# NEW YORK STATE ENERGY PLANNING BOARD

**Comments on**
**State Energy Plan DRAFT - August 2009**

**Submitted by: The City of New York**

**October 19, 2009**

## I. Introduction

The City of New York ("City") has a critical interest in the wide range of issues now being considered by the New York State Energy Planning Board ("SEPB"). As the preeminent business and financial center in the State, the City is directly affected by energy planning and development issues, and welcomes the opportunity to offer its perspective on a number of proposals and recommendations contained in the Draft 2009 State Energy Plan ("Draft Plan" or "Plan"). The City is appreciative of the ongoing work of the SEPB and its Chairman in advancing energy planning and development in New York State, and looks forward to a productive working relationship with the New York State Energy Planning Board, as does the SEPB's counterpart in the City, the New York City Energy Planning Board ("CEPB").

The Draft Plan encompasses 137 recommendations directed towards State agencies, institutions and policymakers. In broad terms, the strategies and recommendations are guided by five policy objectives:

- Assuring reliability in energy and transportation systems
- Significantly reducing greenhouse gas emissions
- Addressing affordability and competitiveness concerns
- Reducing risks to human health and the environment
- Improving energy independence and fuel diversity

The Draft's recommendations are outlined under five principal strategies that simultaneously address these objectives:

> Produce, Deliver and Use Energy More Efficiently: Reduce electricity use 15% by 2015 through improved efficiency codes, standards, financing and new technologies.
>
> Support Development of In-State Energy Supplies: Increase renewable energy to of 30% of electricity demand by 2015 through Renewable Energy Credits,

Distributed Generation, bilateral contracts, and substituting sustainable biomass for heating oil and gasoline. The Marcellus Shale natural gas formation would also be developed with environmental safeguards.

Invest in Energy and Transportation Infrastructure: Develop a Climate Plan to reduce 80% of GHG emissions by 2050, complemented by a power plant siting law, Carbon Capture and Sequestration, repowering of existing facilities and upgrading transmission and distribution infrastructure

Stimulate Innovation in the Clean Energy Economy: Accelerate the deployment of clean technology through State action with various sectors, foster clean energy business clusters, targeted economic development programs, and clean energy job training programs

Engage Others in Achieving the State's Policy Objectives: Engage local governments to incorporate energy considerations in planning, Tax Increment Financing for redevelopment, Smart Growth policies, transit oriented development, and improved energy facility siting criteria. Work on regional initiatives (*e.g.*, RGGI), and advance the clean energy agenda at the federal level

In general, the City supports these recommendations and strategies as a means of framing comprehensive energy planning in New York State. However, one significant concern relates to development of the Marcellus shale region. To the extent that development impinges on the New York City watershed, there are a number of serious City concerns outlined at pages 16 -18 herein.

What is needed to effectuate the broad State goals is a detailed series of specific action steps and milestones against which progress can be measured and verified. The Draft Plan recognizes this in its call for public accountability by State entities and by utilities in the administration of efficiency programs.[1] However, the City believes that the obligations placed on all entities involved in energy related activities must be made more pervasive, and require an even greater measure of accountability. Thus, for example, the City urges the use of a more frequent reporting interval, such as semiannually, rather than the annual reporting

[1] *Draft Plan* discussion at page 14; *Draft Plan* Recommendations at page 90

suggested by the Plan. This is particularly critical given the importance that the State has now placed on achieving significant goals by the year 2015. The relative immediacy of that date strongly argues for somewhat more frequent assessments of all our energy-related efforts, and the impetus that such reporting requirements will provide. In addition, the City urges that the SEPB convene a meeting as early as January of 2010 to facilitate a public discussion to address the early steps to accelerate programs needed to begin realizing the goals of the State Plan. This is particularly important as the implementation schedule for the measures established in the State Energy Plan has not been made public. Implementation will necessarily involve establishing priorities, and there should be an opportunity for public participation in that process.

In short, the City believes that the laudable energy initiatives embodied in the Draft Plan can only be achieved through the establishment of clear and quantifiable program goals, and the wide use of measurable interim targets for achievement in the numerous areas that the Draft Plan establishes or recommends for future action. While establishment of aggressive goals such as the gubernatorial vision for "45 by 15"[2] is clearly important, perhaps even more critical is the transparent development of early and mid-stage targets against which progress toward that vision can be measured, accompanied by a comprehensive system for public disclosure of achievements made, and a recognition of additional steps needed to realize future expectations. A requirement that strict and clear accountability standards be created will ensure that timely and effective energy measures are put into place. In addition, it is important that uniform,

[2] Statement of Governor David Paterson concerning a 30% renewable energy goal and a 15% energy efficiency goal to be achieved by the year 2015: *2009 State of the State* address (delivered January 7, 2009)

common metrics be used in program evaluation, in order to ensure that all program initiatives are subject to the same scrutiny, and are judged fairly.

While progress on many of the programs outlined in the Plan will not necessarily be linear, particularly for innovative or untested programs that can be expected to improve and accelerate over time, it remains important to constantly gauge our progress, and to closely examine those areas that need to be revisited to ensure the targets we have set remain within reach.

The platform provided by the SEPB is the logical forum to address the fact that while New York State has clearly been a national leader in the establishment of such bold energy goals as 45 x 15, the vision embodied in those goals cannot be achieved without timely and comprehensive actions to effectuate them. Particularly where we have a fixed target – 2015 – the loss of vital time in the interim period due to program delays will only heighten the challenge in reaching our stated goals.

Accordingly, the City believes that the SEPB Draft Report must set out not only an overarching vision for energy planning, but a credible means of achieving that vision, and doing so rapidly. This will mean the creation of new structures and procedures, the development of accelerated programs, and regular reporting thereon to ensure accountability. The alternative to such an approach is to risk losing opportunities that cannot be recaptured before the deadlines that the State has established for itself.

## II. Specific Comments of the City of New York

The specific observations of the City in response to the Draft Report are as follows:

**1.** While statewide energy planning is the mandate the Governor gave to the Board in Executive Order 111, the State is not monolithic, and should not be treated as such in energy planning. Various regions have sharply different needs, and confront specific challenges – sometimes pressing ones – that may have little relevance in other areas. The Final Plan to be issued by the SEPB should take into account the need to address regional issues across the State. There are numerous energy issues that are necessarily of interest to all State residents and businesses. However, truly effective planning will need to disaggregate a number of distinct regional concerns, and treat them separately. The SEPB Draft does in fact recognize the need to address regional concerns in areas as land use and transportation,[3] and this approach can and should be used in treating energy issues.

For this reason, the City strongly urges that the forthcoming final State Energy Plan discuss specific, identifiable regional issues in a manner that will permit them to be addressed expeditiously. The needs of the City as New York State's most critical and constrained energy market deserve direct attention by the SEPB, and by energy planners.[4] This can best be accomplished by the creation of segmented portions in the final Energy Plan that identify and address discrete regional issues as distinct from those that affect the entire State. Recognition of this concern is not found in the Plan as written in draft form, and the City urges the Board to revisit that issue as it completes its work on a Final Plan.

As an example, one innovative approach would be to evaluate the possibility of expanding the ability of the City, the utilities, and the New York Power Authority, where

[3] *Draft Plan* at Chapter 6 *passim* concerning regional planning councils and metropolitan planning organizations; also Section 6.1.2 at page 80

[4] This is not solely a City issue; Long Island, or NYISO Zone K, faces similar constraints and is subject to stringent locality based reliability requirements established by the NYISO. .

appropriate, to drive needed regional power market improvements. This might be done, for example, by contracting for or building, through competitive means, energy resources that best meet recognized public policy objectives, or by providing financing for strategic projects that would benefit both the region and the State. The State Energy Plan should explore the use of possible regulatory or legislative actions and mechanisms to facilitate such an expanded role for key stakeholders, with provision for cost recovery where appropriate, in those instances where market mechanisms alone have proven to be inadequate. Such an approach may not be warranted for use in certain areas of the State, but may be ideally suited to a region such as New York City that faces a number of unique energy and policy challenges.

Another instance of a regional concern that directly affects the City far more than other regions is the disparity that has developed in funding projects under the State's renewable portfolio standard ("RPS"). New York State has demonstrated leadership in the development of renewable power, and has a procurement model in place that has resulted in the installation of significant wind farms and solar power installations across the State. These additions to the generation portfolio appear to have resulted in a reduction of energy prices on a statewide average basis. However, those benefits have not accrued to New York City's ratepayers due to the absence of a significant renewable energy presence in the City.

In fact, an unintended effect of statewide RPS bidding in its existing form has been to effectively exclude the City from most renewable funding opportunities. This is not simply a matter of large-scale wind farms being located, as might be expected, in rural areas upstate. It also extends to the State's solar power installations, approximately

6% of which have been funded in the City, despite the fact that some 40% of RPS funding is drawn from Con Edison ratepayers.[5] This gross disparity in RPS funding is one instance of the need for a comprehensive State Energy Plan to take into account critical regional issues. Failing to do so would potentially place at risk public confidence in the State's energy management plans.

**2.** Beyond the issue of regional equity in the administration of RPS funds, the City believes that broader consideration should be given to alternative delivery mechanisms for renewable funds. The Draft Report refers specifically to two such initiatives: 1) a tracking and trading system for renewable energy credits ("RECs") to foster market development and to help ensure renewable market integrity; and 2) an expanded RPS proceeding in which incentives could be provided for renewable distributed generation resources, including efficient combined heat and power systems, directed particularly at load pocket areas, and funded through the Customer-Sited Tier of RPS.[6]

As to REC tracking and trading, the City suggests that the SEPB examine particularly the solar renewable energy credit ("SREC") model employed in New Jersey – a program that has met with a large measure of success in sharply increasing the installed base of photovoltaics there in recent years, with more than 4300 photovoltaic installations with more than 100 MWs of solar capacity as of October of 2009.[7] SRECs are subject to registration, and provide both public price discovery information, and

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[5] See NYSERDA's *New York State Renewable Portfolio Standard Performance Report* at page 13, citing 18 of 300 PV installations in the five counties comprising New York City (September 2008)

[6] *Draft Plan*, discussion in paragraphs 1 and 2 of page 93

[7] New Jersey Board of Public Utilities, statement release citing 4340 PV installations and more than 100 megawatts of installed PV capacity (issued October 14, 2009)

guidance on anticipated sources of solar capacity. SRECs can be sold, and can provide a revenue stream for a period up to 15 years.[8]

On the issue of the customer-sited tier, the City urges the Board to examine proposing expansion of that tier, in part to permit better balance between the existing Main Tier and the Customer Tier, which has to date suffered from limited funding. There are many opportunities at the customer-sited level, particularly for solar resources, that are currently not being utilized. For instance, emerging technology such as the use of building-integrated photovoltaics has great potential for a densely populated, higher cost area such as New York City. Other applications could include solar canopies on subway stations or parking garages in urban areas. Furthermore, regardless of the application, distributed solar generation in load-pockets such as New York City and Long Island will provide ancillary environmental and economic benefits, including increased grid stability during times of peak demand, reduced need for costly new transmission facilities and improved air quality by displacing fossil fuels, particularly from "peaker" plants during times of high demand on hot summer days.

Similarly, utility programs can play an increasingly important role in helping the State achieve its renewable energy targets and meet other strategic goals. As an example, in early 2009, Con Edison petitioned the State Public Service Commission to approve a Solar Energy Pilot Program in order to improve the sustainability and reliability of New York's energy resources, a goal that is shared with State and City governments.[9] If approved, this pilot would establish a total of 12 megawatts (MW) of solar energy in ConEd's service

[8] See, *e.g.*, www.njcleanenergy.com, renewable-energy/programs/solar-renewable-energy certificates

[9] *Verified Petition Regarding Ratemaking Treatment for Solar Energy Pilot Program*, PSC Case No. 09-M-0303 (filed March 3, 2009)

territory in a matter of 18 months through three mechanisms: customer-sited solar panels (5 MW), solar panels on four Con Edison building rooftops (1.8 MW), and procurements for solar systems located inside the service territory (5 MW). Two of these three categories could involve a number of significant customer–sited solar locations, thus illustrating the potential for expanding that Tier with appropriate support from the State. And as the Public Service Commission recognized in its *Iberdrola* ruling,[10] the general public policy in this State limiting generation ownership by investor owned utilities should not stand as a bar to the enhancement of renewable resources that utilities may be ideally positioned to provide.

For Con Edison, such projects will allow the utility to understand the network, reliability and operational impacts from widespread solar panel interconnection, test solar market conditions, and engage their customers in promoting solar energy. For the State, the solar program would enhance the capability to install more solar energy sources in the future, allow an assessment of rules to integrate solar energy into the NYISO wholesale market, and enhance understanding of appropriate incentives for distributed solar energy.

The City views such utility-driven efforts to be a complement to other State efforts such as existing RPS procurement. Indeed, the Board should consider whether there is a role for utilities to assist in administering RPS funds in those areas where the current RPS formula is not achieving adequate penetration and success. As the Con Edison territory is primarily located in the jurisdiction of the City, adoption and expansion of such utility-based renewable energy programs would in part rectify the failings that have been seen to date in RPS-funding for City installations. Moreover, if

[10] Public Service Commission Case No. 07-M-0906, Iberdrola acquisition of Energy East, *Order Authorizing Acquisition Subject to Conditions* (issued and effective January 6, 2009)

significant scale is achieved in such programs, they could offer an opportunity to defer certain utility infrastructure investments in transmission and distribution assets.

For these reasons, the City encourages the SEPB to adopt a policy recommendation that (1) distribution utilities be allowed to own and operate a limited amount of clean distributed generation, and (2) a separate RPS procurement tier for high-cost constrained areas of the State be established as soon as it is feasible. Taking these steps would advance our progress toward the 30% RPS goal that the State has set for 2015, and would also comport with the PlaNYC goal to significantly expand the amount of clean distributed generation available in the City.

Another SEPB recommendation that the City strongly supports is the expansion of funding and implementation support for environmentally beneficial distributed energy resources ("DER").[11] Solar thermal and geothermal projects that are both economical and clean should be encouraged to a greater degree than is the case now, as the Board recognizes. Moreover, the Draft Plan recommendations note the need to increase public awareness of the benefits of DER. The City region has significant potential in DER, and the use of New York City's many channels of communication with appropriate funding resources could heighten public awareness of that potential, and lead to far better utilization of DER.

The City recommends that the Public Service Commission and the utilities do more to encourage distributed energy resources by adopting best practices for integrating cogeneration into the grid, such as: designing standby rates that recognize the favorable peak load coincidence factor for cogeneration; creating a tariff for Con Ed to buy back steam from third-party steam producers within the Con Ed steam supply

[11] *Draft Plan Recommendations*, discussion in paragraph 4 of page 94

franchise; and allowing interconnection of customer-owned generation direct to than Con Ed grid rather than behind the meter. These changes would improve the economics for customer sited combined heat and power plants that would benefit from the economies of scale possible with better integration with the electric and steam grids, and the energy markets.

**3**. The City continues to believe that while the focus of energy infrastructure planning on traditional reliability concerns must remain paramount, we must also take into account other key elements that will affect the achievability of such important initiatives as the State's 45 x 15 plan, and the parallel energy enhancement efforts now underway under New York City's *PlaNYC*. These concerns include such vital matters as an increased role for efficiency and demand response, a reduction in hazardous air emissions and greenhouse gases, and the need for an increase in the use of renewable power in all regions of the State, most notably including New York City, and including adjacent areas such as offshore locations. The Draft Report addresses these topics, and the SEPB should be commended for doing so. What will be needed going forward is an open and inclusive energy planning process to ensure that all parties engaged in energy program development give adequate consideration to factors that may have previously been viewed as externalities, but which actually deserve more focused attention.

The City believes that a more intensive planning process, one allowing the direct comparison of potential resource options, is warranted for the downstate region, if not for the State as a whole. Such a planning process would provide an analytical framework to make decisions regarding competing resources considering the full range of cost, environmental and economic development impacts. Such decisions need to be made on

an ongoing or "rolling" basis, as they cannot be delayed until the next State Energy Plan cycle, or be made solely under the purview of the utilities. We invite the State to work with the City in developing such an analytical method, which would complement rather than replace the existing merchant model for new resources.

Regarding transmission planning, the City generally supports the Draft State Energy Plan's priorities for the bulk electricity transmission grid, especially the call for improved regional transmission planning and cost allocation, accelerated implementation of smart grid and advanced metering, and creating an inventory of utility corridors that could be used for future expansion.

The City recently completed an extensive analysis of the economic benefits to ratepayers of potential new transmission from upstate into NYC/LI and from NJ into NYC/LI. Our analysis points out that new transmission lines would deliver wholesale price reduction benefits to ratepayers that would grow over time. In particular, new inter-regional transmission between Zones G and J and between NYC and Northern New Jersey would provide benefits to both the City and the State. However, resource limitations and market realities dictate that we cannot do everything that might be desirable from a policy perspective. Transmission expansion will have to be weighed against energy efficiency and in-City repowering, which have the added impact of creating local jobs and economic development. These tradeoff considerations point out the need for an effective and timely resource planning process.

In addition, there is a critical need for the development and use of common metrics against which to judge the economics and environmental benefits of various

potential energy projects, in order to permit a reasoned and defensible evaluation of the relative merits of such initiatives.

**4.** The City is concerned that the pace of efficiency and renewable energy program development and implementation has not fully matched the force of the State's public commitments to its energy goals. The Draft Report properly recognizes the value of initiatives to reduce emissions of greenhouse gases, and to stimulate innovation in what it characterizes as a clean energy economy. However, while the budget for energy efficiency measures has effectively been doubled in the last year, fully attaining the State's 2015 goals will require a greater financial commitment.

The Energy Efficiency Portfolio Standard proceeding at the Public Service Commission has resulted in recent Orders materially increasing funding for expanded efficiency programs operated by NYSERDA and the utilities. However, that case was initiated in May of 2007, and given the procedural approach employed by the Commission and the Department of Public Service, it has entailed a very protracted process. The SEPB should examine whether there may exist less burdensome alternative means to advance the State's energy goals without a procedure that involves multiple years to implement and approve critical programs. In this connection, it is noteworthy that the California Public Utilities Commission recently issued an Order containing a three billion dollar commitment to energy efficiency in that State over a three-year period, and has also incorporated a far reaching green buildings initiative.[12]

Moreover, there is a need to target the use of Regional Greenhouse Gas Initiative ("RGGI") funds to reach energy goals that have proven to be elusive due to jurisdictional

[12] California PUC *Decision Approving 2010 to 2012 Energy Efficiency Portfolios and Budgets*, Application 08-07-022 *et seq.* (September 24, 2009)

or funding limitations. One example of the latter is the recognized need to provide incentives for reductions in the use of relatively carbon-intensive fuels such as fuel oil (particularly the heavy distillates, Nos. 4 and 6 oil) by switching to natural gas supplies. The combustion of natural gas produces far fewer hazardous air emissions than its oil-based counterparts, and its carbon content is also substantially lower than that of oil. Heretofore, however, the Public Service Commission has been constrained by the fact that oil is not a jurisdictional fuel, and electric and gas ratepayer-sourced funds such as the System Benefit Charge and the funds collected pursuant to the Energy Efficiency Portfolio Standard proceeding. The SEPB properly recognizes the need to have RGGI funds applied to provide incentives for conversions from oil to gas. This would directly meet the intended RGGI goal of reducing carbon output, and simultaneously address the jurisdictional barrier that has been faced by the Public Service Commission.

In light of the SEPB statement concerning the value of RGGI funds in advancing our goals, it is disappointing that the Governor has proposed the reallocation of some $90 million from the RGGI account to the State General Fund, with the balance of the expected RGGI auction receipts in 2009-10 going solely to support development of a green jobs program. While the latter purpose is laudable, and is fully supported by the City, it is troubling to see a fund intended to support reductions in carbon intensity being applied to a purpose that bears no relation to its creation. This will only reduce the likelihood of reaching the aggressive environmental and energy goals that were articulated in the Governor's 45 by 15 pronouncement earlier this year.

**5.** The City believes that there is an opportunity for the State government to provide leadership through its building and facility sector on the issue of advanced

energy control systems and the increased demand response opportunities that can be created by the use of such systems. For example, the City now has two ongoing initiatives in this direction. The New York City Department of Administrative Services has an outside contract to examine the potential for advanced meters and sophisticated building controls to reduce energy use and to permit both targeted and general load reductions in City buildings and facilities. In addition, the City has entered into a venture with Con Edison and a private company to seek a federal grant to optimize building load by a combination of newly-installed solar capacity, and the use of advanced behind the meter storage and energy management resources to provide demand reductions and load curtailment in real time.

These are simply examples of the potential that lies in the optimized use of existing governmental buildings, and other facilities such as pumping stations. Like the City, the State has a very large stock of buildings, and the SEPB should recommend the creative use of State facilities to advance energy goals, and importantly, to serve as an example of what may be accomplished with the creative use of advanced technology in existing buildings. In particular, the City invites the participation of State agencies having buildings or other facilities located in the City in load reduction and curtailment programs that could serve, in effect, as "virtual generators" in an area that has been a persistent load pocket.

**6.** Concerning the section on the Marcellus Shale gas-bearing formation, the City appreciates that this represents an opportunity for the State to unlock substantial economic value while helping to increase the State's energy security. While we agree

with those goals, and the environmental benefits of increased use of gas, these benefits have to be measured against the risks of development.

In particular, the City is concerned about potential impacts to its regional water supply system, which is the primary source of drinking water for approximately one-half of the State's residents. It provides approximately 1.1 billion gallons of water to 8.4 million residents of New York City, one million consumers outside of New York City in Westchester, Putnam, Orange and Ulster counties, and millions of commuters and visitors each day. In addition, other residents from upstate counties have the right to tap into this water system. In an average year about 90% of our water is provided by two watersheds in the Catskills region: the Catskill and Delaware watersheds. While the Marcellus Shale formation extends far to the west of them, these two watersheds lie directly over that formation. It is no exaggeration to say that this clean water system allows for the future development of the entire downstate region and the economic engine that it provides for the State.

Hydro-fracturing drilling in the watershed creates the potential to jeopardize public health. Natural gas drilling of any sort is an industrial activity that can pollute the ground and surface waters that form an integral part of New York City's drinking water system. Hydro-fracturing drilling operations often require the clear cutting of forest, the construction of new roads and drilling pads, the storage and use of chemicals that can include benzene and other carcinogens, and surface impoundments or tanks to store those chemicals and briny flowback liquid. In addition, drilling and fracturing with pressurized solution can damage aqueducts and other subsurface facilities, cause settling, and

contaminate groundwater. Because New York City has an unfiltered system serving nine million customers, the potential for contamination is especially alarming.

As the Interim State Energy Plan discusses, these issues are being weighed in an ongoing environmental review by the New York State Department of Environmental Conservation ("DEC"). In those proceedings, the City has vigorously sought to protect its citizens from any public health risks and unnecessary costs. Among other things, the City has requested an additional review of health impacts of drilling in our unfiltered watershed from the New York State Department of Health ("NYSDOH"). As the primary regulator of drinking water quality in the State, NYSDOH is uniquely qualified to identify the risks to public health that natural gas drilling presents, and whether those risks can be sufficiently addressed over the long term. In addition, the City has engaged a joint venture of engineering firms to provide independent, expert advice on the subject of natural gas exploitation via hydro-fracturing and risks to our drinking water supply. That review will be complete in December of 2009.

If the City study or NYSDOH review should conclude that gas drilling currently proposed by the State will create risks to our watershed, the potential price tag for this proposal will be at least $10 billon for the City and its water customers.[13] While we are

[13] The U.S. Environmental Protection Agency (EPA) and NYSDOH allow the City to operate the Catskill-Delaware water systems without filtration only because those watersheds retain much of their rural and agricultural land uses and because the City, together with upstate landowners, has created a vigorous system of land use controls. This waiver is possible only because the City is meeting very stringent criteria, and only four other large cities in the country have received it. New York City could not avoid filtration for the Croton system, which supplies 10% of our water annually, and as a consequence is now spending more than $2 billion to build a filtration plant. If the EPA's filtration avoidance determination is revoked because of the impacts from natural gas drilling, a much larger filtration plant for the Catskill-Delaware system will have to be built that we estimate could cost $10 billion to construct and $100 million per year to operate. That translates to a 30% increase in the price of water and sewer service currently paid by New York City residents.

still assessing whether drilling in the watershed can be done safely under any circumstances, if the State decides to permit this activity as part of its overall energy plan, then it must include and account for the cost of a filtration plant and its operation in any regulatory framework that would allow drilling in the watershed.[14] In view of the potential costs of repairing any damage caused by natural gas drilling, the Catskill-Delaware watersheds deserve State protection.

In the past the State has carefully balanced the need for energy development and other, competing demands upon ecosystem services. For example, the State (and also the federal government) enacted special protections for the residents who rely on surface water from the Great Lakes by closing the beds of Lakes Ontario and Erie to gas exploration. This precautionary approach is entirely appropriate for the Catskill-Delaware watershed. The nine million New York residents who depend upon Catskill-Delaware water deserve the same amount of protection as those New Yorkers who depend upon Great Lakes surface waters.

7. Concerning the potential relicensure by the Nuclear Regulatory Commission ("NRC") of Indian Point Generation Units 2 and 3 effective in 2013 and 2015 respectively, the City supports the continued operation of that plant, in light of its critical reliability function, and the distinct environmental benefits that flow from having approximately 2000 megawatts supplied in the New York metropolitan area without the

[14] Failure to do so would impose a massive unfunded mandate on the City and its water rate payers, who are already bearing the cost of several billion-dollar projects that are driven by such mandates. In recognition of this growing problem, Governor Paterson recently stated in Executive Order 17 that "the fiscal impact of any legislative or regulatory proposal that imposes a mandate should be evaluated to the fullest extent possible to consider the cost to local governments." The significant potential costs of allowing drilling in the watershed cannot simply be passed onto New York City, and must not be ignored as this process moves forward.

emission of greenhouse gases. In the near term, the City sees no practical alternative to Indian Point, as its loss without a comparable replacement would clearly jeopardize system reliability, and markedly increase energy and capacity prices in the already expensive downstate region. Supplanting nuclear power with a comparably sized gas generation facility does not appear to be a credible alternative, particularly given current gas infrastructure limitations, and the long-standing opposition to new gas pipelines in Westchester County and surrounding areas.[15] The City would endorse a long-term study to consider alternatives to the present form of Indian Point in case the plant is ultimately no longer available, but the City cannot support any precipitate action endorsing closure without a thorough examination of the full consequences of such a decision.

**8.** While the Draft Plan appropriately highlights and considers risks posed to the State's energy infrastructure from sea level rise associated with climate change, it does not address impacts related to rising temperatures. In February 2009, the New York City Panel on Climate Change ("NPCC"), a panel of experts convened by Mayor Bloomberg to advise the City on climate change-related issues, released climate change projections for the New York City region.[16] The NPCC projects that by the 2020s, the City will face a 1.5 to 3 °F increase in mean annual temperatures and that by the 2080s mean annual temperatures could increase by 4 to 7.5 °F. This increase in mean annual temperatures will result in more days over 90 °F and more frequent and longer heat waves[17] (the City currently experiences an average of 2 heat waves a year lasting 4 days. This is projected

[15] The extreme opposition and protracted litigation over the attempted extension of the Millennium gas pipeline across the Hudson River should serve as a cautionary note to any claim that the logical successor to Indian Point nuclear plants is a large-scale gas fired power plant. See SEPB discussion at Section 4.2.1, page 57

[16] New York City Panel on Climate Change, *Climate Risk Information Workbook,* NPCC (February 2009); available at www.nyc.gov/planyc2030

[17] Defined as three or more consecutive days with maximum temperatures exceeding 90 °F

to increase to 5 to 8 heat waves a year lasting 5 to 7 days by the 2080s). Increases in mean annual temperatures and the frequency and intensity of heat waves will have an impact on energy demand, production, and transmission throughout the state and should be addressed in all long-term plans related to New York State's energy supply and use.

**III. Specific City Energy Planning Board Recommendations**

Acting in conjunction with the other members of the New York City Energy Planning Board, the City submitted to the SEPB a number of collective recommendations in December of 2008.[18] The City notes that a number of the City Energy Planning Board recommendations to the State Board were addressed in some manner in the Draft Energy Plan, and offers the following additional thoughts:

One CEPB recommendation was the call for greater efforts to create more transparency and accountability regarding the State's progress in meeting its 15 by 15 goals. The State has acknowledged the importance that all of its agencies, authorities and utilities that administer energy efficiency programs consistently measure and report results of efficiency programs, including energy savings, peak demand reductions, and load shifting, using similar techniques, metrics, and reporting formats, and use those results to optimize program support going forward and make the results available to the public on an annual basis. As noted above, we believe that a somewhat shorter reporting cycle would have a salutary effect. With that one exception noted, the City strongly supports this proposal.

The CEPB suggested that the State should use experienced City entities when engaged in public education and outreach campaigns aiming at informing citizens about the

[18] CEPB Submission to State Energy Planning Board entitled "Planning for New York City and New York State's Energy Future – Recommendations from the New York City Energy Planning Board" (December 5, 2008) (hereinafter *CEPB Submission*)

need for increased energy efficiency in New York City.[19] The City has had valuable experience in measures such as benchmarking building energy use, as the Draft Plan recognizes in calling on the State to "cooperate with New York City and other large municipalities" to implement "energy-use benchmarking programs under which a building's energy use indexed against comparable buildings is publicly disclosed."[20] We continue to believe that there is a valuable role for joint marketing efforts in the City's unique energy market.

The CEPB also called for the NYISO to lead a stakeholder process that would examine the future potential for clean distributed generation,[21] which the Draft Energy Plan addressed by citing the need to examine the protocols used by NYISO and utilities for connecting [distributed generation] sources to the grid to help ensure such implementation is timely and cost-effective, adding that the State should "expand funding and implementation support for environmentally beneficial distributed energy resources [...and] should design programs to increase public awareness of [its] benefits."[22] The generic Demand Response proceeding[23] conducted by the Public Service Commission is an example of a multi-party collaborative process that can develop innovative proposals to advance the public policy goals of the State. A similar vehicle could serve to expand opportunities for far wider use of distributed generation.

On the topic of renewable energy, the City notes that the Draft Plan calls for an expansion of the RPS Program to meet the Governor's goal to meet 30 percent of the State's

[19] *CEPB Submission*, Energy Efficiency Recommendations # 6, page 7
[20] *Draft Plan*, Section 2.1.2, page 19 and Chapter 7 - "Recommendations" at page 91
[21] *CEPB Submission*, Energy Efficiency Recommendations, # 9, p.8
[22] *Draft Plan*, Section 3.1.4, p. 49 and Chapter 7 - Recommendations at page 94
[23] See Initiating Order of Public Service Commission in *Proceeding on Motion of the Commission to Consider Demand Response Initiatives*, PSC Case Number 09-E-0115 (issued and effective February 17, 2009)

electricity needs with renewable resources by 2015. This action was one of the specific CEPB recommendations,[24] and if implemented will require a redoubled effort to achieve the heightened goal.

The City has expressed its eagerness to begin work, along with the State and utilities, on a comprehensive regional feasibility study that would capture New York's off-shore wind potential.[25] The Plan's call to initiate a regional offshore planning effort to identify appropriate areas for energy development" and acknowledgement that "consultation with ongoing energy development efforts, such as the Long Island-New York City Offshore Wind Project, needs to be built into the planning process is a welcome step in this direction. The CEPB also noted its interest in seeing a New York City and NYPA collaboration to set long-term goals for renewable energy procurements, including the use of marine-based energy sources such as wind and tidal power.[26] The Plan's aim to encourage the State's power authorities to procure diverse renewable electricity resource development, including on-shore and off-shore wind and hydrokinetic sources, adding that LIPA and NYPA should consider achievable targets for subsequent PPAs, is an important step in the right direction. Furthermore, the Plan's encouragement of LIPA and NYPA to proceed with issuing an RFP for the private development of off-shore wind resources also appears to validate efforts currently underway by the Off-shore Wind Collaborative workgroup that includes the City of New York.

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[24] *CEPB Submission*, Renewable Energy and Distributed Generation Recommendation # 3, at page 9

[25] *CEPB Submission*, Renewable Energy and Distributed Generation Recommendation # 1, at page 9

[26] *CEPB Submission*, Renewable Energy and Distributed Generation Recommendation # 2, at page 9

The Draft Plan makes significant strides in addressing one of the CEPB's greatest concerns: the need to reach a consensus on whether new investment in interregional transmission lines will benefit the City, region and the State as a whole. CEPB had previously called on the State to move forward accordingly if they did have that effect.[27] The State Board in its Draft Plan cited the *Master Electric Plan for New York City* as "a comprehensive and extremely informative investigation of the City's electricity transmission and generation options over the next 10 years" that could "inform State policy and planning efforts."[28] The Plan also encouraged the PSC, along with NYPA and LIPA to continue a systematic examination and evaluation of the State's transmission and distribution infrastructure, while stating the need to examine the transmission system to identify and evaluate appropriate investment strategies for needed bulk transmission system upgrades or expansions needed to allow for delivery of the energy output from renewable energy systems.

Lastly, it is encouraging that the State Board has placed emphasis on assuring that efficiency outreach, educational and marketing efforts conducted by State agencies and authority administrators and utilities reflect best practices in terms of design and delivery, are geared to diverse audiences, and noted that education, outreach and marketing for energy programs should be tailored to target audiences.

It should be noted that although the City is interested in educating, informing and motivating its residents and businesses to pursue any number of energy efficiency measures, it is the split incentive issue between tenants and property owners that the CEPB submission highlighted as needing the most urgent attention. It remains one of the principal concerns

[27] *CEPB Submission*, Power and Natural Gas Supply and Infrastructure Recommendations # 4, at page 5

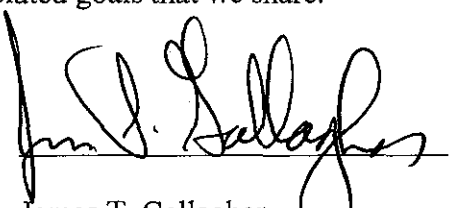
[28] *Draft Plan*, Section 6.1.2, at page 80

underlying the CEPB recommendation for increased emphasis on consumer outreach.[29] In contrast to most areas of the State, residences in the City are predominantly rental units,[30] and the SEPB should make more comprehensive recommendations to address that sector of the energy market with an explicit recognition of the barriers that the split incentive problem gives rise to, and most importantly, suggested mechanisms to overcome those barriers. The residential sector in the aggregate constitutes a large proportion of the discretionary electric load in the City, particularly under system peak conditions. For that reason, it is critical that mechanisms be developed to overcome this persistent barrier to the wider adoption of residential energy efficiency measures in the City.

## III. Conclusion

The City appreciates the Board's consideration of its views in this matter, and looks forward to a productive working relationship with the State Energy Planning Board and with other State entities to advance the energy-related goals that we share.

October 19, 2009



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[29] *CEPB Submission*, Energy Efficiency Recommendations # 5, at page 7

[30] More than 60% of City residences are rental units; New York County, Manhattan, is comprised of more than 70% rental living quarters. Information accessible at http://quickfacts.census.gov/qfd/states/36/36061.html