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By Electronic and Overnight Mail

New York State Energy Research and Development Authority  
Energy Plan Comments  
17 Columbia Circle  
Albany, New York 12203-6399

**Re: *New York State Energy Plan 2009***

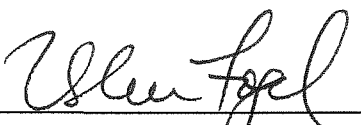
Dear Sir or Madam:

Enclosed for filing with the Energy Planning Board, please find the original and three (3) copies of the "Comments of the Small Customer Marketer Coalition on the Draft Work Scope" in the above-captioned matter.

Thank you for your assistance in this matter.

Respectfully submitted,

Small Customer Marketer Coalition

By:   
Usher Fogel, Counsel

**NEW YORK STATE ENERGY PLAN  
2009**

**COMMENTS OF THE SMALL CUSTOMER MARKETER COALITION  
ON THE DRAFT WORK SCOPE**

**I. INTRODUCTION**

These comments are submitted on behalf of the Small Customer Marketer Coalition ("SCMC") in response to the "Draft Scope of 2009 New York State Energy Plan and Public Solicitation of Comments" issued by the New York State Energy Planning Board on May 30, 2008.<sup>1</sup> SCMC appreciates the opportunity to submit these comments and provide assistance to the Energy Planning Board in its efforts to develop long-range energy policy objectives and strategies that will help chart the State's energy future.

**II. PRELIMINARY STATEMENT**

SCMC is an ad hoc coalition of energy services companies engaged in the provision and sale of electricity and natural gas at retail to residential and commercial customers throughout

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<sup>1</sup> Draft Scope of 2009 New York State Energy Plan and Public solicitation of Comments, A Working Paper for the New York State Energy Planning Board, May 30, 2008 ("Scope").

all the service territories regulated by the Public Service Commission in the State of New York and in other jurisdictions. The members of SCMC have been active in the provision of retail energy services in New York State for many years, some more than a decade and have actively participated in many relevant regulatory and statewide initiatives aimed at providing consumers with the ability to choose their supplier of energy. SCMC supports the general scope and structure of the planning process as outlined in the Scope. As formulated, it will enable the Planning Board to develop a meaningful and comprehensive assessment of the State's long-range energy requirements and supply opportunities. The comments offered below are designed to enhance the Planning Board's ability to correctly assess the factors affecting the State's energy posture, and formulate suitable policies and strategies.

**III. SCMC COMMENTS ON THE SCOPE FOR 2009 NEW YORK'S ENERGY PLAN**

**A. Program Elements, Section III (A)**

The development of long-range plans and policies should reflect the dynamic change that has affected the retail market for the provision of energy products and services in New York State. The new factor centers on the implementation, growth and continued expansion of retail access throughout the State of New York. Over the past decade, the retail market has undergone an extensive level of deregulation, which now enables customers to purchase electricity and natural gas from their supplier of choice including an Energy Service Company ("ESCO") as well as the traditional distribution utility. In the past distribution utilities served 100 percent of electric and natural gas demand of all customers on this system; today

that is no longer the case. As the Public Service Commission (“Commission”) recently reported ESCOs “... serve more than 40 percent of total consumer electricity needs.”<sup>2</sup> As of February 2008, approximately 80 ESCOs were actively supplying electricity and gas in New York to all customer classes including residential, small commercial, large commercial and industrial customers. It appears that currently approximately 43 percent, on a statewide basis, of the electricity load is being served by ESCOs reflecting approximately 16 percent of total customers in the service territories under the Commission's jurisdiction. These statistics vary by utility with Con Edison, for example, reporting that approximately 47 percent of its electric load is served by ESCOs and that during 2007 approximately 260,000 customers migrated from the utility to ESCO commodity supply service. The policy of deregulation has been successful in enabling retail markets for both electricity and natural gas to continue to grow at an unprecedented rate.<sup>3</sup> In view of these developments the Commission has concluded that the “retail energy marketplace is established in New York and is continuing to expand.”<sup>4</sup> Today customers in every utility-service territory have the opportunity not only to acquire commodity from their supplier of choice, but are also offered a plethora of different types of products including fixed, variable, hedged, green and other value added products and services such as HVAC products, that continue to be developed on a continuing basis. Customers now have choice and they are exercising it in increasing numbers.

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<sup>2</sup> Case 07-E-150, Long-Range Electric Resource Plan and Infrastructure Planning Process, *Order Initiating Electricity Reliability and Infrastructure Planning* (issued December 24, 2007), p. 7.

<sup>3</sup> Case 07-M-0458, Proceeding to Review Policies and Practices Intended to Forster the Development of Competitive Retail Energy Markets, *Order on Review of Retail Access Policies and Notice Soliciting Comments* (issued April 24, 2007), pp. 4-5.

<sup>4</sup> Id.

Further, this growth in customer choice has fueled the emergence of an ESCO industry that includes a wide range of providers from local family- owned firms to companies listed on the Fortune 500. The ESCO industry has invested significant financial and material resources in developing the infrastructure required to service its customer base in New York, thereby creating an entire industry that was non-existent only a decade ago. This new industry provides customers with choice, adds additional jobs in the State, as well as potentially enhancing the economic climate in New York.

With this paradigm shift in the retail market in New York, the analysis conducted in this long-range planning process should reflect that a significant portion of the retail load is now being served by ESCOs rather than by the distribution utility. This will entail examining the impact of retail access on the long-range needs and goals of the State, as well as reviewing the impact that potential energy policies will have upon the growing ESCO industry.

SCMC recommends that this new retail environment be reflected in the planned technical assessments and the ultimate policies established in the State Energy Plan.

**B. Issue Briefs, Section III (B)**

***1. Meeting Future Energy Needs and Energy Costs***

With respect to the important issues of meeting future energy needs and energy costs, it is recommended that the working group and the final plan focus and address whether and to what extent consumers are provided clear and accurate market price signals. The provision of accurate market-based pricing signals at all times of the year to the existing customer base will have an important impact upon the need for and development of supply projects, as well as on

the cost of electricity to consumers. In addition, it can materially impact upon the ability of the State to achieve its stated goal of providing for more efficient use of electricity throughout all sectors of the economy.

## ***2. Energy Infrastructure Needs***

In connection with energy infrastructure needs, SCMC urges the comprehensive consideration of the use and implementation of advanced metering equipment for retail electricity sales in all utility service territories. Such an infrastructure development combined with the resulting information being available to consumers and their suppliers (such as ESCOs), will provide consumers with needed and valuable information that is currently available only to the largest customers. With timely pricing information in hand, the potential exists to:

- Forestall or minimize the need for the construction of new generation,
- Lower peak demand on utility systems,
- Enhance the ability and incentive for consumers to conserve and use electricity more efficiently, and
- Mitigate potential price increases.

## ***3. Siting New Energy Infrastructure***

As part of the analysis, there should be careful review of whether and to what extent there is need to establish a new Article X Siting Law that would allow for a one-stop forum for permitting of generation facilities.

IV. **CONCLUSION**

SCMC appreciates the opportunity to submit these comments and looks forward to working with the Planning Board in formulating the State Energy Plan.

Respectfully submitted,

Small Customer Marketer Coalition

By: *Usher Fogel, Counsel*

Usher Fogel, Counsel

Dated: July 7, 2008  
Cedarhurst, N. Y.