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* REGISTERED TO PRACTICE BEFORE U.S.
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** NOT ADMITTED IN DC

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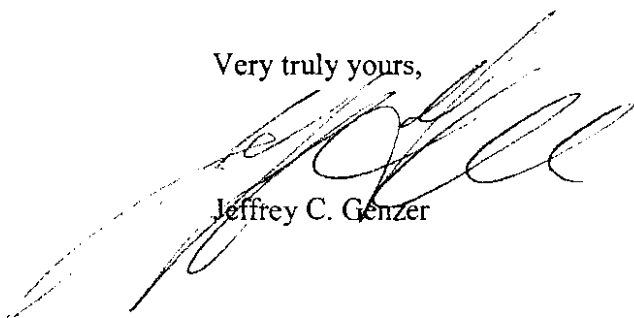
Hon. Eleanor Stein
Hon. Rudy Stegemoeller
Administrative Law Judges
New York State Public Service Commission
Empire State Plaza
Agency Building 3
Albany, New York 12223-1350

Re: Case 07-M-0548 Proceeding on Motion of the Commission Regarding an Energy
Efficiency Portfolio Standard

Dear Judges Stein and Stegemoeller:

Enclosed please find the Reply Comments of the New York Association of Public Power ("NYAPP") in the New York State Public Service Commission's Energy Efficiency Portfolio Standard ("EPS") proceeding. These comments are submitted in response to a recent filing made by various participants in the EPS proceeding, styled "EPS Administration Consensus Recommendation." NYAPP timely submits these comments pursuant to the "Ruling Establishing Comment Schedule," issued by Your Honors, which set January 25, 2008 as the date for reply to the Consensus Recommendation. Please contact me with any questions.

Very truly yours,


Jeffrey C. Genzer

Enclosure

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

Proceeding On Motion of the Commission Regarding
Energy Efficiency Portfolio Standard

Case 07-M-0548

**REPLY COMMENTS OF THE
NEW YORK ASSOCIATION OF PUBLIC POWER
TO THE “CONSENSUS RECOMMENDATION”**

The New York Association of Public Power (“NYAPP”), an unincorporated association of nine municipal electric utilities and four rural electric cooperatives¹ located throughout New York State, is pleased to submit these comments in the New York State Public Service Commission’s (“Commission”) Energy Efficiency Portfolio Standard (“EPS”) proceeding. The Commission established this proceeding in a May 16, 2007 Order Instituting Proceeding (“May 16 Order”), concluding that New York State possesses “sufficient potential energy efficiency resources to meet its forecast electricity needs and to reduce electric usage by 15% of projected levels by the year 2015.” May 16 Order at 3. On January 11, 2008, several parties submitted a proposal and a request for the Commission to consider the proposal immediately, styled an EPS Administration Consensus Recommendation (“Consensus Recommendation”) relating to the governance structure for the administration of the EPS. These comments are submitted pursuant to the January 15, 2008 “Ruling Establishing Comment Schedule,”

¹ The four cooperative members of NYAPP are non-jurisdictional and are not participating in this proceeding.

issued by Administrative Law Judges Stein and Stegmoeller, which set January 25, 2008 as the date for reply to the Consensus Recommendation.

NYAPP's Members support the Commission's initiative to reduce energy use and improve energy efficiency throughout the state. New York's municipally and cooperatively-owned utilities have a long-standing partnership with the Power Authority of the State of New York ("NYPA") to improve energy efficiency and maximize the efficient use of NYPA hydropower. NYPA has recently completed a study of energy efficiency measures for consumer-owned power entities ("NYPA/Nexant Report")² and the NYAPP Members are implementing measures pursuant to the study.

BACKGROUND:

NYAPP was formed in early 2005 to better represent the interests of its members on policy and regulatory issues. NYAPP is an unincorporated association of nine municipal electric utilities and four rural electric cooperatives located throughout New York State. NYAPP's municipal utility members are: Village of Freeport Electric Department ("Freeport"), Green Island Power Authority ("Green Island"), Village of Greenport Municipal Utilities ("Greenport"), City of Jamestown Board of Public Utilities ("Jamestown"), Town of Massena Electric Department ("Massena"), Village of Rockville Centre ("Rockville Centre"), City of Salamanca Board of Public Utilities ("Salamanca"), Village of Sherburne ("Sherburne") and City of Sherrill Power & Light ("Sherrill").

NYAPP's members serve approximately 500 MW of load. NYAPP's members are "Load Serving Entities" and they have long-term power supply arrangements to meet their service obligations. NYAPP's members are non-profit

² See "Energy Conservation Market Assessment of New York Power Authority's Municipal and Cooperative Electric Customers," prepared by Nexant for NYPA, March 23, 2006.

entities that operate with the goal of providing service at the lowest reasonable cost consistent with adequate and reliable service to their customers.

NYAPP members all have long-term power supply contracts with NYPA that extend through August 31, 2025, for output from NYPA's Niagara Power Project. These arrangements are in accordance with the Niagara Redevelopment Act ("NRA"), 16 USC § 836. The NRA requires that fifty (50) percent of the Niagara Project power be sold with a preference to consumer-owned utilities, at the lowest rates reasonably possible (Section 836(b)(1)). In turn, NYAPP members sell power at cost-based rates to their end-use customers. For a representative municipality in New York, over 85% of the power supplied to its consumer-owners is renewable, carbon-free hydropower from the Niagara Power Project.

Certain of NYAPP's Members purchase incremental power above and beyond NYPA hydropower and are subject to New York State Public Service Commission jurisdiction. Other NYAPP members obtain their full requirements from NYPA, including their incremental requirements. These Members are not regulated by this Commission.

At the commencement of this proceeding, the Commission recognized the goal of reducing electric usage in New York by 15% of projected levels by the year 2015. May 16 Order at 3. The Commission further noted that the target levels could not be met by Commission action alone and that there would need to be action from other initiatives, including actions by NYPA and the Long Island Power Authority ("LIPA"), to reach these goals. *Id.*

On January 11, 2008, several parties to the EPS proceeding submitted jointly the Consensus Recommendation relating to the governance structure for the EPS. The parties include New York investor-owned utilities (“IOUs”), two environmental groups, NYPA and LIPA, and a non-profit entity advocating affordable energy. On January 15, 2008, Administrative Law Judges Stein and Stegemoeller, issued a “Ruling Establishing Comment Schedule,” which set January 25, 2008 as the date for reply to the Consensus Recommendation. Accordingly, NYAPP’s comments are timely filed.

COMMENTS:

(a) The Participation of Municipal and Customer-Owned Utilities is Unclear Under the Consensus Recommendation

The Consensus Recommendation does not directly address the participation of municipal utilities in the EPS. The Consensus Recommendation proposes that the different utilities will work within several Energy Efficiency Partnerships (“Partnerships”) that will develop strategic plans to integrate the utilities’ programs. The programs themselves would be administered by “Local Utilities,” NYSERDA, LIPA (for Long Island) and NYPA (for New York City), but the proposal does not define which entities are included in “Local Utilities.” *See* Consensus Recommendation, Part 2. Nevertheless, it is possible that the proposal assumes that a jurisdictional municipal utility would be considered a Local Utility. *See* Consensus Recommendation, Part 3.c. Under the proposal, NYPA has a limited role. Under the Consensus Recommendation, NYPA would administer the programs for its customers in New York City and Westchester, as well as for statewide government buildings (*id.*), but the Consensus Recommendation is silent on NYPA’s role in administering energy efficiency programs for statewide municipal utilities.

Because NYAPP's Members have energy portfolios and costs that are significantly different than those of other suppliers in New York State, application to them of a statewide uniform EPS in this proceeding is inappropriate. NYAPP's situation is different than other regulated utilities, and therefore, NYAPP's Members should be treated separately, and should continue to pursue energy efficiency initiatives through joint efforts with NYPA and NYSERDA and through independent efforts. Because the Consensus Recommendation is unclear on the participation of municipal utilities in the EPS, NYAPP requests that the Commission explicitly provide that municipal and other customer-owned utilities are not covered by the EPS, similar to the Commission's treatment of municipal utilities in the Systems Benefit Charge ("SBC") and the Renewable Portfolio Standards ("RPS") programs. As explained further below, NYAPP's municipal utilities have implemented independently and through NYPA/NYSERDA energy efficiency efforts unique to their systems, and NYAPP recommends that these efforts be continued independently and through NYPA/NYSERDA.

NYAPP's Members are committed to a continued expansion of their existing energy efficiency and renewable energy programs and look forward to working with this Commission, NYPA, NYSERDA, and other parties to facilitate the expansion of these existing efforts. Small, municipally-owned utilities have different requirements than multi-jurisdictional, investor-owned utilities. The community-owned utility is only answerable to its citizens, not to distant investors. These community-owned systems serve only a few thousand customers each, not hundreds of thousands or millions of customers, as is the case with the investor-owned utilities.

(b) NYAPP's Members Have A Long-Standing Energy Efficiency Partnership with NYPA and Have Supported Their Own Measures³

NYAPP's Members have a long-standing partnership with NYPA to implement energy efficiency measures and maximize the use of NYPA hydropower. Over time, a series of energy efficiency efforts have been sponsored by NYAPP's Members in cooperation with NYPA. Most recently, under their current contracts with NYPA, the municipal systems have committed to work with NYPA on additional energy efficiency measures.

NYPA and New York consumer-owned utilities have participated in the Watt Busters home energy audit and weatherization program, which was targeted at residential customers from 1987 to 1994. NYPA conducted home energy audits and financed the installation of nearly \$5.5 million in energy savings measures in more than 35 municipal and cooperative electric systems. The program cut overall peak demand for electricity by more than 15 MW, reduced annual electricity costs by more than \$1 million and lowered yearly greenhouse gas emissions by approximately 19,000 tons. Program measures included insulation, water heater wraps, infiltration reduction and water control measures.

More recent expanded efforts beyond the Watt Busters program have provided energy efficient technologies for both commercial and industrial customers and municipalities themselves. The efforts have focused on lighting for commercial and industrial customers, specific industrial user applications and system technologies. By

³ For a more extensive description of recent, specific energy efficiency measures initiated by municipally-owned utilities, see "Petition on Behalf of the New York Association of Public Power on Behalf of its Member Municipal Electric Utilities for Recovery of the Costs of an Expanded Energy Efficiency Program," Case 07-E-1303 at pp. 4-9 (submitted on Oct. 30, 2007). See also, "Answers of the New York Association of Public Power to Staff's Questions to the Parties," Case 07-M-0548 at pp. 4-5 (submitted on July 11, 2007).

the year 2000, over 1,300 audits were completed, nearly a thousand installations were accomplished, and over \$7 million in technology upgrades were installed. As a result, approximately 18 million kWh are saved each year.

A number of New York Municipals participate in the “Independent Energy Efficiency Program” (“IEEP”). Since 2001, municipal utility systems participating in IEEP have made a collective investment of more than \$9 million in energy efficiency programs. IEEP programs range from the insulation programs, to automatic meter reading, to energy efficient lighting for customers and communities, to energy efficient equipment at wastewater treatment stations, and new energy efficient LED traffic lights that are 90% more energy efficient than traditional traffic signals. The IEEP program reports that it has saved approximately 6.6 MWh and 13 MW.

(c) Recent Energy Efficiency Efforts of Municipal Utilities and NYPA⁴

In 2003, NYAPP Members extended their long-term contracts with NYPA and specifically agreed to enhance their energy efficiency efforts. The Systems agreed to work closely with NYPA to implement expanded energy efficiency and energy conservation programs. In 2005, NYPA completed a study to determine the economic potential for energy efficiency in the municipal and cooperative customer market. The study, undertaken by Nexant, identified the following measures as having potential for consumer-owned systems:

- **Residential Program.** The program works with all homeowners, including those who heat with non-electric fuels, to identify energy efficiency opportunities in their home by conducting an energy audit and later, after an audit report is prepared, to install measures that are approved by the homeowner. Measures included are insulation upgrades and infiltration reduction, hot water heater wraps, compact

⁴ See *id.*

fluorescent lamps, and programmable thermostats.

- **Commercial Lighting.** The commercial lighting program targets offices, hotels, retail shops, schools, and government and institutional customers to retrofit linear fluorescent and incandescent light fixtures in existing buildings.
- **Commercial Equipment Rebate Program.**
- **ENERGY STAR Equipment Program.** The ENERGY STAR® equipment program pays customers a rebate for purchasing ENERGY STAR® qualifying equipment.
- **The Custom Audit Program.** The Program targets industrial and large commercial customers who might not otherwise participate in an energy efficiency program.

NYPA and the New York consumer-owned utilities have undertaken a variety of actions to implement expanded energy efficiency efforts. NYPA and this Commission have authorized a large group of New York municipal utilities to fund the program with a one mill per kWh adder.⁵ NYAPP has separately filed a petition with the Commission in Case 07-E-1303 on October 30, 2007, to authorize inclusion of a 1 mill/kWh adder specifically for its Members' energy efficiency projects that were not covered under Case 06-E-0744, consistent with NYPA's energy efficiency program.⁶ Recently, NYPA has also authorized eligibility for the state's municipal and rural electric cooperative systems to participate in NYPA's Statewide Energy Services Program ("Statewide ESP"). This allows the municipals and cooperatives to obtain up-front, low-interest financing from NYPA, providing them with added flexibility in their financing options, to implement expanded energy efficiency and energy conservation programs at their own facilities, and

⁵ See May 23, 2006 NYPA Memorandum to the Trustees at pp. 2-3; Case 06-E-0744, New York Municipal Power Agency. Order Approving Recovery of Costs of Enhanced Energy Efficiency Program (issued and effective Nov. 6, 2006).

⁶ NYAPP's petition in Case 07-E-1303 is still pending.

also for their business and residential customers. Participation in the NYPA Statewide ESP expands the options available to customers for financing energy efficiency projects. To date, NYPA's Statewide ESP has reduced energy consumption and peak demand. The program has lessened electricity use by nearly 193,000 kilowatts, resulting in savings of almost \$93 million annually. The Statewide ESP includes, but is not limited to, measures such as lighting, motors, heating, ventilating and air-conditioning and controls, boilers, building shell measures, and clean energy technologies such as solar power and fuel cells.

In light of NYAPP's energy efficiency efforts with NYPA it would be inappropriate for the Commission to impose an additional mandatory energy efficiency requirement on NYAPP's Members. Further, a mandatory EPS will interfere with the public power partnership between NYPA and the New York municipal utilities and cooperatives. Not only do NYPA and the NYAPP Members have a long and effective partnership discussed above, but they are pledged to, and are working on, further energy efficiency programs.

(d) NYAPP's Members Have the Lowest Carbon Emissions in the State

The Commission's May 16 Order identifies carbon emission reductions as one of the important benefits of an expanded energy efficiency program. Consumer-owned utilities currently provide the largest percentage of carbon-free power of any suppliers in New York State. To the extent that carbon reductions are an anticipated benefit of the EPS, that benefit is already being experienced in the area of NYAPP's Members because of their large renewable hydropower purchases.

The typical New York municipal and cooperative utility obtains over 85% of its energy from NYPA's Niagara Project; the largest percentage of carbon-free generation of any suppliers in New York State. Most of the members first entered into contracts with NYPA for Niagara hydroelectric power in 1961. Since then, the NYAPP membership has financially supported the Niagara Project, which contributes significant carbon-free power to the State.

(e) NYAPP's Members Have Different Pricing and Incentive Issues Than Other Regulated Utilities and a Mandatory EPS Would Be Inappropriate for NYAPP Members

NYAPP's Members have unique pricing, load profile and energy portfolio issues that make it difficult to analyze energy efficiency for them on a similar basis as other regulated utilities and make a uniform EPS inappropriate for NYAPP Members. The NYAPP member rates are very low, and thus price signals are not generally a sufficient incentive for a broad energy efficiency effort. Investor-owned utility rates in New York are dramatically higher. Nevertheless NYAPP Members are committed to expanding energy efficiency initiatives, as discussed above.

Unlike the investor-owned utilities, NYAPP Members receive the bulk of their power from low-cost, carbon-free NYPA hydropower, which poses unique challenges for energy efficiency measures. Energy efficiency measures that are cost effective for customers of a higher priced utility may not be as effective or as well received in the service area of a municipal or a cooperatively owned utility. Nevertheless, as the NYPA/Nexant Report concludes, there are energy efficiency measures that are effective for customers of consumer-owned utilities. These measures identified in the NYPA/Nexant Report are tailored for municipal and customer-owned utilities.

Analyzing energy efficiency measures under the same rubric and implementing the same energy efficiency standard for municipally-owned utilities that applies to other LSEs in New York, however, would fail to recognize the very different energy costs and comparative value of energy efficiency measures for the customers of municipally-owned utilities as opposed to other utilities.

Residential customers constitute the largest share of municipal and cooperative utility sales. Unlike other LSEs, fuel switching is generally not an attractive option for municipal and cooperative retail customers. Alternative fuel sources (gas, propane, fuel oil), if available, are approximately two to three times as expensive as electric energy.

Municipalities also face unique issues in the administration and implementation of energy efficiency programs. Because of their small size, it is difficult to cost-effectively establish and operate an energy efficiency program in the typical publicly-owned utility. For larger utilities, administration and employee costs associated with such a program can be spread among a larger group of customers and a larger rate base. For municipally-owned utilities these costs are imposed among a much smaller group of customers. Working with NYPA and working cooperatively with each other has reduced these costs.

As a result of their unique characteristics, in particular the high percentage of their portfolio that is renewable and their ongoing relationship with NYPA, NYAPP's Members have not been subject to either the Systems Benefit Charge or the Renewable Portfolio Standards requirements.

NYAPP and its Members believe that energy efficiency is an integral component of their resource portfolio. However, consistent with the SBC and the RPS, the unique aspects of municipal energy efficiency issues are more appropriately addressed through

ongoing efforts under a partnership with NYPA. A uniform EPS standard with other LSEs in New York makes little sense when the municipals have little in common with other LSEs in terms of energy portfolio, load profile and pricing.

(f) The Municipals Have Unique Jurisdictional and Structural Issues that Make a Uniform EPS Inappropriate for Them

Furthermore, the EPS should not be mandated for the Municipals because of their unique structural and jurisdictional issues. It is inappropriate for the Commission to impose an EPS burden on NYAPP's municipal members because they are local governments. As community-owned public power systems, NYAPP members have a particular and unique responsibility to their customers. They are governed by their local elected officials and ultimately by their citizens. Further, they continue to provide bundled electric service to their customers, and unlike other utilities in New York, have an incentive to minimize total costs to their customers, including promoting energy efficiency. In light of their present contractual support of the NYPA Niagara Project – which on average accounts for over 85% of their total usage – and their ongoing efforts to implement energy efficiency measures, it is neither necessary nor desirable for the Commission to impose an additional mandatory energy efficiency portfolio requirement on them. Given their uniquely heavy reliance on renewable generation, these local governments should not be subject to a new State program.

CONCLUSION:

The New York Association of Public Power and its Members are pleased to have this opportunity to participate in the Commission's EPS proceeding and respond to the proposed Consensus Recommendation. For the reasons discussed above, NYAPP Members intend to continue and expand their energy efficiency efforts through NYPA

and independently. Further, imposition of a uniform EPS requirement on municipal utilities is inappropriate, and NYAPP requests the Commission to clarify that municipally-owned utilities are not subject to the requirements of the EPS. NYAPP looks forward to continuing to work with the Commission on this important proceeding.

January 25, 2008

Respectfully submitted,

/s/ Jeffrey C. Genzer

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