that market forces, rather than artificial government constraints, stimulation, or incentives should determine consumer preferences in the energy marketplace.

This Commission has recognized the benefits and advantages of competition by its implementation, promotion and endorsement of the sale of natural gas and electricity in New York State. New York's electric and natural gas commodity sales industry is one of the more advanced and successful programs in the nation. The Commission's acknowledgment that

competition in the energy sector affords great benefits to consumers should be also applied to this proceeding.

The state's energy future and the maintenance of a rational energy policy requires a careful consideration of the panoply of issues involved in the provision of all forms of energy and related services to consumers and businesses in the state. A balanced approach provides a stronger foundation for the growth and security of an effective marketplace. Therefore, in place of promoting one energy source over another, the Commission should adopt a restrained approach and allow competition in the marketplace.

Point E

It is in the Public Interest for the State to Have a Diversified Heating Fuel Market

ESPA submits that maintaining a diversity of fuel sources is of paramount importance. Having an appropriate fuel mix prevents an overreliance on one fuel that could lead to difficulties in times of peak demand. Diversity also permits the entrance into the market of additional participants, such as purveyors of renewable energy.

Recently, a New York Times article highlighted the danger of an overreliance upon natural gas as an exclusive fuel source. New England's extreme reliance on natural gas for power supplies was exposed when a surge in heating demand resulted in a spike in electricity prices four to eight times higher than normal over a number of weeks. The problems of depending on a single fuel source are revealed during periods of peak demand:

"It is certainly true that a region like New England that relies on a single fuel source like natural gas for the bulk of its power does leave itself open for more disruptions than in a region with a more diverse fuel mix," said Jay Apt, executive director of the Electric Industry Center at Carnegie Mellon University in Pittsburgh. "It's not a knock against natural gas; it's a knock against a single fuel source."²³

In addition, the article referenced a consultant who observed:

"We are sticking a lot of straws into this soft drink," said William P. Short III, an energy consultant whose clients include companies that move and burn gas. "This is a harbinger of things to come in New England, as well as New York."²⁴

While these observations are concerned with electric generating facilities, increasing the load to natural gas systems by adding up to a million customers would only further strain such systems. In addition, as the demand for firm natural gas to residential customers increases, the demand and dependence upon petroleum as a backup fuel for interruptible commercial and industrial gas customers also increases.

As noted below, the heating oil industry acts as the backup fuel provider for gas utility interruptible customers. At times of peak demand, these gas customers must interrupt gas service and rely on their backup fuel which is usually heating oil. Converting up to one million heating customers to natural gas not only means a loss of heating oil customers, it means increasing firm demand. In certain service territories this could result in more frequent interruptions to non-residential customers and greater reliance on heating oil marketers. However, the petroleum distribution industry cannot survive only as a backup fuel provider. Similar to the natural gas industry, petroleum marketers must rely upon full-time customers in order to thrive in the business world.

²³ See Wald, Matthew L. "In New England, A Natural Gas Trap" *New York Times* February 15, 2013.

²⁴ A recent article bears out this point on Long Island. See Harrington, Mark "Natural Gas Costs to Raise Electric Bills" *Newsday* March 1, 2013.

In view of the high interdependence between fuels and the significant level of reliance of the natural gas system upon petroleum, it would be unwise to propose policies which economically and structurally undermine the petroleum industry and simultaneously promote natural gas. The more sensible policy would be for the Commission to allow existing market forces to operate which, ironically, presently favor natural gas over petroleum.

Point F

Consideration Should Be Given As To Whether the Customer Is Better Served By Efficiency Upgrades

There is a notion inherent in this proceeding that conversions to natural gas will undeniably benefit all customers. We urge the Commission to be mindful that, for reasons including emissions and price mentioned above, improvements to a heating system could be more beneficial to an individual customer than converting. Energy efficiency upgrades to existing heating oil heat systems may often be a more economical choice for the heating consumer than fuel switching.²⁵

Oil heat energy efficiency upgrades can reduce fuel use anywhere from 25% to 40%, often with a payback time to homeowners in the range of 1 to 5 years.²⁶ Of course, the energy efficiency, emissions, and payback period will be affected by the type and efficiency rating of the upgrade.

²⁵ There are too many variables that are specific to each customer in considering an upgrade or a conversion, so general numbers and observations are offered here.

²⁶ See report, "Present and Future Energy Efficiency Upgrade and Conservation Opportunities for Residential Oil Heating in New York State." Energy Research Center, Inc. (ERC), March 2013 p. 5. A copy accompanies these comments. This report is provided to give an insight into oil equipment efficiencies, the often overlooked costs of converting to natural gas, and the value of energy efficiency upgrades.

For oil heating equipment, new boilers and furnaces have efficiencies in the mid to upper 80% range and ultrahigh efficiencies ranging between 90 to 95%.

Similarly, the economics of switching to natural gas will depend on the efficiency of the particular natural gas equipment installed. The efficiency ratings of most gas equipment are similar to oil heating equipment, but there are gas appliances with higher ratings. However, the cost of converting involves more than simply installing a new gas fired boiler or furnace:

The cost of switching from home heating oil to natural gas is substantially higher than the installed cost of a new gas fired boiler or furnace. It requires many costly modifications that include vent system and chimney upgrades, gas service extensions, removal of existing fuel storage tank, installing a gas fired water heater, and other changes.²⁷

We are aware that the parties are investigating some of these costs in this proceeding. However, it must be noted that sometimes these overlooked expenses, when combined, can increase the conversion from oil heat to natural gas by \$4000-\$7500, bringing the entire cost for fuel switching to as high as \$11,500-\$15,000²⁸

As a related matter, we would urge the Commission to reconsider its long standing policy of denying oil heat customers access to EEPS utility funds for energy efficiency upgrades. While heating oil customers do not pay any natural gas SBC changes, all customers pay into utility efficiency programs through their electric rates. Funds should be made available from these charges for increasing the energy efficiency of oil heat customers' equipment for their homes or businesses.

²⁷ ERC page 4.

²⁸ ERC page 15. These figures do not take into account utility promotional programs for conversions and funds available for energy efficiency upgrades.

Point G

The Commission Has Previously Considered the Competitive Market When Acting in the Public Interest and Should Do So in this Proceeding

This Commission has adopted policies which have been in the public interest and have had a beneficial effect on the competitive marketplace. An example of the Commission's public interest approach is illustrated by its backup fuel requirements for interruptible customers.

In the late 1980s, heating oil marketers began to urge the Commission to adopt policies to require interruptible, temperature controlled (TC), and other dual-fueled customers to have adequate fuel on hand prior to each heating season. We explained that the sudden entrance into the heating oil market of large volume interruptible gas users, usually during the coldest periods of the year, was causing a strain on the heating oil storage and delivery system and causing oil prices to spike. Proper planning for these interruptions would mitigate this unexpected demand. Equally significant was that such planning would also ensure that non-firm gas customers would be able and willing to interrupt their service during the time that the natural gas LDC was experiencing peak demand.

In response, the Commission issued a series of orders that required interruptible and TC customers to prepare, prior to each heating season, for gas service interruptions by having fuel in place or under contract to ease a customer's transition from the utility to its backup fuel. This progressive and prudent planning, which places the responsibility upon customers to be prepared for interruptions, has had the benefit of ensuring gas system reliability but also benefits heating

oil customers in terms of infrastructure and price stability (See Orders in Case 00-G-0996 Matter of Establishment of Criteria for Interruptible Service).

In that instance, the Commission considered the effect of its policies on marketplace participants. The Commission's commendable attention to factors beyond its primary duty of ensuring that ratepayers have safe and adequate service at just and reasonable rates should be applied to this proceeding.²⁹

V. Responses and Comments to the Commission's Questions

The Commission listed 21 issues/questions to be addressed by the natural gas utilities in their technical conference presentations. Interested parties were also invited to submit written comments in response to these questions (Order November 30, 2012 p. 9). The following are ESPA's responses to some of these questions.³⁰

1. Please explain your understanding (and for utilities, your implementation) of Commission regulations and the Natural Gas Expansion Policy including your views on whether they encourage or deter expansion of the natural gas delivery system in New York State. Do you feel that the Commission regulations and Policy should be modified and if so, how?

Response/Comment: To the extent that this question pertains to line and pipeline extension issues, and not to customer conversion issues, ESPA believes that it is ill advised to allow for speculative or uneconomic expansions since the risk involved would be detrimental to ratepayers and to the energy market as a whole. No other energy industry can compete with such an approach.

²⁹ Another example is the Article 10 Siting rules that require adequate planning of a power plant's backup fuel use including the possible impact on the local heating oil market.

³⁰ To avoid repetition, we only list the questions to which we have responded. Also, the relevant points previously made in this document will not be repeated here.

2. Regarding the Commission's regulations of the natural gas delivery system and the system itself, do you believe that the interests of utility shareholders, ratepayers, and the State as a whole are aligned? Please explain.

Response/Comment: By supplying these comments, ESPA intends to present the Commission with interests and concerns of marketplace participants that fall within the "state as a whole" category. In this regard, it is our hope that our observations will provide the Commission with interests and concerns of which it is unaware. We urge the PSC to take into account this information to pursue policies that will allow the marketplace, the state's energy sector, and all businesses to operate freely.

3. Are there provisions of current policies or regulations that appropriately incentivize the expansion of the natural gas delivery system in New York State? Are these sufficient? If not, please suggest alternatives.

Response/Comment: The question assumes that incentivizing the expansion of natural gas is "appropriate." As indicated above, ESPA believes that the marketplace and the state's energy sector would be well served without government policies that promote one fuel source over another. We believe that the Commission's previous approval of existing utility programs to encourage the conversion of oil customers to natural gas use is unfair and should be discontinued. No other marketplace participant can match or compete with the utility's market power or with its ratepayer funded programs. Moreover, current market conditions which greatly favor the natural gas industry are already encouraging conversions so there is no reason to further promote natural gas over all other fuels.

4. Identify current barriers inhibiting conversion to natural gas usage from other heating fuels - other than the cost of replacing heating equipment. Please explain how the barrier inhibits

conversion and provide suggestions for reducing or eliminating the barrier – including the cost of replacing heating equipment.

Response/Comment: In the marketplace, there are always obstacles in choosing one product over another. However, in an open market, equally positioned competitors are able to offer, promote and incentivize their product to earn customers. Since, as already noted, current Commission policies already afford the utilities the ability to overcome some of the "barriers" to conversion, further action is unnecessary.

In addition, there should be consideration given as to the long-term consequences of what could happen to the converted customers, the energy sector, the marketplace, and the state if customer conversions are further incentivized. Customers may be enticed to make decisions with consequences that could, in the long run, be harmful.

7. What issues should be given consideration prior to expansion of the natural gas delivery system? Should such considerations include protections for a group or groups of customers? If so, what should be and what types of protections should be considered?

Response/Comment: As noted above, issues such as reliability, safety, need for upgrade of the existing natural gas infrastructure, environmental impacts, long-term ramifications upon the state's energy diversity, negative impacts upon small businesses that compete with monopoly utilities, and the negative impact on the economy should all be given consideration prior to adopting aggressive conversion policies.

12. Are existing natural gas efficiency programs adequate and optimal to serve the expansion of customers within 100 feet of existing utility infrastructure? If not, what changes, including possibly the level of funding, could be made to improve the existing efficiency programs? Would efficiency programs targeted to conversion customers result in increased energy savings, and if so, how?

Response/Comment: For reasons we have stated above, the natural gas efficiency programs already serve new customers and perhaps even decrease the amount of funds available for existing customers. The primary purpose of an energy efficiency program is to reduce the use of the particular energy source. Expanding the use of energy efficiency funds to encourage an increase in the use of natural gas statewide should be rejected because it would not decrease natural gas use (also see answer to Question 17 below).

14. Does the utility have any information or estimates concerning the existence of commercial or industrial customers who may add and/or retain jobs if they could switch their process or heating fuel to natural gas? If so, how many jobs might be added or retained?

Response/Comment: As noted previously, this question assumes that there will be no negative economic impact on heating oil businesses, their employees, and associated businesses that make their living in conjunction with marketers. The economic impact on the state, on these businesses and on the energy marketplace should be considered in this proceeding.

15. Are there specific industries in the State that would benefit from an expanded natural gas delivery system? Please describe.

Response/Comment: ESPA does not object to the expansion of the natural gas delivery system for new economic development reasons (i.e., electric generating facilities). However, such expansions should not be at the expense of existing state businesses through government actions.³¹

³¹ It is one thing for the state to pursue economic development opportunities and enact policies to attract new businesses through enhancement and construction of the state's natural gas infrastructure. This is growth that does not harm existing New York State businesses and we encourage such measures. It is quite another approach to aggressively pursue conversion policies by influencing and enticing customers in an otherwise competitive market to abandon one business for a monopoly utility system. In this case the process is a "zero sum game" for the utilities gain comes at the expense of a loss for the petroleum marketer. Any potential benefit to the utility is a fleeting one, for it will directly undermine the economic viability of numerous small businesses, the primary driver of economic development and growth in the state and the true community participants at the local level.

17. Are there programs currently administered by utilities or federal, state or local agencies that assist customers with heating fuel conversions? Are there roles that other agencies, such as the New York State Energy Research and Development Authority (NYSERDA), should play in expansion of the natural gas delivery system? Should the Energy Efficiency Portfolio Standard (EEPS) programs be expanded or modified to encourage conversions to natural gas before end-of-life replacements?

Response/Comment: We have previously mentioned Commission approved utility programs and policies that promote heating fuel conversions. We have also stated that the EEPS program should not be expanded to encourage conversions. To summarize:

- EEPS programs are designed to be energy conservation programs and should not be used to increase energy consumption;
- Use of EEPS funds to promote conversions could deplete the pool of money for existing customers, particularly low and fixed income customers; and
- EEPS funding is already available to conversion customers and operates as an enticement for customers to convert.

For these reasons, the energy efficiency programs should not be expanded to further encourage conversions.

19. Are there changes that could be made to the environmental impact review process involved in granting or expanding gas franchise areas that could improve or streamline the process?

Response/Comment: The Commission should take into consideration the entire environmental footprint of using natural gas from production to use.

VI. Conclusion

ESPA understands the state's desire to enhance its electric and natural gas infrastructure for safety, reliability and economic development reasons in New York. However, we do not believe that such a path to growth should be pursued to the detriment of the heating oil industry, a vital and needed segment of the energy industry. We respectfully request that the Commission take into account the information provided in these comments and to act in a manner that strengthens, rather than influences, the competitive energy marketplace. Such an approach will benefit the state's entire energy sector and all of its energy consumers.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Emilio Petroccione', written in a cursive style.

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