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January 25, 2008

**VIA HAND DELIVERY**

Hon. Jaclyn A. Brilling
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223

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

Dear Secretary Brilling:

Multiple Intervenors hereby submits for filing in the above-referenced proceeding the original and five copies of the "Comments of Multiple Intervenors in Response to Ruling Establishing Comment Schedule." Copies of the enclosed Comments are being served electronically on all parties via the "List Serve" established for this proceeding.

Respectfully submitted,

MULTIPLE INTERVENORS

Michael B. Mager

Michael B. Mager

MBM/cgw
Enclosures
cc: ALJ Eleanor Stein (via E-Mail; w/enc.)
ALJ Rudy Stegemoeller (via E-Mail; w/enc.)
Paul Agresta, Esq. (via E-Mail; w/enc.)
Active Parties (via E-Mail; w/enc.)

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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Proceeding on Motion of the Commission Regarding An Energy Efficiency Portfolio Standard

Case 07-M-0548

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# COMMENTS OF MULTIPLE INTERVENORS IN RESPONSE TO RULING ESTABLISHING COMMENT SCHEDULE

Dated: January 25, 2008

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## PRELIMINARY STATEMENT

Multiple Intervenors, an unincorporated association of approximately 50 large industrial, commercial and institutional energy consumers with manufacturing and other facilities located throughout New York State, hereby submits its Comments in response to the Ruling Establishing Comment Schedule ("Ruling") issued by Administrative Law Judges Eleanor Stein and Rudy Stegemoeller in Case 07-M-0548.[1]

The Ruling solicits comments from active parties regarding a document, filed on or about January 11, 2008, entitled "EPS Administration Consensus Recommendation" (hereinafter, the "Recommendation"), which was executed by a limited number of parties to this proceeding.[2] Specifically, the Ruling invites parties to comment upon "both the procedure and the substance" embodied in the Recommendation, including: (a) whether it should be accepted at this time; and (b) the merits of the recommendations contained therein.

The Recommendation advances proposals by its signatories as to how the New York State Public Service Commission ("Commission") should administer the Energy Efficiency Portfolio Standard ("EPS") in New York State. Multiple Intervenors is not a

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[1] Case 07-M-0548, Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio Standard.

[2] The Recommendation was submitted by: the Natural Resources Defense Council; the Pace Energy Project; the City of New York ("NYC"); the Association for Energy Affordability, Inc.; Consolidated Edison Company of New York, Inc. ("Con Edison"); KeySpan Energy Delivery New York ("KEDNY") and KeySpan Energy Delivery Long Island ("KEDLI"); National Fuel Gas Corporation; Niagara Mohawk Power Corporation d/b/a National Grid ("Niagara Mohawk"); New York State Electric & Gas Corporation ("NYSEG"); Orange and Rockland Utilities, Inc. ("O&R"); Rochester Gas and Electric Corporation ("RG&E"); and the New York Power Authority ("NYPA").

signatory to the Recommendation and was not invited to participate in its negotiation. The proposals contained in the Recommendation include the following:

1. Local partnerships would be responsible for administering the EPS in different regions of the State. The partnerships would be comprised of the applicable local utilities, the New York State Energy Research and Development Authority ("NYSERDA"), NYPA and the NYC government in the case of the NYC partnership. (Recommendation at 1-2.)[3] End-use consumer representatives, such as Multiple Intervenors, would not be included in the proposed partnerships, although they apparently may provide "input" to the partnerships. (Id. at 4.)

2. The State's regulated electric and gas utilities (collectively, the "Utilities"), NYSERDA and the Long Island Power Authority ("LIPA") would be the primary program administrators for complying with the EPS, and their activities would be supplemented by NYPA and the NYC government. (Recommendation at 2.)[4] New York State Department of Public Service Staff ("Staff") would be responsible for reviewing compliance filings by the program administrators. (Id. at 4.)[5]

3. The Utilities would "have lead responsibility for program delivery for end-use customers within their applicable service territories." (Recommendation at 2.) This proposal, however, is conditioned expressly on the Utilities receiving full recovery of all costs and, additionally, financial incentives of unspecified magnitude. (Id. at 2, n.1.)

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[3] NYSERDA is not a signatory to the Recommendation.

[4] LIPA is not a signatory to the Recommendation.

[5] Staff is not a signatory to the Recommendation.

4. NYSERDA would "have lead responsibility for statewide upstream market transformation initiatives focusing on long-term structural or functional changes to markets, rather than direct offerings to end-users." (Recommendation at 2.) Multiple Intervenors interprets this proposal as calling for the termination of NYSERDA's existing energy efficiency programs targeted at end-use customers.

Multiple Intervenors' Comments on the Recommendation are organized into two points. In Point I, Multiple Intervenors addresses procedural issues. As detailed therein, while Multiple Intervenors does not oppose the acceptance of the Recommendation for filing, it asserts that said document should be considered in the proper context. In Point II, Multiple Intervenors addresses the merits of the proposals contained in the Recommendation. As detailed therein, Multiple Intervenors has several substantive concerns regarding the Recommendation and its possible application to Upstate New York.[6]

## ARGUMENT

## POINT I

### THE RECOMMENDATION ONLY SHOULD BE CONSIDERED IN THE PROPER CONTEXT

The Ruling solicits comments on whether the Recommendation should be accepted at this time. While the legal import of the Recommendation being "accepted" is not entirely clear, Multiple Intervenors does not oppose its consideration in this proceeding so long as the document is placed in the proper context. In this regard, there are a number of

[6] For purposes of this submission, Multiple Intervenors advocates no position on the possible application of the Recommendation to Long Island and/or NYC.

procedural issues associated with the Recommendation that warrant a cautious approach to its consideration.

Initially, it is noteworthy that the Recommendation was submitted well after the conclusion of the collaborative process. Earlier in this proceeding, the parties expended considerable time and resources collaborating on, inter alia, governance issues related to the EPS. During that process, a number of parties sponsored proposed governance models for consideration. Those models were subjected to intense scrutiny by other parties, who collectively advanced numerous questions, comments and concerns with respect to each of the models advanced. No similar opportunity existed here. Multiple Intervenors and, upon information and belief, numerous other parties were not invited to participate in the negotiations that resulted in the Recommendation. The signatories to the Recommendation have made no oral presentations on their specific governance model, nor have other parties been accorded any opportunity to pose questions or advance comments and concerns directly to the model's proponents. Thus, to the extent the Recommendation is considered, it must be recognized that the document is a product of negotiations from which most parties apparently were excluded.

Second, the Recommendation is sponsored by a limited subset of the active parties in this proceeding. For instance, there are 13 named signatories to the Recommendation, and eight of those parties are regulated utilities. Moreover, a number of the signatories are subsidiaries of the same company; for instance: (a) Con Edison and O&R have the same corporate parent; (b) KEDNY, KEDLI and Niagara Mohawk have the same corporate parent; and (c) NYSEG and RG&E have the same corporate parent. Given the extremely large number of active parties with very diverse interests in this proceeding, the scope of the support represented by the signatories is rather limited.

Third, the Recommendation leaves many governance issues unanswered and, due to the concerns raised above, it is not clear how, when and/or in what forum such issues should be resolved. For instance, the Recommendation is silent with respect to its proposed effective date. Is the Recommendation being circulated as an alternative to various "fast-track" proposals advanced for the 2008-2009 period, or is it the signatories' intent that their proposals take effect on or after January 1, 2010? Additionally, how, when and why is NYSERDA supposed to terminate its energy efficiency direct offerings to end-use customers? Throughout the State, customers are considering and/or already have made business decisions based on the continued offering of NYSERDA's efficiency programs targeted directly to customers. Finally, what is meant by the signatory-utilities' contingent proposal to implement energy efficiency programs only so long as they receive full recovery of all costs and additional financial incentives? In what forum would it be decided whether the Utilities should be rewarded – at the expense of customers – for complying with State and Commission policy and, if so, the magnitude of such incentives? Would the Utilities be permitted to delay or terminate energy efficiency programs if they deemed potential financial incentives to be inadequate? It is difficult to see how the Commission can take any action with respect to the Recommendation when these fundamental issues have not been explored.

For the foregoing reasons, to the extent the Recommendation is accepted for filing in this proceeding, it only should be considered in its proper context. Moreover, for the reasons set forth in Point II, infra, the Recommendation either should be modified or remanded to the collaborative process for further evaluation and comment.

## POINT II

## CERTAIN PROPOSALS IN THE RECOMMENDATION SHOULD BE REJECTED OR MODIFIED

The Recommendation advances a number of proposals as to how the EPS would be administered on a regional basis, including additional details applicable to NYC. (Recommendation at 1-3.) Multiple Intervenors has no objection to the signatories' apparent attempt to address local concerns and account for possible regional differences.[7] Significantly, however, Multiple Intervenors opposes several substantive aspects of the Recommendation which, for the reasons detailed below, either should be rejected or modified. Those aspects pertain primarily to: (a) the presumption in the Recommendation that the Utilities are entitled to unquantified, customer-funded financial incentives for implementing energy efficiency programs; (b) the unsupported proposal that NYSERDA must cease offering energy efficiency programs directly to end-use customers; and (c) the limited role of customers in the administration of the EPS.

### A. The Utilities Should Not Be Guaranteed Financial Incentives for Administering Energy Efficiency Programs

Initially, Multiple Intervenors opposes the Recommendation's underlying condition that the Utilities are entitled to financial incentives – in addition to full recovery of EPS costs – for implementing energy efficiency programs. This proceeding was instituted because it is the policy of the State, and the Commission, that New York should strive to

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[7] As detailed, supra, Multiple Intervenors advocates no position on the application of the Recommendation on Long Island and/or in NYC; for purposes of these Comments, Multiple Intervenors is focused only on the administration of the EPS in Upstate New York.

reduce its projected electricity consumption by 15 percent by 2015.[8] Multiple Intervenors disagrees that the Utilities must be rewarded financially – at the expense of customers – for complying with State and Commission policy.

The cost and rate impacts associated with implementing the EPS are expected to be substantial. For instance, with respect to "fast track" programs proposed for the 2008-2009 period, Staff: (a) notes that the System Benefits Charge currently is $175 million annually ($350 million for the period) and that the Weatherization Assistance Program administered by the New York Division of Housing and Community Renewal ("DHCR") is funded at approximately $55 million annually ($110 million for the period); (b) proposes incremental funding increases of $118.5 million for the second half of 2008 and $229 million for 2009 ($347.5 million for the period); (c) proposes an additional $10 million for customer outreach and education; and (d) proposes an additional $2.5 million to develop improved building codes and standards.[9] In total, this amounts to $820 million in customer-funded expenditures, the vast majority of which will be allocated to energy efficiency. The incremental funding proposed by Staff – which includes only "half" funding for 2008 – equals $360 million, which presumably would be paid by New York utility customers, who already pay among the highest energy costs in the United States.[10] Importantly, however,

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[8] See, e.g., Case 07-M-0548, supra, Order Instituting Proceeding at 2.

[9] Case 07-M-0548, supra, Revised Proposal for Energy Efficiency Design and Delivery and Reply Comments of the Staff of the Department of Public Service ("Staff Revised Proposal") (dated November 26, 2007) at 4. Multiple Intervenors notes that multiple requests for leave to submit comments on the Staff Revised Proposal have been pending for approximately six weeks.

[10] Additional, EPS-related costs to customers also will be incurred during the 2010 to 2015 period.

this extraordinary amount of funding on State-administered energy efficiency does not include any financial incentives for the Utilities, which, if included, only would exacerbate the already-significant burden being imposed on customers.

Upon information and belief, NYSERDA does not require any financial incentives to implement energy efficiency programs, nor does the DHCR. Municipalities seeking to implement energy efficiency programs, such as NYC, also are not seeking mandated financial incentives in excess of program costs. Inasmuch as customers are being forced to fund large-budget energy efficiency programs in furtherance of State and Commission policy, Multiple Intervenors disputes any notion that the regulated Utilities should be guaranteed financial incentives in order to comply with such policies.[11]

Moreover, the Recommendation is silent as to the amount of financial incentives being sought by the Utilities, an issue that is fraught with difficulty. What forum would determine the level of such incentives and/or how they should be recovered? Proposals that would provide the Utilities with "veto power" over EPS administration unless they are rewarded financially to their satisfaction should be rejected. Inasmuch as the Utilities have yet to specify the financial incentives they are seeking herein, or even attempt to demonstrate why such customer-funded incentives are warranted, at a minimum, the Recommendation should modified to remove any presumption of utility entitlement to financial incentives above and beyond cost recovery. If, arguendo, the issue of utility

[11] Multiple Intervenors does not oppose utility recovery of EPS program costs, including verifiable lost revenues resulting from utility-administered efficiency programs; significantly, however, the Utilities have yet to demonstrate an entitlement to additional financial incentives for implementing efficiency programs.

financial incentives is to be decided at this time, Multiple Intervenors requests that a briefing schedule be established.

### B. The Utilities Should Not Be Provided With Sole Responsibility for Offering Energy Efficiency Programs Directly to End-Use Customers

There is no basis for the demarcation between utility and NYSERDA responsibility for administering energy efficiency programs targeted at customers that is advanced in the Recommendation. As detailed above, the Recommendation proposes that: (a) the Utilities would have lead responsibility for program delivery for end-use customers within their applicable service territories; and (b) NYSERDA would focus on "long-term structural or functional changes to markets, rather than direct offerings to end-users." (See Recommendation at 2.) The EPS goal established by the Commission is very aggressive and, upon information and belief, there will be much for the Utilities and NYSERDA, as well as other entities, to do in order to achieve that goal. The Recommendation's proposed diminished role for NYSERDA, however, raises a number of concerns.

First, NYSERDA currently offers numerous energy efficiency programs targeted at end-use customers. NYSERDA has been implementing such programs for years, and, at least Upstate, many large customers are familiar with them. NYSERDA's efficiency programs are well-regarded and generally are deemed successful by, among others, the Commission. In contrast, there is no basis for concluding that the Utilities can replicate and/or improve upon NYSERDA's programs. Accordingly, at least with regard to Upstate, it is not at all clear from the Recommendation why NYSERDA should be forced to terminate its existing programs targeted at end-use customers in favor of unknown, yet-to-be-implemented programs that would be administered by the Utilities.

Second, in determining whether NYSERDA or the Utilities should administer a particular program targeted at customers, the Commission should favor the entity best able to administer the program successfully and cost-effectively. It may be that, over time, the programs that are developed should be split between NYSERDA and the Utilities.[12] That said, the Recommendation contains no demonstration – such as projected cost levels, savings levels, and cost/benefit ratios – that supports the immediate, and summary, substitution of the Utilities for NYSERDA as the entities responsible for program delivery to Upstate end-use customers.

Moreover, in evaluating the entities best able to administer energy efficiency programs, there should be recognition that NYSERDA is not seeking customer-funded financial incentives based on savings achieved. To the extent the Utilities are offered financial incentives – notwithstanding Multiple Intervenors' position to the contrary – then such potential incentives must be factored into any cost/benefit analyses used to justify a utility-administered efficiency program.

### C. Customers Should Be Accorded a Substantial Role in the Administration of the EPS

The proposed role for customers in the administration of the EPS is not clear from the Recommendation. As proposed, the Utilities and NYSERDA and, where applicable, LIPA, NYPA and NYC government, would be program administrators for the EPS. (Recommendation at 2.) Customers are neither program administrators nor members of the proposed regional partnerships. (Id.) Each partnership, while excluding customers,

[12] Multiple Intervenors is not opposed per se to utility-administered efficiency programs, and there may be some – or many – types of programs that the Utilities potentially could administer better than NYSERDA.

would seek input from other entities, including customers. (Id. at 4.) Multiple Intervenors contends that customers should be accorded a greater role in the administration of the EPS, particularly when customers are being asked to provide the lion's share of the funding of EPS programs.[13]

During the collaborative process, a number of governance models were advanced. At least some of those governance models generally envisioned a greater role for customers than that proposed by the Recommendation. For instance, Staff proposed a governance model that relied on an Advisory Committee that included, inter alia, consumer groups. (Working Group I Report at 11.) The "Joint Utilities" advanced a governance model that included an "Energy Efficiency College" comprised of, inter alia, consumer representatives. (Id. at 14.) Multiple Intervenors submits that any governance model lacking a significant and defined role for customer representatives is fatally flawed and should be modified to include customers. As the likely primary funding source for EPS-related energy efficiency programs, customers deserve a seat at any table discussing EPS program design, budgets, evaluations, etc.

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[13] For the reasons set forth in Multiple Intervenors' prior submissions in this proceeding, it is essential that the rate impacts of the EPS be moderated to the maximum extent possible.

## CONCLUSION

For all the foregoing reasons, Multiple Intervenors advocates that: (a) the Recommendation, if accepted, only should be considered in the proper context; and (b) the substance of the Recommendation should be rejected or modified in accordance with these Comments.

Dated: January 25, 2008
Albany, New York

Respectfully submitted,

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