



540 Broadway, P.O. Box 22222, Albany, New York 12201-2222 • (518) 426-4600

April 29, 2011

VIA E-MAIL

John Williams
Director
Energy Coordinating Working Group
NYSERDA
17 Columbia Circle
Albany, NY 12203-6399

Re: Draft Scope of the 2013 New York State Energy Plan

Dear Mr. Williams:

Attached please find the Initial Comments and Recommendations of Multiple Intervenor regarding the Draft Scope of the 2013 New York State Energy Plan. Multiple Intervenor looks forward to working with you and the ECWG in the development of the 2013 State Energy Plan. Please call me if you have any questions.

Respectfully submitted,

MULTIPLE INTERVENORS

S. Jay Goodman

JG/dap

Attachment

S:\DATA\Client6 12456-13409\13206\Corres\04-29-11 MI draft scope cov ltr.doc

**Initial Comments and Recommendations
of Multiple Intervenors Regarding the
Scope of the 2013 New York State Energy Plan**

Dated: April 29, 2011

**MULTIPLE INTERVENORS
540 Broadway - P.O. Box 22222
Albany, New York 12201-2222
Telephone: (518) 426-4600**

PRELIMINARY STATEMENT

Multiple Intervenors, an unincorporated association of approximately 55 large industrial, commercial and institutional energy consumers with manufacturing and other facilities located throughout New York State, hereby submits its *Initial Comments and Recommendations* (“Initial Comments”) on the *Draft Scope of the 2013 New York State Energy Plan* (“Draft Scope”) that was issued on March 10, 2011 by the Energy Coordinating Working Group (“ECWG”) of the New York State Energy Planning Board (“Board”). Multiple Intervenors’ Initial Comments are submitted in response to the *Public Solicitation of Comments* (“Solicitation”) that was included within the Draft Scope,¹ and provide a brief summary of the extensive oral comments that Multiple Intervenors provided to the ECWG on these issues during a March 30, 2011 meeting.

The Solicitation indicates that “comments may address any aspect of the Draft Scope, including how the Board should conduct the analyses and assessments” described in the Draft Scope as well as “any additional issues that should be addressed.”² Multiple Intervenors’ Initial Comments will address aspects of the Draft Scope that relate to the business impacts of energy costs, and are organized into two sections. In Point I, Multiple Intervenors describes the high cost of energy in New York State and its impact on businesses and economic development. In Point II, Multiple Intervenors presents 14 recommendations for inclusion in the Draft Scope and the 2013 New York State Energy Plan (“2013 Plan”).

¹ Draft Scope at 5.

² *Id.*

COMMENTS

POINT I

THE COST OF ENERGY IN NEW YORK STATE IS NOT COMPETITIVE

Multiple Intervenors' primary concern regarding the Draft Scope – which is intended to provide a framework for development of the 2013 Plan – is that it fails to prioritize (or even include) the development of a comprehensive plan to reduce energy prices in New York State as a goal of the 2013 Plan. Given that the Draft Scope states “[Article 6 of the New York State Energy Law] requires that the [2013 Plan] seek to ... **[r]educe the overall cost of energy in the State** ...,”³ the failure to establish this goal as a priority for the 2013 Plan is surprising and problematic. The 2013 Plan must be the document that balances the State's often-conflicting policy goals to assure **affordable**, reliable energy supplies. Multiple Intervenors urges the ECWG to revise the Draft Scope accordingly.

High energy costs, generally, and the cost of electricity, specifically, continues to make it very difficult for existing businesses to thrive, and discourages businesses from locating, expanding or remaining in New York State. In 2010, the average price of electricity in New York State exceeded 16 cents per kWh (all sectors), which was greater than the cost of electricity in 46 of the 49 other states in the country, and approximately 65 percent greater than the national average.⁴ In contrast, 35 states had comparable average electricity prices under 10 cents per

³ Draft Scope at 1 (emphasis added).

⁴ U.S. Energy Information Association (“EIA”), Average Retail Price of Electricity to ultimate Customers by End-Use Sector, by State (Table 5.6b), *available at* http://www.eia.gov/cneaf/electricity/epm/table5_6_b.html.

kWh, and 16 states had an average retail price for electricity that was one-half or less than the New York State average (i.e., 8 cents per kWh or less).⁵

The excessive cost of electricity in New York State is part of a long-term trend of increasing prices; it is *not* the product of either a one-year aberration or a short-term trend. In 1990, the cost of electricity in New York State (all sectors) exceeded the national average by 42.6 percent (9.4 cents per kWh versus 6.6 cents per kWh). As demonstrated in Table 1, below, that cost disparity increased over time to 65 percent (16.3 cents per kWh versus 9.9 cents per kWh) in 2010:

Table 1.⁶

Year	United States (cents/kWh)	New York (cents/kWh)	Differential
1990	6.57	9.37	42.6%
1991	6.75	9.79	45.0%
1992	6.82	10.19	49.4%
1993	6.93	10.72	54.7%
1994	6.91	10.92	58.0%
1995	6.89	11.06	60.5%
1996	6.86	11.13	62.2%
1997	6.85	11.13	62.5%
1998	6.74	10.71	58.9%
1999	6.64	9.95	49.8%
2000	6.81	11.38	67.1%
2001	7.29	11.55	58.4%
2002	7.20	11.16	55.0%
2003	7.44	12.44	67.2%
2004	7.61	12.55	64.9%
2005	8.14	13.95	71.4%
2006	8.90	15.27	71.6%
2007	9.13	15.22	66.7%
2008	9.74	16.57	70.1%
2009	9.83	15.52	57.9%
2010	9.88	16.31	65.1%

⁵ Id.

⁶ EIA, Average Price per State by Provider (EIA-861), comparison of Total Price (cents per kWh) for U.S. Total Electric Industry and New York Total Electric Industry.

The increasing disparity between the cost of electricity in New York State and the national average cost represents a trend that has developed steadily during the 20-year period set forth on Table 1. This trend is emphasized when the average cost disparity is examined in five-year increments, as demonstrated on Table 2, below. As set forth on that table, the energy cost disparity between New York State and the national average increased from approximately 49.9 percent during the period 1990-1994, to approximately 67.1 percent during the period 2005 to 2010:

Table 2.

Period	Average Differential
1990-1994	49.9%
1995-1999	58.8%
2000-2004	62.5%
2005-2010	67.1%

Table 2 demonstrates that not only is the cost of electricity in New York non-competitive with other states, this significant disadvantage is getting worse. Thus, clearly, the State’s policies to keep electricity affordable are, collectively, not working. One begins to wonder how many energy-intensive manufacturing jobs need to be lost before New York places increased emphasis on policies that actually lower costs to customers and reduces this crippling cost disadvantage.

Some of the contributors to excessive electricity costs to customers include New York’s “alphabet soup” of surcharges and taxes, which include the System Benefits Charge (“SBC”), Renewable Portfolio Standard (“RPS”) surcharge, the Energy Efficiency Portfolio Standard (“EEPS”) surcharge, the costs of the Regional Greenhouse Gas Initiative (“RGGI”), and the Temporary State Assessment (“TSA”). These surcharges and taxes have significant rate impacts, both individually and, especially, collectively. Moreover, because most of these surcharges and taxes are recovered volumetrically, they have a disproportionate (and inequitable)

impact on large, non-residential customers with high load factors (who also are the State's most price-sensitive customers). As can be seen from Table 2 above, the implementation of these "policies" over the last decade or so have not resulted in lower electricity costs for customers and, in many respects, have made the State less competitive in terms of attracting and retaining jobs.

Burdensome energy costs are a recognized impediment to business growth and vitality. A report issued by the United States Department of Commerce concluded that "manufacturers in energy-intensive industries say that rising energy costs are their biggest challenge. They base many decisions, including those about shutting down U.S. production and investing in other countries, on the cost of energy in the United States."⁷ New York's 2002 State Energy Plan indicated that the impact of energy prices on business decisions is higher in New York than other states:

In a national survey of businesses that primarily included manufacturers, 81% of respondents considered energy cost and availability to be either an important or very important site-selection factor. Given the relative cost of energy in new York, manufacturers in the State regard energy costs as being even more significant than is indicated by the national survey.⁸

⁷ United States Department of Commerce, *Energy Policy and U.S. Industry Competitiveness* (2007) at 1, available at <http://www.ita.doc.gov/td/energy/Enduse.htm> (hereinafter, "Commerce Report"). Although the Commerce Report focuses on manufacturers, its conclusions with respect to the impact of energy costs also are relevant to energy-intensive commercial and institutional entities.

⁸ 2002 New York State Energy Plan at 2-16.

The 2002 State Energy Plan also found that: “The increase in business profitability and consumer purchasing power that results from lower energy costs will further stimulate business investment, consumer spending, and employment growth within the State.”⁹

Similarly, the 2009 State Energy Plan (“2009 Plan”) acknowledged the importance of affordable energy and its correlation with business competitiveness and economic development, stating that: “Energy costs also can have a significant impact on the economic competitiveness of the State, especially for energy intensive businesses currently located with the State and those considering an expansion or looking to locate in New York.”¹⁰ Further, the Energy Cost Brief recognized that existing policies are insufficient to moderate energy costs, stating that “[a]lthough the State’s energy and economic development assistance programs have provided incentives to lower costs, *additional measures are required both in the near and longer-term to address energy costs.*”¹¹ The 2013 Plan needs to recognize that no progress has been made in reducing New York’s electricity cost disadvantage and, in fact, that disadvantage now is larger. Moreover, the 2013 Plan needs to prioritize reducing the wide disparity between New York’s electricity prices and the national average, and that achieving such a reduction should take precedence over other, often-conflicting goals.

⁹ Id. at 2-15. Unfortunately, as New York has experienced, the converse also is true.

¹⁰ 2009 Plan at 4. See also *Energy Costs and Economic Development Issue Brief*, New York State Energy Plan 2009 (December, 2009) at 4, 11 (hereinafter, “Energy Cost Brief”) (stating that the State’s “manufacturing sector ... is energy intensive; as a result, securing reasonably priced energy supplies are a primary concern for these industries in maintaining competitiveness in global markets,” and “[e]nergy costs are a substantial expense for [commercial customers] that can impact decisions on location, expansion and the creation of jobs.”).

¹¹ Id. at 34 (emphasis added).

Currently, the State and its administrative agencies are implementing initiatives to achieve certain policy or budgetary goals (e.g., EEPS, RPS, SBC, RGGI, TSA). Each initiative, individually, carries a substantial price tag. Cumulatively, these initiatives impose a substantial – and, likely, unsustainable – increase in energy costs that exacerbates New York’s already-large competitive disadvantage. Unfortunately, all or most of these policies are being developed without adequate consideration of their cumulative impact on customers. The 2013 Plan needs to address the cumulative impacts of New York’s energy surcharges and taxes on customers and advance recommendations that will reduce those burdens and achieve meaningful progress toward reducing the electricity cost disparity that exists currently.

New York State must acknowledge the impact of its policies on energy prices by modifying its priorities to achieve a balance between energy policy goals and energy prices. Such balance currently is lacking. The policies set forth in the 2009 Plan did not include a plan to reduce the cost of energy in New York State, nor has any such reduction occurred. Instead, since the 2009 Plan was developed and issued, the average price of electricity in New York State rose approximately 5.1 percent from 2009 to 2010 (15.52 cents per kWh in 2009 versus approximately 16.31 cents per kWh in 2010). (See Table 1.)

Reducing the energy cost disparity between New York State and the rest of the nation should be the top priority of the 2013 Plan, and the context against which all other issues are evaluated and balanced. Accordingly, Multiple Intervenors urges the ECWG to revise the Draft Scope to reflect this priority.

POINT II
RECOMMENDATIONS

The preceding comments highlight Multiple Intervenors' overarching concern that unrestricted and uncoordinated spending in pursuit of certain policy goals – however worthwhile each goal might appear in isolation – is unduly burdening customers, making the State less competitive (especially to companies that can conduct business elsewhere), and harming economic development efforts within the State. These Initial Comments seek to ensure that the energy planning process leading up to and including the 2013 Plan incorporate fully the mitigation of energy costs to business as a core value.

Multiple Intervenors hereby advances the following recommendations as to the scope of certain elements that should be included in the 2013 Plan:

- 1) A comprehensive plan to reduce energy prices in New York State should be the top priority of the 2013 Plan.
 - a) **Recommendation #1:** Undertake a comprehensive and holistic review of the programs funded by discretionary surcharges that are added to utility customer bills. Based on that review, adjust the surcharges to moderate the cumulative bill impact arising from the implementation of those programs.
 - b) **Recommendation #2:** Coordinate **all** energy policy initiatives and include their cumulative bill impacts in the evaluation of their funding and/or continuation.
 - c) **Recommendation #3:** Eliminate programs and expenditures that demonstrably are not cost-effective on a stand-alone basis.
 - d) **Recommendation #4:** The cost of energy policy initiatives should be recovered from customers on the basis of cost-causation principles. Many of such costs

currently are recovered on a purely volumetric basis, which ignores principles of cost-causation and disproportionately impacts high-load-factor customers.¹²

- e) **Recommendation #5:** End the practice of disguising State taxes as utility bill surcharges (e.g., to narrow a State budget deficit).¹³
- 2) The New York State Department of Public Service (“DPS”) should be strengthened. The DPS has experienced a steady decline in staffing levels for a variety of reasons. Such reductions strain the ability of remaining staff to audit and review all utility filings (including, for example, utility requests for increased rates) as required by law. The loss of personnel also represents a loss of invaluable institutional knowledge.
- a) **Recommendation #6:** Increase DPS staffing levels as necessary to ensure that the ability to conduct full and effective audit and review of all utility filings is maintained.
 - b) **Recommendation #7:** The business advocacy and economic development roles of the DPS should be strengthened and accorded a higher priority by the agency.
- 3) The absence of a streamlined law to regulate the siting of electric generation facilities impedes the development of new, cost-effective capacity resources. The 2009 Plan recommended that the State enact a comprehensive, fuel-neutral siting law for electric generation facilities. No such law has been enacted.

¹² For instance, many SBC, EEPS and RPS programs pertain, at least in part, to generation capacity and demand, yet such surcharges currently are recovered entirely – and inequitably – on a volumetric basis.

¹³ Recovering “general fund” tax revenues through energy taxes is poor policy because it exacerbates the State’s already-substantial energy cost disadvantage, thereby harming economic development efforts disproportionately.

- a) **Recommendation #8:** Enact a comprehensive, streamlined siting law that is fuel-source neutral.
- 4) As noted by the 2009 Plan, “the State’s geographic location away from major supplies of energy” is one factor contributing to the high cost of energy in New York State. To address this issue, the 2013 Plan should establish policies intended to increase the supply of natural gas in New York State.
 - a) **Recommendation #9:** Promote and support the siting of infrastructure necessary to deliver increased volumes of natural and liquefied natural gas.
 - b) **Recommendation #10:** Permit the market development of a liquefied natural gas terminal in New York State.
 - c) **Recommendation #11:** Resolve the environmental issues associated with development of natural gas from the Marcellus shale in a timely manner, thereby facilitating the development of a new, domestic source of natural gas that has the potential to reduce electricity and gas prices to customers.
 - d) **Recommendation #12:** Develop a plan to maximize the economic benefits associated with the development of natural gas from the Marcellus shale to make the State more competitive.
- 5) Distributed generation and combined heat and power (“DG/CHP”) resources provide businesses with an opportunity to have a reliable, cost-effective source of energy. Significantly, DG/CHP resources typically: (a) generate electricity with greater efficiency than central generating facilities; (b) minimize energy losses during transmission because they are located on or near the site of use; (c) yield a net reduction of pollutant emissions; and (d) moderate demand on the bulk electric

system, thereby reducing prices for all customers and, in some cases, helping to reduce or delay expenditures on infrastructure projects.

- a) **Recommendation #13:** Enact laws and regulations to facilitate the development of DG/CHP resources, whether or not they rely on renewable fuel sources.
- b) **Recommendation #14:** Require each utility to adopt cost-based standby service rates that do not discourage the development of DG/CHP.

CONCLUSION

For all the reasons set forth in these Initial Comments, Multiple Intervenors respectfully requests the ECWG and the Board to incorporate the Recommendations contained herein into the Draft Scope and, ultimately, the 2013 Plan.

Dated: April 29, 2011
Albany, New York

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "S. Jay Goodman", with a long horizontal flourish extending to the right.

Michael B. Mager, Esq.
S. Jay Goodman, Esq.
Attorneys for Multiple Intervenors
540 Broadway
P.O. Box 22222
Albany, New York 12201-2222
(518) 426-4600