

**NEW YORK STATE
ENERGY PLANNING BOARD**

**COMMENTS OF THE
EMPIRE STATE PETROLEUM ASSOCIATION, INC.
ON THE AUGUST 2009
DRAFT NEW YORK STATE ENERGY PLAN**

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Before the
NEW YORK STATE ENERGY PLANNING BOARD

Comments of the
Empire State Petroleum Association, Inc.
On The
August 2009 Draft New York State Energy Plan

I. Introduction

The Empire State Petroleum Association, Inc. (ESPA or Association) respectfully submits these comments in response to the issuance of the August 2009 Draft New York State Energy Plan. In general, ESPA agrees with the Draft's overall findings and recommendations which recognize the importance of fuel diversity for energy reliability and the necessity of balancing the state's energy, environmental and economic concerns in the establishment of a state energy plan. ESPA is grateful for the opportunity to provide the following observations concerning specific portions of the Draft Plan.

II. Interest of ESPA

ESPA is a statewide not-for-profit trade association representing petroleum marketers, convenience store operators, propane dealers, and independent energy marketers selling natural gas and electricity in New York. ESPA's marketers are responsible for the storage and distribution of heating oil, gasoline, diesel, aviation, and industrial fuels that are vital to the energy infrastructure of the state. ESPA's members also provide residential and commercial HVAC system installation, service and repair.

As such, ESPA has a significant interest in the State's Energy Plan and has been an active participant in past New York state energy planning processes.

III. Comments

POINT A

**ESPA ENDORSES THE DRAFT PLAN'S SUPPORT FOR
BIOFUELS AND ULTRA-LOW SULFUR HEATING OIL**

Before turning to the Draft Plan's discussion of biofuels and ultra-low sulfur (ULS) heating oil, mention must be made of recent developments in the heating oil distribution industry.

On September 15, 2009, representatives of various levels and elements of the heating oil industry participated in a summit meeting in Baltimore, Maryland to discuss the future of heating oil. ESPA was among the 80 industry representatives who attended the conference which was comprised of industry trade groups from every oil heat state in the country. Included among the attendees were heating oil associations from states surrounding New York and national industry trade associations. The result of the summit was the overwhelming approval to move toward an ultra-low sulfur heating fuel with biofuel blends so as to create a greener and cleaner heating oil product. With regard to ULS heating oil, it was agreed that by July 2011, heating oil should be transitioned to ultra-low sulfur heating fuel of less than fifteen parts per million sulfur content.

The newly adopted approach by the heating oil industry is consistent with the Draft Plan's view of biofuels and ULS heating oil. The Draft Plan includes a recommendation to support biofuels production from sustainably managed feed stocks. (Draft pp. 49, 94).¹ With regard to ultra-low sulfur heating oil, the Draft specifically acknowledges that the:

...adoption of ultra-low sulfur heating oil for residential, commercial, and industrial heating applications could yield energy efficiency improvements, lower emissions, and reduced system maintenance costs.

Draft p. 27.

The Plan correctly describes the advantages of utilizing ultra-low sulfur heating oil. Benefits include reduced rates of efficiency degradation, reduced emissions of fine particulates, stimulation of the market for ultra-high efficiency appliances, reduced maintenance requirements, and longer appliance life. (Draft p. 27).

Even before the recent industry summit meeting, ESPA had been aggressively advocating specific initiatives to achieve a more environmentally friendly fuel. ESPA is supporting a bill to mandate the use of ULS heating oil presently before the New York State Legislature sponsored by Assemblyman Robert K. Sweeney and Senator Bill Perkins.² The bill requires all heating oil sold on or after July 1, 2011 to have a sulfur content of no more than 15 parts per million.

In addition to urging the adoption of an ultra-low sulfur heating fuel, ESPA is committed to accelerating the use of biofuels for heating. The benefits associated with

¹ The Draft states that, "State agencies should develop programs to implement measures recommended by the Biofuels Road Map, when it is completed." (Draft p.49). The Plan is expected to be released later this year.

² As of the writing of these comments, the Assembly bill (A8642) had passed the Assembly. The Senate bill (S1145) is presently before the Senate Rules Committee.

blending No. 2 heating oil with biofuels include reduced emissions, reduced maintenance, and diversification of use.

The Draft Plan acknowledges and supports the use of biofuels in the State's energy mix but defers all final recommendations until the State issues its Biofuels Roadmap. Nonetheless, the Draft correctly supports the production and use of biofuels, particularly from sustainable managed feed stocks, and also notes a possible further benefit:

Biofuels may also play a more significant role in rural communities, and by creating distribution systems for local use of fuels, farms may play a key role in growing suitable energy crops, aid in the conversion of such crops into usable fuels, and then have local communities and on-farm use of such fuels serve as primary markets.

Draft p. 39.

The transition of the heating oil industry from a conventional fuel to ultra-low sulfur, biofuel blends has multiple environmental, consumer, and energy efficiency benefits. Consequently, ESPA endorses the Draft Plan's support for increased biofuel production. ESPA suggests, however, that a specific recommendation be included in the final draft plan that New York move to ultra-low sulfur heating oil as soon as possible, but no later than July of 2011.

POINT B

ESPA SUPPORTS THE PLAN'S RECOMMENDATION TO EXTEND THE STATE'S TAX CREDIT FOR THE RESIDENTIAL USE OF BIOHEAT AND URGES THE PLAN TO INCLUDE A RECOMMENDATION TO EXTEND THE STATE'S BIOFUEL PRODUCTION TAX CREDIT

New York State currently has a personal income tax credit for the residential use of bioheat that is equivalent to one cent per gallon for each percent of biodiesel up to the first twenty percent of biodiesel that is blended with conventional heating oil. That tax credit is set to expire in 2011. ESPA endorses the Draft Plan's recommendation that this personal income tax credit for the use of bioheat by residential customers be extended beyond the expiration date. (Draft p. 94, see also p. 44).

Similarly, ESPA urges that the final plan recommend an extension of the State's current biofuel production tax credit that will expire January 1, 2013. At present, a credit is allowed for biofuel production in an amount equal to fifteen cents per gallon of biofuel produced at a biofuel plant located in the state and is limited to \$2.5 million per taxpayer per year and can be claimed for four consecutive years per biofuel plant. (See NYS Tax Law sections 28, 187-c, and 210.38).

ESPA believes that an extension of biofuel production tax credit will encourage more businesses to invest in biofuel production plants within the State of New York. This would not only increase the amount of available biofuels, but would also increase the number of jobs and economic advantages to the state and localities in which the plants are located.

POINT C

**THE FINAL PLAN SHOULD CONTAIN A RECOMMENDATION FOR
INVESTMENT IN THE STATE'S LIQUID FUELS INFRASTRUCTURE
AS WAS CONTAINED IN THE INTERIM REPORT**

Preliminary Finding No. 10 of the March 31, 2009 Interim Report presented by the Energy Coordinating Working Group in this proceeding stated:

Near-term investment in infrastructure to support liquid fuels for heating and electric generation will be necessary to insure supply reliability and flexibility over the short run.

Interim Report p. 4-17.

ESPA believed this to be a welcome recognition of the essential role that liquid fuels will play in the state's energy plan and filed comments supporting this finding.

For years, ESPA has advocated for the enhancement of the state's petroleum infrastructure to remedy a decline in total storage capacity for liquid fuels. Both the Interim Report and the Draft Plan note that statewide distillate fuel storage capacity, which includes home heating oil, kerosene, and diesel fuel, has declined while demand for these fuels has increased over the same time period. (See Interim Report pp. 4-18 and Draft Plan p. 62). The Draft Plan identifies the vital nature of storage:

The continued, uninterrupted operation of this complex distribution system, with its ability to receive, store and distribute millions of gallons of the various fuels per day, is of critical importance to New York.

Draft p. 62.

The consequences arising from the reduction in storage capacity for petroleum was originally recognized in the 2002 State Energy Plan which observed that decreased storage can result in the "degradation of the operational flexibility needed to satisfy consumer demand, greater supply uncertainty, and greater short term price volatility."

(2002 State Energy Plan p. 1-31). The Interim Report correctly observed that the cost associated with storing products and the lack of market incentive to add storage capacity were hampering marketers' efforts to add storage.

While increasing storage has been a vital concern for the storage and distribution industry, this issue is more critical today. As previously stated, heating oil marketers are seeking to enhance their fuel by introducing more environmentally beneficial products into the market (ultra-low sulfur heating oil, biodiesel, biofuels and ethanol for gasoline blending). To promote the expansion and use of these products, adequate storage capacity is essential to enable the liquid fuels infrastructure to accommodate these new fuels in the marketplace. This is consistent with the statement made in the Interim Report:

It is critical therefore that the infrastructure required to store, handle, blend and dispense the wide range of petroleum fuels is adequate to meet New York's needs.

Interim Report p. 4-17.

Although the Draft recognizes the importance of a sound petroleum storage and distribution infrastructure, the Draft does not explain why the Interim Report's preliminary finding with regard to investment in a liquid fuels infrastructure has been omitted. ESPA knows of no reason to justify its exclusion. The Draft does mention that storage capacity for distillate fuels increased in 2007 demonstrating that "industry has responded to market signals and added tank capacity to meet demand." (Draft p. 62). However, ESPA is unaware of any significant increase in the industry's infrastructure to warrant the elimination of this issue from the Final Plan.

Even if there has been a marginal increase in tank capacity, the Final Plan should still contain a recommendation to increase the liquid fuels storage infrastructure to accommodate New York State's needs. A lack of storage capacity should not be allowed to impede the development and use of products beneficial to both the environment and consumers. Instead, investment in the liquid fuels infrastructure will provide consumers and the state with reliability, supply security, price stability and environmental benefits.

Finally, the Draft Plan suggests that the solution to the decline in petroleum storage capacity is to adopt a "variety of strategies to reduce significantly the state's use of these fuels." (Draft p. 62). We do not believe that it is logical or appropriate for the state to adopt a policy that would dissuade investment in a liquid fuels infrastructure that would accommodate the development and use of renewable biofuels by advocating strategies to switch fuels. A more sensible approach is to encourage an increase in storage infrastructure so as to enable enhanced liquid fuels to be part of the state's energy mix as it progresses towards using cleaner and diversified energy sources. To assure New York State's future energy reliability and price stability, particularly as petroleum products transition to ULS/biofuel blend products, additional storage infrastructure is essential.

POINT D

THE FINAL PLAN SHOULD ENCOURAGE THE ENERGY EFFICIENT USE OF PETROLEUM PRODUCTS

ESPA has a history of supporting energy conservation measures and the efficient use of petroleum products. Years ago, ESPA proposed and supported the very successful

Oil Burner Rebate Program administered by the New York Power Authority.³ The program provided a rebate to residential heating oil customers for replacement and upgrade of their existing oil burner with a high efficiency model. While the heating oil industry's desire to move quickly to an ultra-low sulfur product will certainly increase energy efficiencies, conserve the use of petroleum, and promote the development and use of very high efficient petroleum burning appliances, there must be more opportunities to encourage energy efficiency upgrades for heating oil customers.

ESPA is grateful that NYSERDA has included energy efficiency measures for heating oil in its RGGI Operating Plan. The plan calls for a set of programs designed to increase the energy efficiency of homes, businesses and commercial facilities that use fuel oil for space heat, water heat and processing heat. (Draft p. 27). This is significant because the heating oil industry receives little benefit from the current energy efficiency proceedings and programs designed for utility customers.

Natural gas and electric utilities have been involved in numerous generic and utility-specific proceedings before the Public Service Commission (PSC) that promote energy efficiency programs for utility customers. Unlike utilities whose delivery systems operate as a sanctioned monopoly, the oil heat industry is comprised of many small and medium sized companies who vie for customers in a fiercely competitive market against each other and the utilities. We do not have a captured customer base upon which to rely for the promotion of energy efficiency programs. Therefore, in addition to promoting conservation and energy efficiency on our own, we have sought government assistance to promote energy efficiency in our industry.

³ The Oil Burner Rebate Program was funded by Federal Petroleum Overcharge Restitution Funds that were given to the states for conservation programs.

ESPA recommends that the Final Plan make recommendations that would promote the implementation of new petroleum energy saving measures, create incentives to the installation of high efficient oil equipment and appliances, and encourage further research and development of energy efficient petroleum equipment and products.

POINT E

THE DRAFT PLAN'S RECOMMENDATION THAT HEATING OIL AND GASOLINE BE DISPLACED BY THE DEVELOPMENT AND USE OF BIOMASS SHOULD BE RESTATED

As part of the support for the development of in-state energy supplies, the Draft Plan encourages the “development and use of sustainable biomass to displace heating oil and gasoline.” (Draft p. xiii).

To the extent that this recommendation is encouraging the displacement of conventional petroleum fuels with biofuels and or ULS fuel, ESPA is supportive of the recommendation (see Point A above). However, if the recommendation represents a proposed state policy to encourage the conversion of heating oil systems to wood systems, then ESPA opposes this approach and strongly urges that the Final Plan omit this recommendation.

While ESPA is in favor of developing in-state renewables to assist the state in both its economic and environmental goals, we do not believe that the state should promote the replacement of heating oil with wood or any other fuel. The Draft Plan's discussion concerning the potential for using wood as a renewable resource of the state contains little discussion of the pragmatic and environmental aspects of doing so. ESPA believes that it is impractical, from both from a consumer and distribution standpoint, and

may be environmentally unsound from an emissions standpoint, to recommend the displacement of petroleum with wood. This is particularly so given the fact that the heating oil industry is on the verge of having its fuel become more environmentally friendly. As such, to the extent that this recommendation seeks to establish state policy of substituting wood for heating oil, it should be removed from the Final Plan as being contrary to the state's economic, consumer, and environmental best interests.⁴

POINT F

THE FINAL PLAN SHOULD INCLUDE A RECOMMENDATION TO REQUIRE ADEQUATE PLANNING FOR BACKUP FUEL OF ELECTRIC GENERATING FACILITIES

The Draft's first planning objective is to maintain reliability of energy for New York's businesses and residences. (Draft p. 2). For all energy systems, "reliability is contingent on adequate supplies of fuel, as well as a robust delivery infrastructure" (Draft p. 2). The Draft further notes that the State's electrical system reliability is strengthened by use of diversified fuels for generation. (Draft p. 61). The interdependence of electricity, natural gas and petroleum affects the reliability, price and supply of each energy source.⁵

Significantly, the Draft recognizes the challenges faced by the petroleum distribution industry both during peak demand periods and serving as a backup fuel for

⁴ ESPA is not recommending that the state dissuade consumers from using or choosing wood as a heating source, but that it should not be a formal recommendation of the final energy plan to do so at the expense of heating oil.

⁵ In making recommendations for any energy source, ESPA urges the final plan to recognize and make accommodations to the fact that the state's natural gas, electric and petroleum industries are interdependent. For example, it would be inadvisable for the plan to make a recommendation with regard to the natural gas industry without considering its impact upon the petroleum industry that acts as the backup fuel supplier to interruptible customers.

While the Commission's orders were welcomed, the backup storage for proposed electrical generating facilities was not addressed. Instead, the Commission stated that the issue should be considered in each Public Service Law Article X proceeding, a statute which has expired and has not been renewed.

ESPA is pleased that the Draft plan acknowledges the vital role that petroleum plays as a backup fuel to electric generating facilities (Draft p. 2). From a reliability standpoint, proper planning to assure that adequate supplies are available to an electric generating facility will insure that generating operations are not interrupted or that the facility improperly remains on the utility system during a period when it should be interrupted to enable the utility to meet its firm customers' peak needs. Thus, not only would lack of planning affect the petroleum industry, it would affect both the electric and natural gas industry.

Proper planning would mitigate the negative impact caused by the sudden entrance by large facilities into the petroleum market during periods of peak demand. Requiring electric generating facilities to plan for use of their backup fuel supplies would give the petroleum delivery industry time to respond, would place less strain on oil supplies, would buffer the impact of the sudden switch generated by the large volume of product needed to keep generating facilities operating, and would mitigate price increases that normally result from the tremendous demand on a commodity that is traded on the open market.

ESPA proposes that the final energy plan recommend that any new electric generation facility siting law include a provision that requires consideration for adequate planning for backup fuel use. Specifically, whenever a proposed facility intends to use

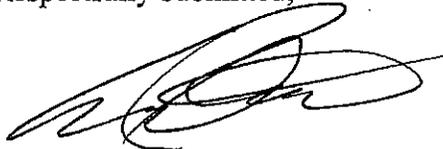
petroleum or any other fuel as a backup fuel for generating electricity, the planning process should include:

- evidence and an evaluation of the adequacy of the facility's plan to supply, transport and store the backup fuel;
- the potential impact that interruption of the facility's primary fuel will have upon the backup fuel supply and distribution industries; and
- any proposals to ameliorate negative impacts upon the backup fuel's supply and distribution industry.

IV. Conclusion

For the reasons stated above, ESPA urges the State Energy Planning Board to adopt the recommendations contained herein in its final 2009 State Energy Plan.

Respectfully submitted,



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