



**NEW YORK STATE ENERGY PLANNING BOARD
ENERGY COORDINATING WORKING GROUP**

**COMMENTS OF MULTIPLE INTERVENORS
REGARDING THE 2009 NEW YORK STATE
ENERGY PLAN INTERIM REPORT**

Dated: May 15, 2009

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TABLE OF CONTENTS

Page

PRELIMINARY STATEMENT 1

POINT I

THE INTERIM REPORT COMPLETELY IGNORES THE ENORMOUS STRAIN THAT EXISTING STATE ENERGY AND ENVIRONMENTAL POLICIES PLACE ON THE STATE’S RESIDENTS AND BUSINESSES..... 2

POINT II

THE INTERIM REPORT IS INADEQUATE BECAUSE IT FAILS TO ANALYZE THE POTENTIAL ENERGY COST IMPACTS ASSOCIATED WITH IMPLEMENTING ITS RECOMMENDATIONS 10

POINT III

THE ENERGY PLAN SHOULD ENCOURAGE ECONOMIC DEVELOPMENT AND BUSINESS RETENTION AND GROWTH..... 14

CONCLUSION 17

PRELIMINARY STATEMENT

Pursuant to the notice posted on the website of the New York State Energy Planning Board (“Board”), Multiple Intervenors hereby submits these comments regarding the 2009 New York State Energy Plan Interim Report dated March 31, 2009 (“Interim Report”).¹

Multiple Intervenors supports sound and reasonable energy and environmental initiatives, including initiatives aimed at increasing energy efficiency and reducing greenhouse gas emissions. In fact, Multiple Intervenors’ members, collectively, have invested tens of millions of dollars and substantial other resources in order to increase the efficiency of their individual operations, thereby reducing the “carbon footprint” of their respective facilities. However, the Interim Report fails to adequately account for the cost burden placed on energy consumers by current State energy and environmental initiatives, or the significant costs associated therewith. Moreover, Multiple Intervenors has grave concerns that recommendations set forth in the Interim Report, if implemented, would lead to significant, additional costs for all of the State’s energy consumers. As set forth below, the objectives established by Governor Paterson to guide the development of a statewide energy plan did not authorize unfettered, incremental spending but, rather, mandated consideration of cost impacts to consumers and development of a plan ensuring energy affordability.

¹ Multiple Intervenors is an unincorporated association of approximately 50 large industrial, commercial, and institutional energy consumers with manufacturing and other facilities located throughout New York State. Multiple Intervenors previously submitted comments to the Energy Coordinating Working Group on July 8, 2008 regarding the development of a statewide energy plan by the Board.

The Interim Report exhibits an abject failure to appreciate that many public policy initiatives, regardless of their intended benefits, significantly increase the cost of energy to consumers – a population already overburdened by exorbitant energy costs. Absent any meaningful analysis of the costs associated with the investments/initiatives recommended by the Interim Report, parties are hampered in their ability to provide substantive comments regarding such recommendations. The draft 2009 New York State energy plan (“Draft Plan”) must rectify this fundamental shortcoming and include a full and fair evaluation of the costs/benefits of each recommendation and the resulting impacts on energy prices.

The Board must correct the fundamental flaws in the Interim Report by ensuring that the Draft Plan addresses three priorities: (i) energy affordability; (ii) energy cost reduction (or, at a minimum, cost containment); and (iii) encouraging economic development, business growth and retention, and job creation. Only by first acknowledging, and then alleviating, the significant burden that energy costs place on the State’s consumers will the Board be able to craft an energy plan that helps New York emerge from the current, deep economic recession.

POINT I

THE INTERIM REPORT COMPLETELY IGNORES THE ENORMOUS STRAIN THAT EXISTING STATE ENERGY AND ENVIRONMENTAL POLICIES PLACE ON THE STATE’S RESIDENTS AND BUSINESSES

The Interim Report is wholly inadequate because it fails, in any meaningful way, to evaluate the significant burden that energy costs already place on consumers,

businesses, and the State as a whole. New York already has implemented many public policy initiatives aimed at the energy sector. Among the policy initiatives already implemented by the State are the Regional Greenhouse Gas Initiative (“RGGI”), the Energy Efficiency Portfolio Standard (“EEPS”), the System Benefits Charge (“SBC”), and the Renewable Portfolio Standard (“RPS”). Collectively, these initiatives are estimated to cost electricity consumers more than \$800 million in 2009 alone, comprise at least 10 percent of an average energy consumer’s bill, and exact an even higher toll on the State’s businesses and industries.

New York consumers currently pay some the highest electricity prices in the entire country. In fact, the State’s electricity consumers pay, on average, approximately 70 percent more than the national average for electricity.² This price disparity places an undue burden on all State consumers. The price of electricity, inclusive of the additional costs resulting from the public policy initiatives, places New York businesses at a significant competitive disadvantage with respect to businesses in other regions and nations. This price disadvantage is especially impactful on manufacturers and other energy-intensive businesses, many of which are struggling to maintain operations in the State when lower-cost alternative locations are readily available.

Given the energy-intensive nature of manufacturing and other commercial and industrial processes, high energy prices hamper efforts to retain jobs and thwart economic development in the State due to the significant costs associated therewith. The

² Energy Information Administration (“EIA”), *Average Retail Price of Electricity to Ultimate Customers by End-Use Sector, by State*, available at http://www.eia.doe.gov/cneaf/electricity/epm/epmxmlfile5_6_a.xls.

manufacturing industry represents a critical component of the State's economy. Nearly 500,000 individuals in New York are directly employed in manufacturing, representing nearly 10 percent of all private sector jobs in the State.³ Moreover, in 2007, manufacturing contributed more than \$66 billion to the total gross domestic product for New York State.⁴ Governor Paterson has recognized the importance of manufacturing to the State, and has announced policies to encourage the further growth of the manufacturing sector in New York. Specifically, the Governor has stated that "New York State is committed to supporting the needs of manufacturers. . .that want to invest and grow in Upstate. At a time when our State's economy has tightened dramatically, [manufacturing] investment is critical for New York's economic development."⁵

However, despite its importance to the State's economic well-being, the manufacturing industry in the State has declined sharply in recent history. In fact, between 1997 and 2007, job growth in the manufacturing sector in New York ranked third worst in the country.⁶ During this period, New York lost more than 169,000 jobs from the

³ The Public Policy Institute of New York State, Inc., *Monthly Economic Update – Latest Job Statistics for New York* (March 2008), available at <http://www.ppiny.org/nyecon/stats.pdf> (hereinafter, "New York Jobs Report").

⁴ Bureau of Economic Analysis, *Gross Domestic Product by State*, available at <http://www.bea.gov/regional/gsp/>.

⁵ *Governor Paterson Announces Major Economic Development for New York's Southern Tier* (August 6, 2008), available at http://www.state.ny.us/governor/press/press_0806082_print.html.

⁶ The Public Policy Institute of New York State, Inc., *Manufacturing Employment Growth, 1997-2007*, available at <http://www.ppiny.org/reports/jtf/manufacturingemployment.html>.

manufacturing sector.⁷ This trend has continued recently, as the State lost an additional 37,000 manufacturing jobs between March 2008 and March 2009.⁸ High energy prices are a significant contributor to this mass exodus of jobs from the State. As explained by The Dow Chemical Company's Chairman and Chief Executive, Andrew Liveris, "even more than high labor costs, runaway energy prices are pushing manufacturing jobs overseas."⁹

A significant component of the ever-increasing cost of energy in New York is the "hidden" costs associated with public policy initiatives. Regardless of the claimed benefits associated therewith, energy and environmental initiatives implemented in New York have significantly increased the cost of energy. Four such initiatives are RGGI, the EEPS, the SBC, and the RPS. Although the Interim Report touts the benefits of such programs, it fails to quantify, or even mention, the significant costs and rate impacts associated with these initiatives. As set forth below, based on estimates, this is a more than \$800 million annual oversight that renders the Interim Report wholly inadequate as the basis for making any informed decisions about the proper energy initiatives for the State to implement.

The current annual collection of \$175 million annually from the SBC results in

⁷ *Id.*

⁸ New York Jobs Report.

⁹ Associated Press, *Dow CEO Blames Energy Costs for Job Losses* (October 30, 2006), available at <http://www.secureourenergy.com/natural-gas-news/Dow-CEO-Blames-Energy-Costs-for-Job-Loss>.

electric rate increases in the range of nearly 2% to 4%, depending on customer-type (*i.e.*, residential, commercial, or industrial), with an average electric rate increase of more than 2%.¹⁰ In addition, the currently-approved funding levels of the RPS results in an average electric rate increase of nearly 2%.¹¹

In addition, based on the New York State Public Service Commission's ("PSC") prior estimates of the electricity cost increases associated with the SBC and the fact that the annual initial funding level for the EEPS is to be collected in the same manner as the SBC, the \$330 million approved annual EEPS funding will result in an incremental increase in electricity rates ranging from approximately 3% up to more than 6%, depending on the customer-type, with an average electric rate increase of nearly 4.5%.

Moreover, based on the prior analysis relied upon by the New York State Department of Environmental Conservation ("DEC") and the New York State Energy Research and Development Authority ("NYSERDA") and the current RGGI allowance clearing price of \$3.51 per ton for vintage 2009 allowances, RGGI increases the cost of electricity to consumers by approximately 1% to 2%, depending on customer-type, with an

¹⁰ See Case 94-E-0952, *In the Matter of Competitive Opportunities Regarding Electric Service*, Order Continuing and Expanding the System Benefits Charge for Public Benefit Programs (issued January 26, 2001), at 25 (hereinafter, "SBC Order").

¹¹ See Case 03-E-0188, *Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard*, Status Report on Implementation of the Renewable Portfolio Standard Program (August 9, 2007) at 4-5. Those electric rate impacts relate only to the currently-approved RPS funding levels, and do not account for the substantial amount of additional funding that would be necessary to achieve even more ambitious RPS goals.

average electricity increase of approximately 1.3%.¹²

Thus, as demonstrated in Table I below, cumulatively, the current estimated cost of the State’s own programs – EEPS, RGGI, SBC and RPS –comprise at least 10 percent of the average customer’s electricity bill. Moreover, the impacts of the programs are even higher for New York businesses struggling to maintain operations in the State, with increases of at least 14 percent resulting from these State initiatives.¹³

		Percentage of Electricity Bill			
Public Policy/Initiative	2009 Cost	Residential	Commercial	Industrial	Average
Regional Greenhouse Gas Initiative	\$223,000,000	0.8%	1.1%	2.0%	1.3%
Renewable Portfolio Standard	\$82,000,000	1.7%	1.8%	2.2%	1.9%
System Benefits Charge	\$175,000,000	1.8%	1.7%	3.6%	2.4%
Energy Efficiency Portfolio Standard	\$330,000,000	3.4%	3.2%	6.8%	4.5%
Total	\$810,000,000	7.7%	7.8%	14.6%	10.1%

¹² See 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. This represents a very conservative estimate of the going-forward electricity rate increases associated with RGGI, especially in light of the fact that the allowance price for current vintage allowances has increased with each successive auction, resulting in a more than 14 percent increase in allowance prices since the first regional auction.

¹³ These impacts do not include the projected impact (approximately 2.0 percent) or the recent amendment to Section 18-a of the Public Service Law.

The Interim Report’s failure to assess impacts of current public policy initiatives is not consistent with the Governor’s Executive Order No. 2. As recognized by Executive Order No. 2, which established the Board, “decisions about how to meet the State’s future energy needs can have significant impacts on...energy costs, and the ability to maintain and grow the State’s economy.”¹⁴ Moreover, Executive Order No. 2 described the purpose of the statewide energy plan to be that it would “enable the State to determine its future energy needs and facilitate a deliberate, efficient, and cost-effective means of meeting those needs.”¹⁵ In developing the plan, Executive Order No. 2 specified certain requirements that the plan must include, such as: (i) “a statement of long-range energy policy objectives and strategies appropriate to increase energy supply and reduce energy demand, considering factors such as...consumer cost impact;”¹⁶ (ii) “projections of energy prices over the forecast periods;”¹⁷ (iii) “assessments of the costs...for promoting sustainable alternatives to traditional energy resources;”¹⁸ and (iv) a “comparison of energy prices...with those in other

¹⁴ Executive Order No. 2, *Establishing a State Energy Planning Board and Authorizing the Creation and Implementation of a State Energy Plan* (April 9, 2008), p. 1, available at http://www.nysenergyplan.com/presentations/EO_2.pdf (hereinafter, “Executive Order No. 2”).

¹⁵ *Id.* (emphasis added).

¹⁶ *Id.* at 2.

¹⁷ *Id.*

¹⁸ *Id.*

states that compete with New York for business.”¹⁹ The Interim Report does no more than pay lip-service to energy cost concerns.

The Interim Report also represents a departure from the current State Energy Plan, which recognized that New York’s energy costs must be competitive. The current State Energy Plan recognized that 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. Specifically, the current State Energy Plan concluded 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.²⁰

Moreover, the relationship between economic activity and reasonably-priced energy costs is strong and beyond serious dispute. The current 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”²¹ The current State Energy Plan also found that: “The increase in business profitability and consumer purchasing power that results from

¹⁹ *Id.* at 3.

²⁰ New York State Energy Plan and Final Environmental Impact Statement (June 2002) (hereinafter, “State Energy Plan”) at 2-16 (footnote omitted).

²¹ State Energy Plan at 2-15.

lower energy costs will further stimulate business investment, consumer spending, and employment growth within the State.”²²

For the reasons set forth herein, the Interim Report is woefully deficient. The Draft Plan must seek to identify solutions to rectify the problems that high energy costs impose on the State’s residents and businesses, and not simply seek to impose more costs on already-overburdened consumers.

POINT II

THE INTERIM REPORT IS INADEQUATE BECAUSE IT FAILS TO ANALYZE THE POTENTIAL ENERGY COST IMPACTS ASSOCIATED WITH IMPLEMENTING ITS RECOMMENDATIONS

The Interim Report, in derogation of the requirements established by the Governor for developing a statewide energy plan, fails to quantify, let alone justify, the potential energy cost impacts associated with the recommendations set forth therein. As noted above, Executive Order No. 2 clearly requires that a statewide energy plan must evaluate the impacts of State initiatives on the cost of energy. However, despite these clear directives, the Interim Report recommends a wide array of major initiatives and policies for the State to implement without ever evaluating the costs associated therewith.

The major energy and environmental initiatives recommended by the Interim Report would require massive amounts of revenue to implement. Moreover, these

²² *Id.*

recommendations likely would have significant, negative impacts on energy prices in New York.²³

The Interim Report contains a wide-array of recommended initiatives for the State to implement that would have a significant, yet-to-be quantified, cost impact on energy consumers. Despite the enormous cost of the current energy and environmental initiatives implemented by the State, the Interim Report appears to contemplate even more aggressive funding to transform the State's economy entirely. For example, the Interim Report recommends a complete transformation of the State's economy to a "clean energy economy."²⁴ This transformation would require substantial investment in work force development, as well as attracting clean and advanced energy technology manufacturers and businesses to the State. Clearly, a complete transformation of the State's economy to develop an entirely new sector thereof would have a significant cost impact; however, the Interim Report fails to mention how this transformation would be funded, or the impacts such funding would have on businesses in the State already struggling to survive. As the Board is well aware, renewable generation and energy efficiency projects already are subsidized heavily by consumers.

²³ As noted above, current energy and environmental initiatives implemented by the State already are scheduled to comprise, on average, fully 10 percent of the average consumer's electricity bill, with even greater impacts on businesses struggling to survive in the State.

²⁴ Interim Report at 4-1.

The Interim Report also recommends the development and implementation of initiatives to further reduce greenhouse gas emissions in New York.²⁵ Specifically, the Interim Report recommends the extension of greenhouse gas reduction strategies, beyond just the electric generation sector covered by RGGI, to all sectors of the State's economy. Based on the experience of RGGI, which is a very limited greenhouse gas emissions reduction program, the expansion of such policies to include all sectors of the State's economy would have untoward impacts on businesses in the State already paying for RGGI and otherwise struggling to survive. Again, the Interim Report fails to even recognize the existence of such impacts.

The Interim Report recognizes the need for investment in both new natural gas and electricity transmission infrastructure in order to meet the energy needs of the State.²⁶ Past experience has shown that such investments often are costly and can place significant additional cost burdens on energy consumers. Despite these potential cost impacts, the Interim Report includes no discussion or analysis of the consumer-cost impacts of such infrastructure expansions, nor to what extent consumers would be responsible for such costs.

The Interim Report further recommends substantial alterations of the transportation system in New York, including expansion of public transit, increased utilization of plug-in hybrid electric vehicles, and development of biofuels.²⁷ Multiple Intervenors fails to comprehend how such initiatives could be implemented absent significant

²⁵ *Id.* at 4-6 and 4-13.

²⁶ *Id.* at 4-8 and 4-10.

²⁷ *Id.* at 4-9.

costs. Here again, although the Interim Report is quick to recommend substantial new initiatives, it fails to provide any guidance on the costs or energy price impacts associated therewith.

Given the severe economic recession and New York's fiscal woes, the State should be taking all reasonable actions to moderate, and reduce, the growing financial burdens associated with high energy prices in the State. Executive Order No. 2 embraces this goal, by requiring extensive analysis of the cost-impacts of all energy and environmental initiatives of the State and development of cost-effective means to meet the State's energy needs. Despite the clear directives of Executive Order No. 2, however, the Interim Report recommends implementation of a vast array of initiatives and substantial restructuring of the State's economy in the absence of any analysis of the costs associated with such recommendations.

For the reasons set forth herein, the Board must ensure that the fundamental flaws of the Interim Report are rectified by including in the Draft Report detailed information regarding current energy prices, as well as both the individual and cumulative cost impacts of all recommended initiatives and actions contained therein. Furthermore, the Board should develop the Draft Plan in accordance with the requirements of Executive Order No. 2, in a manner that reduces, or, at a minimum, contains, energy costs to consumers. Exorbitant energy prices are a significant contributing factor to the plight of businesses struggling to survive in New York. Policies that further escalate these costs will have significant negative implications for the State's businesses, residents, and economy.

POINT III

THE ENERGY PLAN SHOULD ENCOURAGE ECONOMIC DEVELOPMENT AND BUSINESS RETENTION AND GROWTH

The Interim Report recommends a radical transformation of the State's economy in order to embrace a new "green economy."²⁸ However, the Board and policymakers must recognize that such a transformation will not displace all other economic activity in the State, particularly in the short term.²⁹ Rather, such a new economic sector should be more properly viewed as a supplement to the State's current economic infrastructure. Accordingly, in developing the Draft Plan, the Board must expand the Interim Report to better address the needs of the State's current economic infrastructure, including the development of additional strategies to ensure not only business and job retention, but, also, expansion of existing business operations to provide a catalyst to the State's ailing economy.

The Interim Report does include a small section that focuses on these considerations. Specifically, the Interim Report recommends restructuring of the economic development programs administered by the Power Authority of the State of New York ("NYPA"), which provide electricity to businesses throughout that State that support more

²⁸ *Id.* at 4-1.

²⁹ For example, the manufacturing sector accounts for nearly 10 percent of all private sector jobs in the State and contributed more than \$66 million to the State's gross domestic product in 2007.

than 420,000 jobs.³⁰ While this is an appropriate first step to take, in developing the Draft Plan the Board should greatly expand the scope of this recommendation to include the development of additional strategies and incentives to promote both economic development and job retention by current businesses and industries struggling to survive in the State.

The cost of doing business in New York is far greater than the national average. In fact, New York recently was ranked as having the second highest cost of doing business in the nation, with high energy costs being a significant driver.³¹ Moreover, it has been estimated that the cost of doing business in New York is more than \$5,000 greater for every private sector job than the national average, with energy costing nearly \$7 billion more statewide per year than the national average.³² In addition, CEOs recently ranked New York as the second worst State for job and business growth for the fourth consecutive year.³³ Given these staggering statistics and the energy-intensive nature of manufacturing and other commercial and industrial processes in the State, it is clear that in developing the Draft Plan, the Interim Report should be expanded to recommend additional strategies and programs to relieve the financial strain that high energy prices places on existing businesses in the State.

³⁰ *Id.* at 4-12.

³¹ The Public Policy Institute of New York State, Inc., *Milken Institute 2007 Cost-of-Doing-Business Index*, available at <http://www.ppiny.org/reports/jtf/costbusiness.html>.

³² The Public Policy Institute of New York State, Inc., *Benchmark New York State – 2007 Edition*, p. 1, available at <http://www.ppiny.org/nyecon/benchmarkNYS.pdf>.

³³ Chief Executive Magazine, *CEOs Select Best, Worst States for Job Growth and Business* (March 25, 2009), available at <http://www.chiefexecutive.net/ME2/dirmod.asp?sid=&nm=&type=Publishing&mod=Publications%3A%3AArticle&mid=8F3A7027421841978F18BE895F87F791&tier=4&id=D8BB1C4F12AE46EF9B7647E09E3253A6>.

Incentives and programs targeted to existing businesses and industries in the State that seek to contain the ballooning cost of energy will be essential to the State's economic recovery in the near term. Therefore, the Board should look beyond just the current economic development programs administered by NYPA, and include within the Draft Plan a recommendation to develop innovative incentives and programs to be deployed throughout the State that seek to lower the cost of doing business in the State, thereby encouraging growth by existing businesses and job retention.

A renewed commitment to creating a "business-friendly" environment is essential in developing programs that foster and encourage growth of the State's existing businesses and industries, while encouraging others to develop and site new operations in New York. Absent a clear indication in the Draft Plan evincing New York's commitment to containing runaway energy prices and fostering business and job retention in the State, New York will be unable to shed the current highly-negative perception of the business community regarding opportunities for doing business in the State. The lack of any such recommendations in the Interim Report represents a fundamental shortcoming that must be remedied in the development of the Draft Plan if the Board intends to meet the requirements of Executive Order No. 2 to develop a statewide energy plan that focuses on energy affordability and mitigating consumer-cost impacts of energy and environmental initiatives.

CONCLUSION

For all the foregoing reasons, Multiple Intervenors respectfully submits that the Board must vigilantly consider the cost impacts of all recommendations to be included in the 2009 New York State Energy Plan. Moreover, the 2009 New York State Energy Plan should be developed with the primary goals of: (i) ensuring affordability of energy to consumers; (ii) minimizing consumer-cost impacts to the greatest possible extent; and (iii) encouraging economic development, business growth and job retention in the State.

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