NATIONAL ENERGY MARKETERS ASSOCIATION

3333 K Street, NW, Suite 425
Washington, D.C. 20007
Tel: 202-333-3288
Fax: 202-333-3266

January 29, 2002

Honorable Janet Hand Deixler
Secretary
State of New York Public Service Commission
Three Empire Plaza
Albany, NY 12223

RE: Case 01-E-0359 - New York State Electric & Gas Corporation Price Protection Plan

Dear Secretary Deixler:

The National Energy Marketers Association (NEM) will not be filing a formal Reply to Statements in Support of the Joint Proposal. However, NEM submits this letter to briefly outline its outstanding concerns with respect to the Proposal.

NEM recognizes that certain improvements have been made to the Plan since its inception. For instance, the term has been reduced from seven years to four years (2 two-year periods). The increase in the proposed adders to 3 and 5 mills for customers participating in the retail access option is also a marginal improvement. However, NEM continues to be concerned that a number of terms of the Proposal will harm the development of a competitive market in the NYSEG service territory. NEM also notes that the doomsday, California redux scenario that purportedly necessitated the Price Protection Plan filing never came to pass.

As a general matter, NEM is concerned that the fixed bundled rate option (BRO) could stunt the market in a similar fashion to the fixed back-out rate that the Commission replaced. Inasmuch as the fixed BRO is an artificial estimation there is no reason to believe it will bear a strong relation to actual market conditions. NEM asserts that the same reasons that supported institution of a market-based back-out credit in NYSEG's service territory are equally applicable to the rejection of the BRO. In the alternative, if the Commission approves implementation of the BRO there must be a method to reopen, revisit, and reevaluate the proceeding to examine the level and propriety of the BRO rate. NEM is also concerned that pursuant to the Proposal NYSEG has the right to discount the fixed commodity price for the second phase of the Plan by October 1, 2004. Inasmuch as enrollment for phase two begins on October 1st, marketers will not have adequate warning of whether NYSEG will undercut their competitive offerings.

NYSEG is also afforded the opportunity pursuant to the Proposal to avoid risk in a manner that competitive entrants are not. With respect to Variable Rate Option (VRO) customers, NYSEG will be entitled to credit/recover estimated gains/losses for purchases made in the real time market at prices different than the day ahead market through a floating non-bypassable wires charge. The utility's commodity-related risk should not be reflected in delivery rates. It distorts the price signals received by consumers.

Pursuant to the Proposal NYSEG is entitled to recovery of 1.5 and 3.5 mills of the 2 and 4 mill adders under the ESCO Rate Option (ERO) as uncontrollable costs. This provision violates the Commission's repeated Orders in the Retail Access Credit case that this would constitute double recovery for NYSEG. The Proposal also provides that NYSEG can recover incremental costs and net revenue shortfalls resulting from the Unbundling proceeding in excess of 4 million dollars in any year of the Plan. In guaranteeing NYSEG's recovery of these costs, the Proposal violates the Commission's November Order in the Unbundling case that utility recovery of lost revenues should be premised upon the obligation to "productively manage and reasonably mitigate" costs. Guaranteed cost recovery provides no incentive for NYSEG to shed costs that should in fact be avoided. NEM also continues to be concerned about the inclusion of the vague "all other uncontrollable costs" category.

Respectfully submitted,

Craig G. Goodman, Esq.
President,
National Energy Marketers Association
3333 K Street, NW
Suite 425
Washington, DC 20007
Tel: (202) 333-3288
Fax: (202) 333-3266
Email: cgoodman@energymarketers.com
Website-www.energymarketers.com

cc: Active Parties (via email)
Judges Stockholm and Harrison (via email and Express Mail)