NEW JERSEY CITIZENACTION

Comments on New Jersey's April 2008 Draft Energy Master Plan Prepared by Atif Malik, New Jersey Citizen Action

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NJCA is the state's largest citizen watchdog coalition, representing more than 60,000 family members and over 100 affiliated labor, senior, disability, tenant, housing, environmental, women's, civil rights, faith based, civic and community organizations.

New Jersey Citizen Action, the state's largest independent consumer advocacy coalition, respectfully submits the following comments on the April, 2008 Draft New Jersey Energy Master Plan (EMP). While we are concerned about all aspects of our energy future, the following comments are primarily focused on the supply and pricing of electricity.

Access to safe, reliable and affordable electric and gas service is indispensable to the health, safety and well-being of every person and business in the state, the region and the country. Our vast economic achievements over the past century could not have occurred without the effective development and regulation of electric energy. Electricity is a unique good in modern society, not a simple commodity and one that is key to the quality of the lives of every family and business. Unfortunately, the state's Draft EMP fails to adequately protect access to safe, reliable and affordable electric service and as described below we urge the State to modify the Draft Plan.

It has been more than a decade since the state's last EMP was adopted and as the current Draft acknowledges, significant changes have occurred: Electric Utility deregulation has failed to meet its supporters' promise of affordable and reliable electric service and supply, forcing consumers and businesses to cope with continually skyrocketing and sometimes overwhelming electric prices; as a state and a nation we are grappling with the implications of climate change, and as described in the Draft EMP, the state is facing a potentially serious supply shortage of electric energy which could lead to more job losses and create further havoc for our state economy.

1. Re-regulate the residential electricity market and establish A NJ Public Power Authority (PPA) to Help Meet the State's Need for Affordable, Reliable and Environmentally Sound Electricity.

The last 10 years has demonstrated that the 'market' has not, can not and will not solve our electricity needs. Instead the evidence can only lead even the most casual observer to conclude that at least for residential consumers, (and arguably commercial customers as well), that the market has failed to produce retail competition in the electricity sector, consumers are in reality captive consumers of now unregulated monopolies, and that the private energy corporations have a vested interest in maintaining tight markets to drive up prices – and they are. Given that there is absolutely no retail competition in NJ's residential electricity market we urge that the Energy Master Plan recognize these clear facts and move for the re-regulation of this market (as provided for under the Electric Discount and Energy Competition Act (EDECA).

As described by the Draft EMP, reducing New Jersey's overall demand for electricity is one of the most important means by which we can meet our current and future electric supply needs, reduce costs and protect the environment. We urge New Jersey to take aggressive measures in this area. However demand reduction strategies will likely not solve all of the state's supply needs given our continually increasing demand for energy, the state's aging generation facilities, (many of which are on the verge of retirement), and the unlikely prospect that New Jersey can import electricity to meet our energy needs in an environmentally appropriate manner.

A Public Power Authority (PPA) is an effective and powerful tool that New Jersey should establish as part of the Plan's strategy for meeting our state's electricity needs. Unlike private energy companies, public power authorities/utilities are public service institutions that do not serve stockholders. The mission of an Authority is to serve customers and success is measured by how much money stays within the community through low rates and other contributions to the state economy, not how much goes out to stockholders across the state, country and world (which in the case of NJ's private electric utilities, has certainly been a lot).

Public Power Authorities are not new to New Jersey and have on a local level, been providing safe, reliable and affordable electricity services for decades. Currently New Jersey is home to the following municipal power authorities: Boroughs of Butler, Madison, Milltown, Pemberton, Seaside Height, South River, the Lavallette Electric Department, the Park Ridge Electric Department and the Vineland Municipal Electric Utility. Nationally, private energy company customers pay on average electricity rates approximately 14% higher than those paid by public power consumers. On average, public power systems return to state and local governments in-lieu-of-tax payments and other contributions that are 15% greater than state and local taxes paid by private energy corporations.

While the EMP does not call for the creation of a PPA, it does call for an examination of existing state agencies and their ability to ensure that adequate supplies of the right types of generation are created to meet our energy needs. This is a good first step. However, the EMP falls short in its vision.

The EMP describes a PPA that can enter into short and long-term power purchase agreements for energy and capacity; provide long-term low-interest financing to facilitate generation construction and develop new generation facilities directly through public-private partnerships; to monitor the balance between the state's energy supply and demand; to monitor the diversification of our energy supply; and to update the EMP periodically (Draft EMP at 69).

The EMP describes a PPA as a tool that can assist private industry in developing generation capacity. However and as described above, a Power Authority should be created to serve the interests of consumers. The development and implementation of demand reduction programs, new supply, (traditional, and or/renewable) etc. can be developed and implemented by the Power Authority itself and as such inject needed competition into our dysfunctional electricity markets, serving to reduce rates. A PPA should be authorized to build, own and operate as well as purchase power plants, transmission and distribution assets and to provide electricity to NJ residents on a cost-of service basis. A PPA can compete with private generators, either through the provision of long-term contract agreements with the state's electric distribution companies, or via the State's annual BGS Auctions. A PPA would work to ensure ratepayers are purchasing clean energy at the best price possible.

While the start-up costs for a PPA may appear steep, the benefits of cleaner and more affordable energy make an Authority a cost-effective measure for our state's residents and businesses. Power owned by the Authority would be completely under state governance and provide New Jersey with meaningful control over our energy future.

2. Demand Reduction Measures/Program Must be Cost-Effective and Provide Real Incentives for Ratepayers to Reduce Their Energy Usage

Efforts to reduce New Jersey's overall energy demand is a critical component of our energy future and can be a cost-effective way to reduce our energy needs while helping to reduce electric bills. However, we support the Public Advocate's July 10, 2008 comments concerning the importance of ensuring that any measures or programs adopted by the state to reduce energy demand are carefully analyzed in terms of cost versus benefits. We also agree that no ratepayer or class of ratepayers be forced to participate in programs for which they receive no benefits.

For example and like the Public Advocate, NJCA is skeptical about the cost effectiveness of smart grid technology, especially when applied to residential customers. Smart grid technology is expensive and does not reduce electric usage. Instead it relies on consumers to alter their energy usage habits raising concerns that its benefits will not be greater than the cost, yet still leaving ratepayers with the bill. We are also concerned that smart grid technology could be used to implement hourly pricing for residential customers. While the Draft EMP does not call for residential hourly pricing, it cites the possibility of an inverted tariff that charges residential customers more for electricity at different times. Hourly pricing and inverted tariffs that are implemented without consideration of ability to pay or monitor one's usage would likely hurt NJ's vulnerable low and fixed income residents.

NJCA is encouraged by the State's desire to improve existing buildings and encourages the Northeast Energy Efficiency Partnership (NEEP) and the BPU to work to propose additional programs that will provide low to moderate income households appropriate incentives to make their homes more energy efficient through weatherization measures and/or through the purchase of Energy Star products. Improved energy efficient building codes is a cost-effective way to permanently lower demand.

New Jersey must ensure that all homeowners have the ability to benefit from new building codes. The down payment assistance proposal for certain purchasers of homes meeting enhanced energy guidelines, (Draft EMP Implementation Strategies at 6) is a good way to ensure that families that otherwise are not able to afford these more efficient homes have an opportunity to do so and who will subsequently benefit from lowered energy usage.

Education & Outreach efforts to all ratepayer classes, particularly low, moderate and fixed income ratepayers, on the importance of energy efficiency and the positive economic impact efficiency measures can have is critical. The EMP Committee has already convened an Education and Outreach Working Group to review best practices and develop recommendations in this area. NJCA looks forward to working with this Group.

3. Reject Decoupling

As H.L. Mencken once said and as cited by the Electricity Consumers Resource Council (ELCON) in its thoughtful analysis of decoupling, "Every complex problem has a simple solution too good to be true, and it usually is."

New Jersey Citizen Action is opposed to decoupling and urges the Master Plan clearly reject this ratemaking mechanism. The Draft EMP claims that decoupling has worked in other states (Draft EMP, p. 54). We disagree (unless all one is seeking is more windfall profits for utility corporations).

Revenue decoupling is a ratemaking mechanism designed to eliminate or reduce the dependence of a utility's revenues on sales. It is a radical departure from traditional cost-of-service principles, which bases a customer's rates on the actual cost of providing the electricity and a fair rate of return (profit) for the company. Decoupling guarantees actual shareholder profits at the level of authorized profits regardless of the levels of sales, when sales occur because of changing economic conditions, weather or new technologies.

As found by ELCON, decoupling does not create an economic incentive promoting greater energy efficiency or load reduction. At best, it establishes utility indifference to these objectives. Simultaneously, it undermines customer efficiency efforts and muddles price signals to ratepayers. For example, under decoupling schemes, consumer conservation efforts are rewarded with future higher rates, while excessive consumption paradoxically causes no such price spikes.

NJ's Board of Public Utilities, legislators and other policy makers should not bargain with our state's utilities from a position that assumes that profits in excess of a reasonable rate of return is necessary for their ordinary (and statutory) business behavior, i.e., the responsibility to sell and deliver electricity and to make prudent long-term investments. Decoupling simply shifts business risks from shareholders to consumers (in fact makes electric distribution service virtually risk free for utilities) without any guarantee for net increases in consumer benefits and real risks for consumer losses.

As stated by ELCON, "There is no inherent inconsistency that a utility would both sell and 'unsell' electric energy if rates are appropriately designed for different services. Selling competing products and services is a common business choice and need not be a moral dilemma only for utility executives. There are examples of state ratemaking practices such as shareholder performance incentives that create more explicit economic inducements for promoting energy efficiency and load reduction. These practices avoid the collateral damage created by the 'blunt instrument' nature of revenue decoupling mechanisms".

4. Implement Measures to Reduce Electricity Bills Immediately

It is disappointing and shortsighted that the Draft EMP has limited, if any concrete proposals to provide some relief to consumers who are reeling under skyrocketing electric bills. Electric rates have doubled since 2004 (and the most recent federal data puts NJ's residential rates at the 9th highest in the nation), and utility shutoffs are rising dramatically (15% in the last year). As testified to in numerous proceedings by New Jersey Citizen Action, the Public

Advocate’s Division of Rate Counsel and NJ Large Energy Users Coalition, there are measures the state can and should take right now to reduce electricity bills.

A. Ensure NJ’s Annual Basic Generation Service Auction is Transparent

Since 2002, the BPU has conducted an annual Basic Generation Service (BGS) Auction to establish electricity prices for virtually all residential customers in New Jersey. EDECA established the BGS Auction as a default mechanism for those customers who did not or could not choose among competing electricity suppliers. Since competition has not formed in New Jersey’s residential energy market, residential consumers have no choices to pick from and are by default hostage to auction prices.

The BPU must increase its scrutiny of the auction, which occurs in a virtual “black box”. The current process does not provide the information needed to ensure ratepayers are charged just and reasonable prices for energy usage. Complete and uncensored reports including underlying supply contracts must be provided for regulatory review and public scrutiny to insure that rates are just and reasonable and not the product of market manipulations. Moreover, the Board should require a market power analysis of the BGS auction, similar to that provided by the PJM Market Monitor of our regional grid, to determine if market power is impacting BGS rates and if so take steps to alleviate market power and reduce rates accordingly.

B. Pay as Bid Auction Prices

Under the current BGS auction rules, ratepayers are forced to pay a higher price than the bidder was willing to accept. The NJ BPU should halt this anti-consumer practice immediately and adopt a Pay-as-Bid procedure. This procedure provides winning bidders the lowest price they freely agreed to accept, not the current practice of awarding the highest price accepted for the product on which they bid.

C. Immediately Cease the Collection of No Longer “Stranded Costs” and Refund the Money Erroneously Collected to Ratepayers.

When NJ restructured of the State's electric industry in 1999, EDECA directed the State's utilities to divest their electric generating assets, and the Board to abandon its traditional rate regulation of power generation. In response to EDECA's mandate, PSE&G divested its electric generating assets to an affiliated entity, PSEG Power, while the other utilities sold to third parties. In response to concerns by the electric utilities that they would not fully recover the costs associated with their power generation assets and supply costs in a competitive market, EDECA allowed the utilities an opportunity to recover these so-called above-market (stranded) costs.

PSE&G applied to the Board for the recovery of several billions of dollars in stranded costs. PSE&G's stranded cost valuation was predicated on an administrative estimate of its above-market costs that utilized forecasted power prices and projected revenues for each of its generating facilities. No consideration was given to prices obtained for the sale of comparable generating plants, like those of JCP&L, which sold for more than $2 billion, or about three times their book value. Based on its projections, PSE&G claimed its generating assets had a total value of only approximately $1.7 billion, after taking into account stranded costs estimated at $3.3 billion. Based on PSE&G's filing, the Board determined the value of the generation assets transferred to PSEG Power to be $1.903 billion. The Board allowed PSE&G to recover up to $2.94 billion in stranded costs, $2.4 billion of which was later securitized, with the remaining $540 million recoverable through a Market Transition Charge. The Board also accorded PSE&G favorable income tax treatment for the stranded costs awarded. ***The total stranded cost recovery awarded to PSE&G was approximately $5 billion, exclusive of interest and carrying costs.***

The 2006 Annual Report of the Public Service Enterprise Group, the parent company of PSE&G and PSEG Power (PEG), states that because of higher energy prices, PSEG Power has become the ***"main earnings driver"*** of the company. According to a February, 2008 earnings announcement, in fiscal 2007, PSEG Power contributed $949 million of PEG's total operating earnings of $1,377 million, almost triple the earnings of PSE&G ($376 million). The company has projected an 8% improvement in its earnings in 2008, due to the "continued solid operating performance of PSEG Power". In fact, due largely to the windfall profits earned by PSEG Power, PEG stock has doubled since the aborted Exelon merger and quintupled since the passage of EDECA. As a result, the total market capitalization of PEG has grown from approximately $6 billion in 1998 to its current value of over $19 billion. It is hard that anyone could believe that the company still has or needs to collect from ratepayers these so-called stranded costs. Today, and likely for many years already, these costs, shouldered by ratepayers, have proved nothing more than a huge utility windfall.

To assure that a utility does not over-collect its stranded costs, EDECA specifically requires the Board to conduct a periodic review of utility stranded costs in order to ensure that the utility will not collect charges that exceed its actual stranded costs. However, the NJ Board of Public Utilities has failed to conduct this review.

As part of the Energy Master's Plans recommendations, the NJ BPU should be required to immediately carry out its statutory responsibility in this matter. If as expected, it determines that these costs are no longer stranded, rates must be adjusted, (lowered), to eliminate this surcharge and credits should be provided to ratepayers to compensate for any illegitimate charges already paid.

4. Improve NJ's Universal Service Fund Program to keep Pace with Rising Energy Costs

EDECA created the Universal Service Fund ("USF"). While it took a number of years to develop and implement it serves as a model program for the nation. USF is New Jersey's most efficient assistance program, providing individualized benefits to all participants – just enough to ensure that they pay no more than 6% of their income on energy costs (after accounting for LIHEAP and other public benefits). (In contrast middle income ratepayers pay roughly half this amount for their utility services.) USF is available to all households that earn up to 175% of FPL and pay more than 6% of their income toward energy. USF is funded by a small adder on utility rates, and program expansions can be paid for with adjustments to that rate.

At its inception the program established a $1,800 cap on family program benefits. The cap was established in part because the program was new and policy makers were unsure of the program's outcomes. ***Now, this $1,800 cap should be eliminated because it is inconsistent with a program aimed at having participants pay a certain percentage of their income toward energy***. The program already has built-in incentives for conservation. The only effect this cap has is to arbitrarily force certain families to pay more than 6% of their income toward energy.

USF seeks to ensure that low-income residents have affordable gas and electric bills. If not for the USF, many ratepayers in our state would be paying as much as 24% of their annual income on energy bills, which is simply unacceptable. Rising electric and gas prices undermine the ability of the USF program to ensure affordable energy bills for low-income households in New Jersey. Moreover, skyrocketing energy costs are causing households above 175% FPL to struggle with their energy bills as well. As a result ***Citizen Action recommends increasing the income eligibility threshold from 175% FPL to $350% FPL.***

New Jersey Citizen Action looks forward to working with members of the NJ Energy Master Plan Team and all stakeholders to develop a bold, creative and cost-effective plan that meets the energy needs of all New Jersey residents.