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July 8, 2008

VIA HAND DELIVERY

Thomas C. Congdon
Executive Director
Energy Coordinating Working Group
NYSERDA
17 Columbia Circle
Albany, NY 12203-6399

Re: Scope of the 2009 New York State Energy Plan

Dear Mr. Congdon:

Attached please find the Initial Comments and Recommendations of Multiple Intervenors regarding the Scope of the 2009 New York State Energy Plan. Multiple Intervenors looks forward to working with you and the ECWG in the development of the 2009 State Energy Plan. Please call me if you have any questions.

Very truly yours,

COUCH WHITE, LLP


Michael B. Mager

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**Initial Comments and Recommendations
of Multiple Intervenors Regarding the
Scope of the 2009 New York State Energy Plan**

Dated: July 8, 2008

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PRELIMINARY STATEMENT

Multiple Intervenors, an unincorporated association of over 50 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 2009 New York State Energy Plan (“Scope Paper”) that was issued on May 30, 2008 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 Scope Paper.¹

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 Scope Paper as well as “any additional issues that should be addressed.”² The Initial Comments of Multiple Intervenors will address aspects of the Scope Paper that relate to the business impacts of energy costs, and are organized into four sections. In Point I, Multiple Intervenors describes the current business climate in New York State. In Point II, Multiple Intervenors describes the high cost of energy in New York State and its impact on businesses. In Point III, Multiple Intervenors discusses the cumulative retail bill impacts associated with certain energy policy initiatives. Finally, Multiple Intervenors presents 12 recommendations for inclusion in the Scope Paper and the 2009 State Energy Plan.

¹ Scope Paper at 5.

² *Id.*

COMMENTS

POINT I

THE NEW YORK STATE BUSINESS CLIMATE IS NOT FAVORABLE TO ECONOMIC GROWTH AND DEVELOPMENT

Large commercial and industrial (“C&I”) employers are a critical component of the New York State economy, especially Upstate. For example, each industrial job indirectly creates two or more jobs in supplier firms (*i.e.*, companies that sell goods or services to workers and their families and in government).³ The Upstate average job multiplier of one manufacturing job is 2.67 jobs created in other sectors, which exceeds the national average job multiplier of 2.34.⁴ The average manufacturing job pays about \$54,000 annually, exceeding the national average compensation by 20 percent.⁵

New York State has lost almost 29 percent of its manufacturing jobs between 1996 and 2007 – only North Carolina and Rhode Island suffered worse losses on a percentage basis.⁶ Between 2000 and 2007, Upstate New York lost about 1.3 percent of its private sector jobs (about 32,000), whereas the manufacturing sector shrank approximately

³ *Manufacturing Fast Facts*, Manufacturers Association of Central New York (“MACNY”), available at <http://macny.org/manufacturinginformation.aspx> (last visited June 23, 2008).

⁴ *Id.*

⁵ *Id.*

⁶ Jay Gallagher, *Address State of New York*, THE TIMES UNION, January 5, 2008, at A7 (hereinafter, “Gallagher Article”).

22 percent (about 94,000 jobs).⁷ Within the past year, Upstate New York lost an additional 7,300 manufacturing jobs, a 2.2 percent decline.⁸ Overall, New York job creation lagged behind the national average and 39 other states – from 1996 to 2006, public sector employment in New York grew 9 percent, whereas the national average was 14 percent.⁹

The difficult business climate in New York State is reflected further by its poor performance on two indices. First, the State ranked as the second most expensive state in the nation to do business in 2007, at almost 31 percent above the national average.¹⁰ Second, a recent analysis of competitiveness by the Beacon Hill Institute indicated that, in 2007, New York State ranked 38th among the 50 states.¹¹

The perception of New York State as a difficult and expensive place to do business extends beyond its borders. For the third consecutive year, New York was ranked by a national survey of chief executive officers (“CEOs”) as second only to California as the worst state in which to do business.¹² According to the survey’s publisher:

⁷ The Public Policy Institute, *Monthly Economic Snapshot of Upstate New York as of April 2008*, available at http://www.ppiny.org/nyecon/upstate_jobs.pdf.

⁸ *Id.*

⁹ Gallagher Article.

¹⁰ Milken Institute 2007 Cost-of-Doing Business Index, The Public Policy Institute, available at <http://www.ppiny.org/reports/jtf/costbusiness.html>.

¹¹ The Public Policy Institute, *Beacon Hill Institute’s 2007 State Competitiveness Index*, available at <http://www.ppiny.org/reports/jtf/competitivenessindex.html>.

¹² *CEOs Weigh In On Best, Worst States To Do Business*, CHIEF EXECUTIVE, Jan. 22, 2008, available at <http://www.chiefexecutive.net/me2/default.asp>.

the message CEOs are sending is that over-taxed and over-regulated states are not conducive to the health of their businesses. . . . This is the message they've been communicating since our poll started in 2005. However, in states like California and New York, where we are increasingly facing a shrinking population, the message seems to have fallen on deaf ears, as CEOs continue to be extremely frustrated with the business-unfriendly practices in these states.¹³

In the survey, New York also was described as “[n]otorious for onerous legislation and high taxes.”¹⁴ As described in more detail below, the difficult business climate that exists in New York State is exacerbated by the high cost of energy.

POINT II

INFLATED ENERGY COSTS EXACERBATE THE DIFFICULT BUSINESS CLIMATE

The high cost of energy is a substantial component of the difficult business climate in New York State. For example, the United States Department of Commerce recently issued a paper which reported that the rising cost of energy is the biggest challenge facing many manufacturers in energy intensive industries.¹⁵ The Commerce Report also indicated that improvements in energy efficiency and increased production yielded a level of energy intensity (*i.e.*, energy consumption per unit of GDP) in 2006 that was the lowest on

¹³ *Id.*

¹⁴ *Id.*

¹⁵ U.S. Department of Commerce, *Energy Policy and U.S. Industry Competitiveness at 1*, available at <http://www.ita.doc.gov/td/energy/> (“Commerce Report”).

record.¹⁶ The reduction in energy intensity reflects efficiency gains in all sectors, including almost all manufacturing sectors, whether energy intensive or not.¹⁷ Energy intensive industries, however, have been disproportionately impacted by high oil and natural gas costs despite the implementation of energy efficiency programs that reduced energy intensity.¹⁸

Businesses in New York State are suffering under inflated energy costs. In 2007, the average electricity price for all sectors in the United States was 8.91 cents per kWh.¹⁹ The comparable electricity price for New York in 2007 was 15.04 cents per kWh, approximately 69 percent higher than the national average.²⁰ Last year, only Connecticut and Hawaii had higher average electricity prices than New York.²¹ In fact, while New York's average electricity price exceeded 15 cents per kWh in 2007, 36 states had comparable average prices under 10 cents per kWh, while 23 states had average prices under 7.5 cents per kWh (*i.e.*, less than half that of New York).²²

¹⁶ *Id.* at 2-3.

¹⁷ *Id.* at 3.

¹⁸ *Id.*

¹⁹ Energy Information Administration, *Average Retail Price of Electricity to Ultimate Consumers by End-Use Sector, by State* (Report Released March 17, 2008).

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

Energy prices are particularly important for large C&I customers, many of which consume substantial amounts of electricity and gas as part of manufacturing and other processes. The most recent State Energy Plan reports that:

In a national survey of businesses that primarily included manufacturers, 81% of the 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.²³

Moreover, the relationship between economic activity and reasonably-priced energy costs is strong and beyond serious dispute. The 2002 State Energy Plan concluded that “[p]olicies that promote a secure, competitive, and reasonably priced energy supply will help attract, retain, and expand business in New York,” and that such policies “support reducing energy costs to consumers”²⁴ 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.”²⁵

Unfortunately, not only has the State failed to achieve the lower energy costs highlighted in the 2002 State Energy Plan, those costs have risen dramatically, and New York’s competitive position has deteriorated as a result. Worse, unless current initiatives are reevaluated, State policies will cause significant, incremental increases in Statewide energy

²³ New York State Energy Plan and Final Environmental Impact Statement (June 2002) (hereinafter “2002 State Energy Plan”) at 2-16 (footnote omitted).

²⁴ *Id.* at 2-15.

²⁵ *Id.*

prices. Accordingly, it is critical that the State Energy Planning process restore some balance to energy policy in the State. More competitive energy prices should not be one of a laundry list of goals in the State Energy Plan; it should be designated as a high priority goal against which all other initiatives should be judged.

POINT III

CURRENT STATE ENERGY INITIATIVES LIKELY WILL FURTHER INFLATE ENERGY COSTS

The State and its administrative agencies currently are aggressively developing and/or implementing initiatives to achieve certain policy goals. These “Initiatives” include the Regional Greenhouse Gas Initiative (“RGGI”), and the Energy Efficiency Portfolio Standard (“EEPS”). Importantly, Multiple Intervenors does not oppose, per se, the policy goals that these Initiatives seek to accomplish and, in fact, supports efforts to increase energy efficiency and reduce greenhouse gas emissions. Multiple Intervenors is very concerned, however, about the energy rate impacts that would be inflicted on all New York residents and businesses if each Initiative is fully funded and implemented according to current plans. In addition, Multiple Intervenors is concerned that State policymakers have not given adequate consideration to the cumulative cost impacts arising from the Initiatives.

Each program, individually, carries a substantial price tag. Cumulatively, these programs likely would impose a substantial – and potentially unsustainable – increase in energy costs that could challenge the ability of New York households to pay their utility bills and further exacerbate New York State’s already-large competitive price disadvantage vis-a-vis other states and countries, thereby frustrating important economic development

efforts. In fact, these Initiatives could increase electricity rates in New York by up to 9 percent for the State's residents, with even greater increases of up to 20 percent for the State's businesses.²⁶

The EEPS initially will cost consumers over \$172 million per year, totaling nearly \$561 million through 2011.²⁷ This recently approved initiative will increase the electricity rates of the State's residents by nearly 2 percent, while, simultaneously, increasing electricity rates for businesses by more than 3 percent. Moreover, once additional efficiency programs are designed and implemented, the estimated annual price tag for the EEPS is expected to rise to approximately \$330 million, and that does not even include costs related to utility recovery of lost revenues, proposed utility financial incentives and gas efficiency programs.²⁸

²⁶ Importantly, these increases would be **in addition to** the combined electricity rate impacts that New York residents and businesses already encounter with respect to the System Benefits Charge ("SBC") and the Renewable Portfolio Standard ("RPS"). Combined, the SBC and RPS currently increase electricity rates of the State's residents by more than 3 percent, with an increase of up to nearly 6 percent for businesses. In addition, although the RPS will receive approximately \$742 million through 2013 from the State's consumers, it has been suggested that the program lacks sufficient funding to meet its program goal of obtaining 25 percent of its electricity from renewable sources by 2013. See *The First Report of the Renewable Energy Task Force to Lieutenant Governor David A. Paterson*, Renewable Energy Task Force (February 2008) at 3-4 ("Task Force Report"). The Renewable Energy Task Force also recommended examining whether to expand the RPS target from 25 percent to 30 percent by 2015. Any increase to the current funding level of the RPS, or increase in its target, is likely to increase the cost of this program substantially, placing even greater upward pressure on electricity rates in the State. Task Force Report at 6.

²⁷ Case 07-M-0548, *Order Establishing Energy Efficiency Portfolio Standard and Approving Programs* (June 23, 2008) at 69-70.

²⁸ See *id.* at 16.

RGGI poses an even greater risk to energy costs in the State. The New York State Department of Environmental Conservation (“DEC”) and the New York State Energy Research and Development Authority (“NYSERDA” or, collectively with DEC, referred to as the “Agencies”) continue to argue, incorrectly, that the cost impacts of RGGI will be minimal. In fact, the Agencies suggest that implementation of RGGI in New York only would increase the monthly electric bills of the State’s residential consumers by approximately 0.7 percent in 2015, with increases of approximately 0.9 percent and 1.7 percent for the State’s commercial and industrial consumers, respectively.²⁹ However, the projected impacts provided by the Agencies rely upon a fundamentally flawed analysis conducted by ICF Consulting (“ICF”). The ICF analysis projected unrealistically low CO₂ emissions allowance (“Allowance”) prices based on fuel price assumptions that are well below current market prices. Continued reliance by the Agencies on the results from the ICF analysis, which ignores current market prices for fuels as well as emerging market evidence regarding the value of Allowances for 2009, is irresponsible and would jeopardize the State’s economic health.

In projecting its unrealistically low Allowance prices, the ICF analysis utilized an assumed natural gas price of approximately \$7 per MMBtu and oil prices of only approximately \$35 per barrel.³⁰ In reality, the current price of natural gas exceeds \$12 per

²⁹ DEC, *Regulatory Impact Statement: 6 NYCRR Part 242, CO₂ Budget Trading Program*, at 51-52, available at http://www.dec.ny.gov/docs/air_pdf/08242ris.pdf (hereinafter, “DEC RIS”).

³⁰ ICF, *Assumption Development Document: Regional Greenhouse Gas Initiative Analysis*, at 33-40, available at http://www.rggi.org/docs/ipm_assumptions_2_10_05.ppt.

MMBtu³¹ (*i.e.*, nearly double the assumed price used by ICF) and oil prices exceed \$125 per barrel (*i.e.*, more than 3.5 times greater than the assumed price used by ICF), and more recently have exceeded \$140 per barrel.³²

Furthermore, the ICF analysis predicted Allowance prices resulting from the auction will range from approximately \$2 per ton in 2009 increasing to approximately \$5 per ton in 2024.³³ These projected Allowance prices are significantly below the current market view as to the value of Allowances. In fact, the first trade for vintage 2009 Allowances was conducted at \$7 per ton (*i.e.*, nearly 3.5 times greater than the assumed 2009 Allowance price projected by ICF and nearly 1.5 times greater than the highest Allowance price projected by ICF).³⁴ Moreover, the price of vintage 2009 Allowances has increased with each successive trade, and, in just three months since the first trade, has increased nearly 30 percent to approximately \$9 per ton (*i.e.*, nearly 4.5 times greater than the assumed 2009 Allowance price projected by ICF and nearly double the highest Allowance price projected by ICF).³⁵

³¹ New York Mercantile Exchange (“NYMEX”), *Natural Gas Session Overview*, available at http://www.nymex.com/ng_fut_cso.aspx.

³² NYMEX, *Light Sweet Crude Oil Session Overview*, available at http://www.nymex.com/lSCO_fut_cso.aspx.

³³ ICF, *RGGI Package Scenario* (updated October 11, 2006), available at http://www.rggi.org/docs/packageScenario_10_11_06.xls (hereinafter, “ICF RGGI Modeling”).

³⁴ Evolution Markets, *Koch Supply & Trading LP, Texas Environmental Partners, Complete Landmark RGGI Carbon Allowance Trade* (March 18, 2008), available at http://new.evomarkets.com/pdf_documents/Evolution%20Brokers%20First%20RGGI%20Allowance%20Trade.pdf.

³⁵ Argus Media Inc., *Argus Air Daily* (June 6, 2008), at 1, available at <http://www.argusmediagroup.com>.

Analysis and recent experience suggest that more reasonable Allowance prices, in the range of \$7 per ton to \$30 per ton, should be used to provide a more realistic estimate of the consumer impacts associated with implementing RGGI in New York.³⁶ When these more realistic Allowance price levels are utilized, it becomes evident that RGGI could increase electricity rates for the State's residents by up to 7 percent, with increases of up to 17 percent for New York businesses (*i.e.*, in both cases, over 10 times greater than the impact projected by the Agencies).³⁷ It is important to note that a recent report concluded that an increase in electricity rates by more than 5 percent, due to the implementation of CO₂ emissions controls, would pose significant economic concerns, especially for energy-intensive manufacturing and industrial consumers.³⁸ Logically, electricity rate increases of

³⁶ A recent study concluded that the price of Allowances could exceed \$20 per ton during the first control period. See New Carbon Finance, *Regional Greenhouse Gas Allowances: Going, Going, Gone?* (North America Research Note – November 2007) at 8, available at <http://www.newcarbonfinance.com>. Moreover, the average price of CO₂ allowances in the European Union Greenhouse Gas Emission Trading Scheme (“EU ETS”), the largest cap-and-trade program for CO₂ emissions in the world, exceeded \$20 per ton in each of its first two years. See The World Bank, *State and Trends of the Carbon Market 2007* (May 2007) at 11, available at http://carbonfinance.org/docs/Carbon_Trends_2007_FINAL_-_May_2.pdf. Furthermore, the EU ETS CO₂ allowance price soared to over \$30 per ton in 2007, and analysts have projected that the EU ETS allowance price will range between approximately \$41 per ton and \$74 per ton through 2012. See The World Bank, *State and Trends of the Carbon Market 2008* (May 2008) at 7, 9, available at http://carbonfinance.org/docs/State___Trends--formatted_06_May_10pm.pdf.

³⁷ Importantly, as proposed currently, there are no protections within the Agencies' proposed regulations to implement RGGI that would prevent the Allowance prices from going even higher than these more reasonable estimates.

³⁸ Gardner and Hendrickson, *Carbon Wargames: U.S. Utilities Gain Strategic Insights by Playing Out a Carbon-Constraint Scenario* (December 2007) at 51, available at http://www.iso-ne.com/pubs/pubcomm/forums/2008/rggi_forum_jan312008/Carbon_wargames.pdf.

more than triple this 5 percent threshold, as are possible with RGGI, would be disastrous to the State's consumers and economy.

RECOMMENDATIONS

The preceding Initial Comments highlight Multiple Intervenors' concern that unrestricted and uncoordinated spending in pursuit of policy goals – however worthwhile each goal might appear to be – would hurt New York homeowners, threaten the viability of New York businesses, and harm economic development within the State. These Initial Comments and Recommendations seek to ensure that the energy planning process leading up to and including the Energy Plan incorporate fully the mitigation of energy costs to business as a core value.

The Initial Comments and Recommendations of Multiple Intervenors, therefore, are offered to provide guidance on the scope of certain elements that are to be included in the Energy Plan pursuant to Governor David Paterson's Executive Order No. 2. Each Recommendation will indicate the relevant provision(s) of Executive Order No. 2 to which it applies. Multiple Intervenors respectfully offers the following recommendations for inclusion in the Scope Paper and, accordingly, for consideration in the 2009 New York State Energy Plan:

- Do not permit utility rates to increase further.³⁹

³⁹ Exec. Order No. 2, § 3(a)(iv)-(v), (l).

- **Recommendation #1:** Develop a comprehensive plan to reduce energy prices in New York State and make New York energy prices more competitive with other states.
 - **Recommendation #2:** Prioritize the implementation and funding of each energy policy initiative.
 - **Recommendation #3:** Coordinate all energy policy initiatives and include their cumulative bill impacts in their evaluation.
- Integrate a strategy for economic development into the 2009 State Energy Plan.⁴⁰ Current economic development programs are a critical benefit to those businesses that receive them. They do not meet, however, 100 percent of the need, nor allow for adequate planning. For instance, some programs involving allocations from the New York Power Authority have been extended repeatedly for only one year at a time, preventing recipients from being able to count on the programs when evaluating long-term business plans.
- **Recommendation #4:** Accept the Temporary Commission’s recommendations to establish long-term economic development power programs that will provide long-term, permanent rate relief to manufacturers.
- Examine the New York Independent System Operator, Inc. (“NYISO”) markets.⁴¹ The NYISO markets have produced record electricity prices, and there is no relief in sight.

⁴⁰ *Id.* at § 3(a)(v), (k), (l).

⁴¹ *Id.* at § 3(o).

Multiple unexplained price increases have occurred. In addition, market anomalies that impose hundreds of millions of dollars of increased costs on consumers often go unpunished or unexplained. For example, in 2006 and 2007, market manipulation of the New York City and, by extension, Rest of State, capacity markets was discovered but no refunds for consumers were ordered. More recently, “uplift” increased from approximately \$0.002 per kilowatthour to \$0.01 per kilowatthour, but the increase has yet to be fully explained.

- **Recommendation #5:** The State Department of Public Service should carefully examine the NYISO rules and practices, and recommend changes that would reduce energy prices.

- Encourage the expansion of cost-beneficial electric and gas transmission infrastructure.⁴²
 - **Recommendation #6:** Support price-reducing infrastructure proposals that would reduce congestion in the State and lead to lower electricity prices.
 - **Recommendation #7:** Increase the natural gas supply capacity by promoting and supporting the siting of infrastructure necessary to deliver increased volumes of natural gas and liquefied natural gas.

- Increase the generation capacity in New York State.⁴³
 - **Recommendation #8:** Revive the Public Service Law Article X to re-establish a fair, streamlined siting law that is fuel-source neutral.

⁴² *Id.* at § 3(a), (c).

⁴³ *Id.* at § 3(a), (c), (k).

- **Recommendation #9**: Ease the regulatory burden that is hindering the development of nuclear generation resources.

- Enact additional laws and regulations to facilitate the development of on-site generation and combined heat and power (“CHP”) resources.⁴⁴
 - **Recommendation #10**: Require each utility to adopt fair, cost-based standby service rates.
 - **Recommendation #11**: Require fair and cost-based charges for CHP interconnections.
 - **Recommendation #12**: Provide a tax incentive for the development of CHP resources.

⁴⁴ *Id.* at § 3(f), (l).

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 Scope Paper and, ultimately, the 2009 State Energy Plan.

Dated: July 8, 2008
Albany, New York

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael B. Mager". The signature is written in a cursive style and is positioned above the typed name.

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