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January 25, 2008

Hon. Eleanor Stein
Hon. Rudy Stegemoeller
Administrative Law Judges
New York State Public Service Commission
Empire State Plaza
Agency Building 3
Albany, NY 12223

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

Dear Judges Stein and Stegemoeller:

This letter, in response to your "Ruling Establishing Comment Schedule" of January 11, 2008, contains the comments of the National Association of Energy Service Companies (NAESCO) on the proposal styled, an "EPS Administration Consensus Recommendation" (Consensus Recommendation), filed by Natural Resources Defense Council (NRDC), Pace Energy Project (Pace), City of New York (NYC), Association for Energy Affordability, Inc. (AEA), Consolidated Edison Company of New York, Inc. (Con Edison), Keyspan Energy Delivery New York and Keyspan Energy Delivery Long Island (KEDNY and KEDLI), National Fuel Gas Corporation (NFG), Niagara Mohawk Power Corporation d/b/a National Grid (National Grid), New York State Electric and Gas Corporation (NYSEG), Orange and Rockland Utilities, Inc. (Orange and Rockland), Rochester Gas and Electric Corporation (RG and E), and New York Power Authority (NYPA) (the Consensus Parties).

We are writing on behalf of NAESCO and a group of Demand Response Providers (DRP) and Distributed Generation and Combined Heat and Power (DG/CHP) providers who take exception to both the substance of the "consensus" recommendation, as well as the process that produced it.

NAESCO's current membership of about 75 organizations includes firms involved in the design, manufacture, financing and installation of energy efficiency and renewable energy equipment and the provision of energy efficiency and renewable energy services in the private and public sectors. NAESCO members deliver about $4 billion of energy efficiency and renewable energy projects each year – about equal to all of the energy efficiency projects delivered by all US utilities combined, according to a recent report by the Lawrence Berkeley National Laboratory. NAESCO numbers among its members some of the most prominent companies in the world in the HVAC and energy control equipment business, including Honeywell, Johnson Controls, Siemens, Trane and TAC/Tour Andover. Our members also include many of the nation's largest utilities:

Pacific Gas & Electric, Southern California Edison, New York Power Authority, and TU Electric & Gas. In addition, ESCO members include affiliates of several utilities that have a strong presence in the New York market including ConEdison Solutions, Pepco Energy Services, Constellation, PP&L and Direct Energy. Prominent national and regional independent members include Custom Energy, DMJM Harris, NORESCO, Onsite Energy, EnergySolve Companies, Ameresco, UCONS, Chevron Energy Solutions, Synergy Companies, Wendel Energy Services, WESCO and Energy Systems Group. NAESCO member companies have delivered energy efficiency projects to New York institutional, government, industrial, commercial and residential customers for over twenty years and have delivered demand response, retail commodity energy supply including green power products, and renewables since the transition in the New York market to retail competition in the late 1990s.

NAESCO currently serves on the New York System Benefits Charge Advisory Group, multiple Program Advisory Groups for the California utility energy efficiency programs, the Energy Efficiency Task Force of the Western Governors Alliance, and the Leadership Group of the National Action Plan for Energy Efficiency. NAESCO participated in Working Groups I and II in the EPS proceeding and authored a section of the Working Group I report delivered on December 14, 2007.

The signatory DRP and DG/CHP providers include EnerNOC, ConsumerPowerline, Energy Curtailment Specialists, Innoventive Power, Energy Spectrum, Endurant Energy, Intelligen, Energy Concepts and DSM Engineering. In aggregate these companies represent about 50 DG and CHP projects in New York and the large majority of the demand response capacity enrolled by DRPs in New York. According to a recent report by the NYISO, DRPs currently sponsor 62.3%, more than 1,000 MW, of the total demand response capacity available to the NYISO.

The combined experience of the signatory parties gives us a basis for making our comments on the Consensus Recommendation, as follows:

1. The DRPs DG/CHP providers and NAESCO were not meaningfully consulted in the development of the Consensus Recommendations. None of the DRPs or DG/CHP providers were even contacted by the sponsors of the Consensus Recommendations, while NAESCO was given the Recommendations to review only when they were substantially complete and none of NAESCO's suggested revisions were included in the Recommendations submitted to the Commission.
2. NAESCO assumed, when it reviewed drafts of the Consensus Recommendations several weeks ago, that NYSERDA fully supported the Recommendations. We have since learned that our assumption was not correct. Apparently the stage is now set for a contest before the Commission between NYSERDA and the Consensus Parties about who will administer energy efficiency programs in New York. Our perspective on this contest is that it pits arguably the best program administrator in the country (NYSERDA) against a set of utilities that, with the exception of NYPA, have had limited or unsuccessful energy efficiency program administration experience in New York during the past decade. The onus is thus

on the Consensus Parties to demonstrate why they would be better administrators than NYSERDA.

3. Achieving the Governor's goal of "15 by 15" will require the cooperative efforts of all stakeholders in the current EPS proceeding, plus millions of customers and thousands of vendors who have not been part of the proceeding. The Consensus Recommendations fail to show how they will bring major new resources to the table to build on the current foundation of the NYSERDA Energy $mart programs and the NYPA programs for public buildings in order to dramatically increase the implementation of energy efficiency in New York. In our initial comments in the EPS proceeding, we welcomed the idea that utilities would bring capabilities to the "15 by 15" effort that would supplement those of NYSERDA, particularly the assembly of innovative packages of gas and electric energy efficiency, demand response and DG/CHP measures targeted at specific customer groups in their service territories who have not yet been reached by NYSERDA programs. The Consensus Recommendations appears to offer no such new initiatives but rather to propose the transfer of successful programs for end-use customers from NYSERDA administration to utility administration and to promise the development of programs through a strategic planning process. Based on the history of program administration switches in states like New Jersey and Wisconsin, this seems likely to disrupt the current production of major NYSERDA programs, with little obvious benefit in extending program reach.

4. The proposed Partnerships neglect to include a Program Review Board (PRB) such as the current SBC Advisory Group, which would facilitate the necessary cooperation between stakeholders. The achievement of the "15 by 15" goal will require sufficient input from both providers (EE, DR, and DG/CHP) and customers to enable programs to penetrate market segments, such as large commercial buildings and upscale multi-family residential buildings, in which neither utilities a decade ago or NYSERDA today has had much success. The design of EE programs can be tricky, because relatively small design changes can make the difference between program success and failure. For example, the NYSERDA Enhanced Commercial Industrial Performance Program (ECIPP), the single largest program in the NYSERDA portfolio, had essentially zero participation in its first year. At the end of the year, NAESCO worked with NYSERDA to make some modest program changes, and the program was fully subscribed in six months. It has remained fully subscribed for seven years and the PSC Staff, in its Fast Track filing, recommended approximately quadrupling ECIPP funding. Participation by all stakeholders in the program design process from the start is critical to making programs successful.

5. The focus at this juncture in the planning process should not be on radically changing administrative responsibilities, since a cost-effective and competent program administration structure is already in place. Instead, the focus of the Consensus Recommendations should be on the identification of new program ideas to extend the reach and expand the participation of the broadest range of customer groups. The Consensus Recommendations fail to address the critical issues behind meeting the Governor's "15 by 15" objectives -- how best to

leverage existing programs and design new programs that reach out to ratepayers not currently participating in the existing programs. This should be the focus of the Consensus Parties. Switching administration now and planning programs later does not appear to be a sound approach to establish a framework for meeting the challenges of "15 by 15".

6. The Consensus Recommendation contains no explicit commitment to retain and expand successful NYSERDA Energy $mart programs. Many of these programs have been carefully nurtured for a decade to their current level of superior productivity and cost-effectiveness. The private sector has built an infrastructure in New York that is unmatched in any state in the country (*e.g.*, about 200 ESCOs have participated in the ECIPP, providing more than $600 million in private energy efficiency and clean distributed generation investment in New York). This infrastructure is based on a cooperative, adaptable and transparent working relationship with NYSERDA.

7. NYSERDA and the provider industry (DRP, DG/CHP and EE) have learned a great deal implementing the energy efficiency provisions of the 2005-2008 ConEd Rate Plan. The NYSERDA administered System Wide Program (SWP) has delivered about 169 MW through November 15, 2007, including DG/CHP, DRP, EE and integrated measures, at a cost significantly under the program budget. Any proposed governance changes should not end or curtail the momentum of the SWP program.

8. Recent utility program initiatives, such as the ConEd Targeted program and the LIPA RECAP program, have been more expensive, less transparent and less productive in producing energy savings than comparable NYSERDA programs. Given this history, the lack of an explicit commitment to retain the successful NYSERDA programs and to maintain the productive and transparent relationship that NYSERDA has built with the private sector (thereby successfully leveraging private sector investment) seems to us to be a very significant deficiency in the Consensus Recommendations.

9. The Consensus Recommendations contains no explicit acknowledgement of the central role that ESCOs, DRPs and DG/CHP providers have played in the actual deployment of successful EE and DR programs over the last decade, nor does it recognize that this role must continue if the state is to have any possibility of achieving "15 by 15".

10. The apparent lack of agreement between the Consensus Parties and NYSERDA on governance issues leads to a major question of where the utilities will get the personnel they would need to administer programs. The entire energy efficiency field – ESCOs, utilities, state regulatory agencies and consulting firms – is severely constrained by the shortage of skilled personnel. Again based on our experience in other states, we would expect that it would take <u>at least</u> two years for the utilities to hire and train sufficient staff to be able to run programs to match current NYSERDA program production. It would then be 2010 or 2011 and we would be no closer than we are today to meeting the "15 by 15" goal. In

the absence of full cooperation between the utilities and NYSERDA, it seems likely that a decade of successful NYSERDA staff and contractor experience would be frittered away.

11. The Consensus Recommendations do not appear to make any mention of the cost of the proposed program administration. We suggest that NYSERDA costs be used as the benchmark for program administration costs, particularly the administration of existing NYSERDA programs. If utilities are proposing higher administrative costs, the onus should be on them to demonstrate that their programs achieve proportionally higher results to justify the higher costs. In any case, the Commission should not, in our opinion, agree to a prospective increase in administration costs, but rather a retrospective reimbursement, based on a formula that links increased administrative costs to demonstrated increases in energy savings achieved by programs.

12. NYSERDA, the Partnerships and the program administrators should submit progress reports at least quarterly, if not bi-monthly, to their PRBs, which would then forward the reports to the PSC. The PSC last year moved the current SBC AG from annual to quarterly reports, and the EPS programs will need closer monitoring because the targets are more aggressive. The PRBs should have some dedicated staff or consultant resources to assist them in evaluating the reports.

13. We recommend that the allocation of the responsibility for achieving energy savings goals, and the use of the ratepayer funding that will be required to achieve the goals, be captured in contracts between the program participants – the PSC, the utilities, NYSERDA, third parties, etc. The contracts should be standardized, so that program administrators and implementers do not consume a lot of time negotiating them. All parties should understand that the contracts will be enforced, and that funding will be terminated and administrators replaced if programs are not achieving their goals. The Commission should require that program administrators dedicate the requisite legal staff resources, in addition to program management resources, to program expansion. Two years ago, California implemented an expansion of its energy efficiency programs on the scale of the expansion now envisioned in New York, but the program administrators (in that case utilities) did not allow for the fact that they would have to negotiate and execute hundreds of contracts with third party vendors, ESCOs and DRPs, and did not hire or assign additional legal and contracting staff to the effort. As a result of staff shortages, the start-up of some programs was delayed by almost a year (one-third of the program cycle).

14. The program administrators (NYSERDA and/or utilities) have to be given the flexibility by the PSC to move dollars from unproductive to productive programs. This can be very difficult politically for the administrators unless the PSC makes the rules clear up front.

15. The role of NYC in the Partnership should be clarified. If NYC is going to administer the programs for city buildings, it needs to be established whether NYC will be using its own funds, SBC funds, NYPA funds, other utility funds, or a combination thereof. It also needs to be resolved whether NYC is willing to serve as the primary administrator responsible for achievement of its established

goals, or whether NYC is willing to cede administration and dollars to another administrator if it cannot achieve its goals. California has had a difficult time managing Partnerships between utility program administrators and 25 or so state and local government entities. The utilities have committed substantial funding to the Partnerships, some of which are not productive, but withdrawing committed funding from a public entity is very problematic. Given this experience, we recommend that funding be committed only in small increments, with additional increments based on production. Thus, a program that has the potential to productively use $100 million over several years would begin with a commitment of only a few million dollars, not the whole $100 million.

16. The Commission should establish a very clear set of rules, based on a consensus of the stakeholders, about the participation of unregulated utility affiliates in programs administered by utilities. New York had unfortunate experiences with this issue during the 1990s. Our default position on this issue is the one adopted by the California Public Utilities Commission several years ago – that the participation of ESCOs in programs administered by their utility affiliates be carefully regulated with respect to such issues as access to customer data, branding, and percentage of program funds available to the affiliate.

Given the above concerns, we suggest that it might be more sensible to allow NYSERDA to continue the administration of its current Energy $mart programs, expanded as recommended in the PSC Staff Fast Track proposals, while the Partnerships develop their internal procedures, Strategic Plans and Implementation Plans as outlined in the Consensus Recommendations and identify or hire their core program administrative staffs. We estimate that this process will take the better part of a year. At that point, the Commission can consider how much of the EPS goals and related funding might be assigned to the Partnerships.

But right now, it appears that the choices facing the Commission are fairly stark in contrast. On the one hand it has NYSERDA, a successful, low-cost program administrator with the ability to quickly ramp up several key programs, as described in the PSC Staff Fast Track proposals and as demonstrated by the System Wide Program in the Con Edison territory established pursuant the Commission's Order in Case 04-E-0572, to begin to meet the Governor's "15 by 15" goals. On the other hand, it has the proposed Partnerships, which, if they are able to organize themselves and work together, have tremendous potential to expand the scope and reach of current New York programs. But today the Partnerships do not exist, have not demonstrated their capabilities and seem to be a year away from beginning to implement programs that can expand the scope and reach of the current Energy $mart portfolio.

We therefore urge the Commission to encourage both NYSERDA and the Consensus parties to move ahead. It should order NYSERDA to keep its Energy $mart portfolio producing at full throttle, supplemented by the proposed Fast Track proposals. It should challenge the Consensus Parties to try to assemble the Partnerships, and to develop their Strategic Plans and Implementation Plans, which the signatory parties believe should focus on programs that supplement, rather than duplicate or replace, the current NYSERDA Energy $mart portfolio. If and when the Partnerships come up to speed with demonstrated capabilities that match or exceed those of NYSERDA, then the Commission might entertain proposals from the Partnerships to transfer programs between administrators. But those transfer proposals should be based on hard facts – kWh and therms delivered at documented costs – not on trading a very successful program administrator for a complex, unproven and perhaps unnecessarily expensive administrative scheme.

We believe that if the Consensus Parties accept this challenge from the Commission, they will be pushed into a more cooperative working relationship with NYSERDA than the Consensus Recommendations currently embody. As the Consensus Parties get into the hard work of developing plans for programs that supplement the current NYSERDA programs, and try to identify and hire the new staffers they will need to implement those plans, they will, we think, confront the fact that they are better off working closely with NYSERDA rather than competing with NYSERDA.

In closing, the signatory parties thank the Administrative Law Judges and the Commission for the opportunity to submit these comments. We are committed to working with the Commission and the other stakeholders to the EPS planning process to develop and implement the next generation of energy efficiency, demand response and DG/CHP programs for New York.

Respectfully submitted by:

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