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April 30, 2008

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

***Re: Case 07-E-0949 – Orange & Rockland Utilities, Inc. – Electric Rates***

Dear Secretary Brillling:

In accordance with the schedule adopted in this proceeding, enclosed for filing with the Commission please find the original and ten (10) copies of the *Statement on the Joint Proposal of the Retail Energy Supply Association*.

Thank you for your assistance in this matter.

Respectfully submitted,

Retail Energy Supply Association

By: *Usher Fogel, Counsel*  
Usher Fogel, Counsel

Cc: Hon. Gerald Lynch (by electronic mail)  
Service List (by electronic mail)

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

**Case 07-E-0949 – Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Orange and Rockland Utilities, Inc. for Electric Service**

**STATEMENT ON THE JOINT PROPOSAL OF THE  
RETAIL ENERGY SUPPLY ASSOCIATION**

**I. PRELIMINARY STATEMENT**

On April 18, 2008, a Joint Proposal (“JP”) in the above-captioned proceeding was filed with the Secretary to the Public Service Commission. The signatory parties included Orange & Rockland Utilities, Inc. (“O&R”), Department of Public Service Staff (“Staff”), and other parties representing a spectrum of interests. The Retail Energy Supply Association<sup>1</sup> (“RESA”) was an active participant in the negotiations leading to the development of the JP, and was a signatory to the final JP filed with the Secretary. RESA respectfully submits that, except as to the matter relating to expansion of mandatory hourly pricing (“MHP”), the JP constitutes a reasonable settlement of the issues raised in the proceeding and should be approved by the Commission.

**II. THE JP REASONABLY ADDRESSES MANY OF THE ISSUES RAISED IN THIS PROCEEDING**

In assessing the reasonableness of a proposed settlement, the Commission generally considers the following standards.

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<sup>1</sup> RESA’s members include Commerce Energy, Inc.; Consolidated Edison Solutions, Inc.; Direct Energy Services, LLC; Gexa Energy; Hess Corporation; Integrys Energy Services, Inc.; Liberty Power Corp.; Reliant Energy Retail Services, LLC; Sempra Energy Solutions, LLC; Strategic Energy, LLC; SUEZ Energy Resources NA, Inc., and U.S. Energy Savings Corp. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

- A desirable settlement should strive for a balance among (a) protection of the customers, (b) fairness to investors, and (c) the long term viability of the utility; should be consistent with sound environmental, social and economic policies of the Agency and the State; and should produce results that were within the range of reasonable results that would likely have arisen from a Commission decision in a litigated proceeding.
- In judging a settlement, the Commission shall give weight to the fact that a settlement reflects agreement by normally adversarial parties.<sup>2</sup>

In connection with many issues related to retail access and the fostering of competitive energy markets,<sup>3</sup> the JP, if implemented, will enhance the development of a robust competitive retail market, enhance the competitive economic framework in which ESCOs must compete against the incumbent utility, and is consistent with the established policy of the Commission favoring the growth and development of retail energy markets.

The JP generally maintains the overall retail access infrastructure and incorporates several modifications that affect in a positive manner the growth and development of the utility's retail access program. These include setting cost based merchant function charges,<sup>4</sup> developing the discount rate for the purchase of receivables program,<sup>5</sup> agreeing to prepare a report examining the feasibility of enhancing the ESCO Referral Program to include service initiations,<sup>6</sup>

The JP generally complies with the standards of settlement elucidated by the Commission.

First, it properly balances the interests of all interested parties. By fostering competitive choice through the provisions incorporated in the JP, ratepayers will reap the benefits of having the ability to choose a supplier that best suits their economic needs without impairing the financial health of O&R and by aiding retail access development, the Company will help ensure the development of fully competitive

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<sup>2</sup> Case 90-M-0255, et al, - Proceeding on Motion of the Commission Concerning its Procedures for Settlement and Stipulation Agreements, filed in Case 11175, - Opinion, Order and Resolution Adopting Settlement Procedures and Guidelines, Opinion No. 92-2 (issued March 24, 1991), Appendix B at 8.

<sup>3</sup> This does not apply to the matter of MHP expansion more fully discussed below.

<sup>4</sup> JP, pp. 6-7.

<sup>5</sup> JP, pp. 14-15.

<sup>6</sup> JP, p. 21.

retail markets. In this regard, the Commission’s long-standing policy declares that “the best way to ensure just and reasonable rates for commodity and customer services is to establish conditions for fully competitive commodity and customer services markets.”<sup>7</sup>

Second, the JP comports with the Commission’s policy favoring the growth and development of robust competitive energy markets.<sup>8</sup> In the Statement of Policy the Commission observed that one of the most efficient and powerful tools the Commission could use to meet its public charge to ensure the provision of safe and reliable energy at just and reasonable rates was the development of competitive markets.<sup>9</sup>

Third, as the JP is supported by a highly diverse group of parties, the provisions dealing with retail access reflect agreement among “normally adversarial parties”. In addition to Staff and the Company, the JP is supported by parties representing various interests. The number and disparate interests represented by the Signatory Parties demonstrates that the JP positively bridges the gap between parties of diverse views and concerns, thereby producing a settlement which forges agreement among normally adversarial parties.

### **III. THE JP FAILS TO ADEQUATELY ADDRESS THE MATTER OF EXPANSION OF MHP SERVICE**

The O&R tariffs currently provide that MHP<sup>10</sup> service is applicable to commercial and industrial customers with a minimum demand of 1,000 kW during any 2 months of the prior 12 month period.<sup>11</sup> In

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<sup>7</sup> Case 04-E-0572 – Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service, Order Adopting Three-Year Rate Plan (issued March 24, 2005), p. 49.

<sup>8</sup> See, Case 00-M-0504 – Proceeding on Motion of the Commission Regarding Provider of Last Resort Responsibilities, the Roles of Utilities in Competitive Energy Markets, and Fostering the Development of Retail Competitive Opportunities, Statement of Policy on Further Steps Toward Competition in Retail Energy Markets (issued August 25, 2005) (“Statement of Policy”); Case 07-E-1507 and 06-M-1017 – Order Initiating Electricity Reliability and Infrastructure Planning (issued December 24, 2007), p. 4 and p. 7 FN 17 citing Case 07-M-0458, Order on Review of Retail Access Policies and Notice Soliciting Comments (issued April 24, 2007), pp. 4-5.

<sup>9</sup> *Id.*, p. 2.

<sup>10</sup> O&R refers to such service as mandatory day-ahead pricing.

order to provide consumers with more accurate pricing signals, and enable ESCOs to offer more effective products, RESA requests that the threshold level for MHP service should, consistent with precedent, be lowered to 500 kW.

The rapid implementation of advanced metering is critical to the development of a competitive energy efficiency marketplace in New York and, in turn, to the attainment of the State's energy efficiency goals.

An important factor affecting both the ability and incentive for customers to adjust their usage of electricity is the degree to which customers are provided with timely and accurate signals concerning the market cost of electricity.<sup>12</sup> Absent access to accurate price information, it is difficult for customers to assess the real benefits and costs associated with their specific energy consumption patterns as well as the efficacy of the energy efficiency devices that will be implemented as part of the energy efficiency program.

The pricing data made available by the introduction of real time meters empowers consumers with the information necessary to make more informed choices about their energy consumption and the benefits of modifying or reducing their patterns of energy use. In addition, ESCOs need access to this data in order to develop products that meet the energy consumption needs of customers, including enhancing the ability of ESCOs to offer energy efficiency products.<sup>13</sup> Indeed, the actual benefits of many energy efficiency measures (especially those involving an element of peak shaving or demand response) cannot be delivered to customers in the absence of advanced metering.

In light of these considerations, adoption of the lower threshold to 500 kW is in the public interest, and should be adopted.

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<sup>11</sup> PSC No. 2 – Electricity, 15<sup>th</sup> Revised Leaf No. 22Y

<sup>12</sup> Case 03-E-0641 – Proceeding on Motion of the Commission Regarding Expedited Implementation Of Mandatory Hourly Pricing For Commodity Service, Order Instituting Further Proceedings and Requiring the Filing of Draft Tariffs (issued September 23, 2005) (“MHP Order”), p. 3, 6.

<sup>13</sup> MHP Order, p. 1, 3.

The matter of expanding the MHP class was recently considered by the Commission in connection with the setting of electric rates in Case 07-E-0523 for Consolidated Edison of New York, Inc. (“Con Edison”).<sup>14</sup> Therein, Con Edison had proposed to lower the demand threshold for customers required to take service under its MHP service from 1500 kW to all customers whose maximum demand is greater than 500 kW in a designated 12 month period. The Commission agreed with this effort,<sup>15</sup> noting that:

We concur with the parties’ arguments that the expansion of the MHP program should not be delayed and find that efforts to move more swiftly to hourly pricing comport with the goals expressed in the MHP Order. Accordingly, we approve the Company’s proposal to expand its MHP program to all customers whose maximum demand is greater than 500 kW in any month during an annual period ending September 30.<sup>16</sup>

The precedent established in Con Edison concerning the efficacy of moving more swiftly to hourly pricing applies equally as well to O&R a utility experiencing upward pressure on costs and also seeking to effectively implement the Commission-mandated energy efficiency goals.

However, the JP makes no provision for the enlargement of the existing O&R MHP class to include customers with demand thresholds of 500 kW or greater. Instead, unless modified, the JP would maintain the current 1,000 kW MHP standard; this adherence to the status quo would be detrimental to the best interests of ratepayers and inconsistent with recent Commission precedent on this matter.

#### **IV. CONCLUSION**

In view of the foregoing considerations, RESA generally supports the provisions of the JP, but requests that O&R be directed to lower the MHP threshold from 1,000 kW to 500 kW.

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<sup>14</sup> Case 07-E-0523 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Orange and Rockland Utilities, Inc. for Electric Service, Order Establishing Rates for Electric Service (issued March 25, 2008) (“Con Edison Order”).

<sup>15</sup> Staff also agreed with the proposal to lower the MHP threshold. Con Edison Order, p. 63.

<sup>16</sup> Con Edison Order, p. 66.

Respectfully submitted,

Retail Energy Supply Association

By: *Usher Fogel, Counsel*  
Usher Fogel, Counsel

Dated Cedarhurst, New York  
April 30, 2008