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* OF COUNSEL

March 13, 2006

The Honorable Jaclyn A. Brilling
Secretary
New York State Department of
Public Service
Three Empire State Plaza
Albany, NY 12223-1350

Re: Case 06-M-0043 – Proceeding on Motion of the Commission to Examine Issues
Related to the Deployment of Broadband over Power Line Technologies

Dear Secretary Brilling:

The New York Association of Public Power (NYAPP) hereby submits for filing with the Public Service Commission (Commission) an original and fourteen (14) copies of Comments in the above-referenced proceedings. Copies of NYAPP's filing are also being served by electronic mail to the parties on the service list posted on the Commission's web site.

Kindly acknowledge receipt and filing of the enclosures by date-stamping the enclosed additional copy of this letter and returning it in the envelop provided.

If you have any questions or comments concerning this filing, please contact the undersigned.

Respectfully Submitted,



Tanja M. Shonkwiler

Enclosures

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

Proceeding on Motion of the Commission to Examine Issues)
Related to the Deployment of Broadband over) **CASE 06-M-0043**
Power Line Technologies)

**COMMENTS OF
THE NEW YORK ASSOCIATION OF PUBLIC POWER**

The New York Association of Public Power ("NYAPP"), on behalf of its nine municipal electric utilities files these Comments in response to the Commission Order Initiating Proceeding and Inviting Comments, issued and effective January 25, 2006 ("Order"). NYAPP commends the Commission for its commitment in this Rulemaking and elsewhere to establishing a regulatory framework that promotes innovation in New York's telecommunications infrastructure. The Commission's Order is a timely request for information regarding the potential for BPL and for input regarding the appropriate regulatory framework for BPL.

NYAPP agrees that BPL offers the potential for a third telecommunications platform. NYAPP believes, however, that the Commission should place equal, if not more, emphasis on promoting the benefits of BPL for New York's electrical infrastructure, and as well as maximizing the homeland security uses of BPL. The Commission, in developing the regulatory framework for BPL, should act to ensure that electrical and homeland security benefits are realized and must act to ensure that the safety and electrical grid reliability are maintained. NYAPP questions whether the Landlord-Tenant Model, which the Commission appears to require in the rulemaking, will allow New York to realize these goals. NYAPP believes that a model which provides the utility with more control over the BPL network is more likely to achieve these goals. The Commission can achieve these goals by providing guidance on the

Landlord-Tenant Model but not mandating that utilities provide access under that model and providing flexibility to utilize other models.

The Commission can best achieve the goal of improving New York's electric and telecommunications infrastructure by acting to speed up the deployment of BPL. That goal can be achieved by removing regulatory barriers and uncertainty, providing clear guidance regarding revenue sharing at the outset to encourage BPL deployment, and leaving the particular terms of BPL transactions between utilities and BPL providers to the market. The Commission's proposal that revenue sharing be done based on the market is a good step in this direction. Assuming that affiliate issues are not involved (as NYAPP understands the Commission prefers) competitive markets are highly efficient at providing goods and services and will help ensure that broadband rates to consumers are kept lower than otherwise.

Municipal utilities have an important role to play in furthering BPL in New York. Municipal utility systems are currently implementing various electric and homeland security uses of BPL. Because they own the utility lines in their communities, municipal utilities are in a better position to make telecommunications from BPL available to their communities. NYAPP anticipates that BPL could have economic development benefits for their communities and for New York State generally. NYAPP encourages the Commission to provide regulatory certainty in this area so as to encourage rapid deployment of BPL, and looks forward to realizing the economic benefits from BPL and to working with the Commission to maximize the potential for this new technology.

I. PRELIMINARY STATEMENT

NYAPP is an unincorporated association of nine municipal electric utilities and three rural electric cooperatives located throughout New York State. NYAPP's municipal utility

members are: Village of Freeport Electric Department (“Freeport”), Green Island Power Authority (“GIPA”), Village of Greenport Municipal Utilities (“Greenport”), City of Jamestown Board of Public Utilities (“Jamestown”), Town of Massena Electric Department (“Massena”), Village of Rockville Centre (“Rockville Centre”), City of Salamanca Board of Public Utilities (“Salamanca”), Village of Sherburne (“Sherburne”), and City of Sherrill Power & Light (“Sherrill”).

NYAPP Members are located throughout of the State and as such bring a diversified perspective to the evaluation of the various issues raised by this proceeding, including the importance of BPL to electric utility service and reliability, and BPL opportunities as a third platform for telecommunications. For example, regarding telecommunications issues, in some communities, NYAPP Members have sparsely populated service territories with limited broadband access. Depending on the economics, BPL in these communities could provide access to affordable broadband. On Long Island, in contrast, our Members are seeing a major control struggle developing between Cablevision and Verizon. Verizon is in the process of deploying fiber optic cable to all residents of Long Island with a long-term goal of providing a full spectrum of broadband services. In this situation, Municipal BPL provides an opportunity to make a third platform for broadband services available to potentially compete with cable and phone companies, an option that could benefit consumers by forcing providers to compete to offer better services at competitive prices, without additional pole attachments.

Because NYAPP’s Members are publicly owned, the Members’ primary interests are in improving the economic welfare of their New York consumer-owners and their New York communities. BPL has an important role to play in that economic development. In NYAPP’s view there are significant electrical and homeland security benefits associated with BPL that this

Commission should facilitate. BPL as a third platform for telecommunications also has significant potential benefits both for our underserved communities and for more vigorous competition in the telecommunications industry generally. NYAPP encourages the Commission to move forward promptly with this proceeding so that these goals can be realized.

II. COMMENTS

NYAPP commends the Commission for its commitment in this Rulemaking and elsewhere to “establishing a flexible regulatory framework that promotes innovation and encouraging economic investment in the state’s telecommunications infrastructure.” Order at 2. This goal is important to ensure that regulatory barriers and uncertainty do not frustrate the deployment of broadband services, particularly to lower-use and underserved communities. The Commission also recognizes “the potential benefits that BPL could provide electric utilities and their customers. . . .” Order at 3. These electrical benefits, as well as the homeland security benefits of BPL are, in NYAPP’s view, the most important immediate future benefits of BPL. NYAPP encourages the Commission to keep the important electric grid benefits at the forefront of this rulemaking and ensure that its proposed regulatory structures does not impede utilities’ ability to realize these benefits.

Municipal utilities have an important role to play in furthering the Commission’s stated goals. Municipal utility systems are currently experimenting with various electric and homeland security uses of BPL and their electric consumer-owners are benefiting from those new uses. Municipal utilities are better positioned than investor-owned utilities to make BPL available to their communities. NYAPP’s Members see BPL as a potentially important economic development tool. NYAPP encourages the Commission to provide regulatory certainty for BPL’s rapid deployment, while ensuring that safety and reliability standards are met.

The Order appears to assume a Landlord-Tenant Model for BPL, wherein BPL providers lease property from utilities to provide broadband service to customers. NYAPP does not prefer this model. However, NYAPP understands that under this model, regulation may be more streamlined than in other models (see discussion below) and deployment of BPL may be faster. NYAPP strongly encourages the PSC not to limit New York to this option and to leave open the option of different business structures, at the discretion of the negotiating parties. As discussed in more detail below, these alternative structures would have the benefit of preserving the ability to maximize BPL's potential for economic development, electrical grid and homeland security uses while ensuring the safety and reliability of the grid. One way that the Commission could achieve this goal is establish a regulatory structure for the option of a Landlord-Tenant relationship now, but not mandate that utilities use that structure.

NYAPP's understanding of the scope of this proceeding is that the Commission's intent is not to require open access for BPL. NYAPP supports this for both regulatory and technical reasons. NYAPP believes that it is not technically possible at this time to provide access to multiple BPL providers on the same line. This option also should not be considered while BPL is still in its developmental stages.

NYAPP also recommends that the Commission provide general guidance regarding BPL issues at this time followed by more detailed guidance as necessary in the future. As the Commission correctly points out, there are multiple issues associated with BPL and variations on these issues may develop over time. While it is important that the Commission provide some general guidance at this time, other issues are best addressed as they develop.

A. Status and Development of BPL Technology

In the Order, the Commission identified some of the important electrical benefits of BPL:

BPL may benefit New Yorkers by providing a technology which electric utilities could use to gain instantaneous access to customer and grid-specific telemetry. There are many potential applications for this information, not the least of which would be to identify and resolve distribution system issue before they become significant problems.

Order at 3. NYAPP concurs in these benefits. The recent National Association of Regulatory Utility Commissioners' Report for the Broadband over Power Lines Task Force states that BPL:

has tremendous potential for enhancing the operability of the electric grid itself. An excellent example of potential technological synergy, communications capabilities embedded within the electric system could make possible dramatic enhancements in the efficiency and reliability of the electric utilities' power operations. The ultimate goal in this respect is the development of the 'intelligent' or 'smart grid'.

Report at 13.

NYAPP believes that the primary benefits of BPL at this time and for the immediate future are electrical. One of the goals of this rulemaking should be to establish a regulatory structure that will encourage realization of these benefits.

Several of NYAPP's members are currently evaluating BPL as a means of reading meters, outage monitoring and notification, and gaining access to commercial meter information which could be fed back to the associated customer over the Internet. In addition, there are plans to utilize an integrated BPL/wireless system for security cameras at strategic locations within various utility systems to address homeland security issues. These and other options for BPL use on the electric system and for homeland security have potentially important benefits for utilities.

The potential list of uses of BPL includes:

1. AMR – Automatic Meter Reading for monthly billing – Allows for faster, more accurate billing.

2. **Direct Load Control of customer equipment** – BPL is used for peak shaving to reduce demand and increase load factor.
3. **Controlled time of day billing** – BPL offers the customer the information required to reduce consumption during expensive peak periods by increasing loads during off peak times. Utilities benefit by attaining a more uniform daily load factor.
4. **Real time usage information for the customer** – A way to demonstrate current usage and billing in real time for decision making.
5. **Real Time Outage Information** - Can assist in service restoration by identification of system disturbances to improve restoration times.
6. **Grid Security** – Deployment of the new technology will allow better identification and response to manmade or natural disruptions.
7. **Support for widespread use of distributed generation** – Standardized power and communication interfaces will allow customers to interconnect fuel cells, renewable generation, and other distributed generation on a simple ‘plug and play’ basis.
8. **Achievement of Greater Grid Throughput and the Lowering of Power Costs** - Grid upgrades that will increase the throughput of the transmission grid and optimize power flows will reduce waste and maximize the use of the lowest-cost generation. This could be particularly important in downstate New York with its significant transmission constraints.

NYAPP encourages the Commission to keep the important utility benefits of BPL in the forefront as it moves forward with this proceeding. As the Commission recognizes in its Order, while some BPL electric technologies are currently available, some are currently not and others may be costly. The Commission should establish a regulatory structure that facilitates the

development of these technologies. NYAPP is concerned that in apparently proposing to mandate that utilities cannot be the developer of the BPL network, the Commission may limit BPL innovation for utility purposes. For example, in forcing the utilities to buy BPL services from another provider over the lines built and paid for by the utilities, there is no assurance that these services will be made available or made available on a cost-effective or a timely basis to the utility. A preferable model, as discussed in more detail below, is to have the utility control BPL so they can easily respond to and update the system for these new technologies.

B. Safety and Reliability of Service

The deployment of BPL will add an additional layer of equipment to current third party telecommunication services such as telephone, cable TV (CATV), fire alarm systems, fiber optic cable systems, privately-owned street light systems, and traffic signaling. As discussed in more detail below, BPL raises significantly more complex safety and reliability issues than these other technologies. Safety to operating personnel and the general public is the top priority in adding a new service entity. Care must be taken to ensure nothing in the design, installation, operation, or maintenance of this system compromises this objective.

The Order requests comments on the applicable safety standards for BPL. The current edition of the National Electrical Safety Code (NESC), also known as IEEE C2-2002, provides general provisions for safeguarding of persons from hazards arising from the installation, operation or maintenance of electrical equipment (overhead and underground), and communications facilities. As BPL equipment will be deployed and integrated with common systems of both the electric and telecommunication facilities, BPL must be required to adhere to these general NESC standards and be consistent with Commission orders. However, additional entries will be required in applicable sections of the NESC to cover portions of BPL applications

not already addressed. BPL equipment must also meet requirements contained in applicable sections of ANSI, IEEE, ASTM, NFPA, and OSHA standards as presented in Appendix B of the NESC, as well as Underwriters' Laboratory standards. Regarding telecommunications issues, equipment must be designed to have minimal harmonic and other interference with utility-owned equipment, including radio-operated switches.¹ Amateur radio (HAM radio) interference should be addressed through compliance with FCC part 15, as modified. There should be an initial presumption that interference problems are attributable to the BPL provider.

There are safety and logistical considerations concerning BPL deployment that are significantly different than typical telecommunications access and that should be considered by the Commission in this rulemaking. BPL systems, unlike telecommunication systems, are a different technology relying on numerous field interconnections with the electric wiring at hundreds or even thousands of locations depending on the size of the deployment. This includes, among other things, the potential need for relocation of facilities to accommodate BPL equipment, such as adding new medium or low voltage wiring, changing out poles, and replacing transformers. Freeport Electric, for example, had to replace the 15kV spacers on their overhead system with 33kV spacers to accommodate the BPL couplers used for their pilot program. This work can only be accomplished by First Class Linemen, consistent with OSHA requirements. Therefore, coordination with outside parties would need to be established for every installation on the utility low or medium voltage system. Further, while telecom access operates across a system with extremely low power interfacing, the BPL equipment will be connected to a system

¹ Current BPL designs function at frequencies thousands of multiples higher than the 60 Hz power lines. This limits the effect BPL should have on power system operation. The most likely cause of any harmonics or true power quality issues will result from the additional power supplies that may need to be connected to power the BPL infrastructure. This is a common factor not limited to BPL. Any device that uses a power supply has the ability to generate harmonics. Good engineering practices and testing should be able to prevent this from being a problem. However, it is not clear as to the extent that the current BPL technology will present problems that will require engineering solutions by the utility or the effect a BPL signal will have on newer possibly more sensitive electronic technologies.

with high power capability that could cause extensive damage or injure personnel or the public if not correctly administrated.

Some key issues regarding safety and reliability include:

- Standards for clearances associated with BPL equipment.
- Necessity for re-closure of devices tagged out during primary installation.
- Handling of pad mount transformer access.
- Worker and customer safety during access to vaults and manholes.
- Potential liability associated with having non-utility personnel working on the electric distribution system.
- BPL equipment must be engineered so as not to put additional stress on existing lines, poles or other equipment. The weight and size of BPL equipment must be given serious consideration.
- BPL equipment should be removed from the medium voltage system for servicing or serviced by utility personnel under the guidance of the BPL provider. This would need to be clearly set out in the Landlord-Tenant Model.
- Electricians can work on secondary voltage. Utilities do not allow electricians to make connection to the poles due to the proximity of primary cables.

Since BPL utilizes a high frequency carrier signal to propagate digital bandwidth, it is likely that only one BPL system having a unique set of characteristics can be utilized at a time without causing degradation in available bandwidth. Aside from frequency problems which will prohibit more than one BPL provider, the Commission should consider that the way an electric distribution system is operated will inherently limit a BPL network to only one provider. Utility operators often need to transfer electric load from one circuit to another by closing and opening

field switches or circuit breakers. A customer connected to circuit A could be transferred to circuit B to facilitate fieldwork or load transfers. If the BPL systems on both circuits are not identical, they could interfere with one another and cause either an outage or severe service degradation due to data collisions. If there were multiple BPL networks in one service territory, routine utility operations, such as moving transformer loads between phases to balance circuits, could interrupt BPL service. Further, even with only one provider if BPL is only on one phase and the transformer is moved it may leave BPL customers without service. Typically these actions are taken to insure system reliability. A utility cannot be prohibited from making changes to the distribution system because of a BPL retailer's network design. Also, during restoration efforts, the utility should not be required to delay restoration of electric service while it contacts the BPL provider.

In order to assure the safety of utility personnel and the general public, it is absolutely essential that medium and low voltage requirements be handled exclusively by the utility or, at the utility's sole discretion, directly under the utility's direction and control. In order to simplify regulation in this area, and speed up deployment of BPL, NYAPP recommends that only utility personnel be allowed to work on utility lines. Since the BPL network will require at one time or another connection to secondary voltage supplies (120/240 volts), medium voltage supplies (i.e., 13,880 volts phase to phase, or 7,970 volts phase to ground), and communication lines, a unique skill set for installation and operating personnel will be required. Installation of BPL equipment may require the relocation or replacement of utility facilities in order to accommodate the BPL equipment. This is work that should only be completed by the utilities' line personnel to ensure that proper utility codes and standards are satisfied. Utility line personnel operating on medium and low voltage lines require supervised hands-on and specialized training typically requiring 5 -

7 years of experience. The safety of utility personnel and the general public can be achieved by only allowing qualified personnel to work on or near medium and low voltage lines or equipment.

The Commission requested comment on available space on pole line and underground systems. These issues should be resolved through negotiations between the utility and the BPL provider similar to make-ready work for cable facilities. All BPL installations must meet the requirements of the NESC and applicable safety codes and be under the direction and control of the utility operating that system. As to space on current pole line facilities, the addition of BPL may require additional room currently within the telecommunications or utility boundary as outlined in the NESC. Under many circumstances, space may not be available and additional vertical space may be needed to accommodate the new equipment, requiring the installation of new poles. Likewise, within the underground systems, space and duct requirements would have to be negotiated with utilities to accommodate equipment and cabling. Considering the size of some manholes it may be necessary to install additional duct and manholes to accommodate the BPL connections. These issues are best left to negotiations between the parties.

Ultimately, NYAPP believes that the utility must maintain control over its electric distribution system to ensure the safety and reliability of its operations. While BPL has potential as a telecommunication medium, allowing personnel other than electric utility personnel to work on utility owned facilities will only lead to degradation in safety and reliability.

Although not directly discussed in the Commission's request for comment, NYAPP assumes that during storms or system disturbances, the utility's first priority is to reestablish electric service to its customers. BPL would have a lesser priority during restoration, whether installed by the utility or a third party (similar to current telecom services). This would require

clear direction from the Commission that the utility controls the reestablishment of service. We cannot have a retail BPL provider trying to restore service by using his own First Class Linemen working on utility facilities without utility oversight or direction.

C. Business Models

The Commission in its Order states that “We believe that the most appropriate business model to deploy BPL-based services is one in which the incumbent electric utility is not the BPL provider but rather leases or sells the access rights for its system to business entities. . . .” Order at 8. NYAPP does not agree with the Commission’s conclusion in this regard. NYAPP strongly urges the Commission to provide flexibility in this area rather than dictating that utilities utilize a single rigid model.

The Commission’s selection of a single model is inconsistent with the Commission’s stated goal of providing regulatory flexibility and allowing the market to function. NYAPP infers that the Commission prefers the Landlord-Tenant Model because regulation would be streamlined, and that may speed up BPL access. In the long run, however, alternative models are more likely to improve electrical benefits of BPL and contribute to a safe and reliable electric and telecommunications infrastructure. NYAPP strongly encourages the Commission not to dictate the Landlord-Tenant option and instead to leave available a variety of other options.

There are significant safety and reliability advantages to a model where the utility has more control over the BPL network than a Landlord-Tenant Model. The inherent link between BPL and the utility grid mandates that the electric utility have complete control over the installation and rollout of any BPL project. When BPL and power are both under the control of the distribution utility a single entity is responsible for best interests of the customers. Any sub-system that is attached to or has an effect upon the power grid must be reviewed and engineered

as to have a limited effect on the end product (either BPL or power). When one entity maintains both systems they can be designed to work in unison, the power grid can be modified to best serve BPL and BPL can be designed to work with the power grid. Any conflicts or unforeseen interference that may arise must be addressed. When both systems are under the control of the utility it will maximize the use of both systems.

Even in the current, much simpler environment, there is a tremendous amount of finger pointing when it comes to troubleshooting a problem. Cable suppliers routinely blame the power company for stray currents on their coaxial cables. This results in cable companies walking away from the job and blaming the utility. The utility responds and blames the cable supplier. With standard wired broadband a computer problem can be blamed on the power quality. In turn the power quality problem is blamed on the computer. Who fixes it? This is an ongoing issue that will only be exponentially complicated with newer and more sensitive equipment, and additional suppliers. This split responsibility wastes time, money and most importantly, leaves the customer without service. When a utility has a common goal of customer satisfaction for both power and telecommunications, there is more incentive to achieve a solution. Simply put, the problem must be addressed, and if only one company is responsible they can't "pass the buck". These issues are best addressed in a situation where the utility provides the BPL network.

Allowing the utility to own and operate the BPL network would maximize the opportunities for electric uses of BPL. NYAPP is concerned that in proposing to mandate that the utility cannot be the developer of the BPL network, the Commission may limit BPL innovation for utility purposes. For example, in forcing the utility to buy BPL services from another provider over the lines built and paid for by the utilities, there is no assurance that these services will be made available or made available on a cost-effective or a timely basis to the

utility. For this additional reason, it is important that the utility have the flexibility to control BPL so it can easily respond to and update the electric system and homeland security systems as new technologies develop.

1. Wholesale Business Model

Utilities should have the option of deploying a wholesale BPL network that could be used to provide broadband services to its customers. A Wholesale Model would allow the utility to build the basic network and infrastructure passing every home and business and then provide access to any retail provider wishing to offer telecommunication services on the network. The utility would be responsible for constructing the access network, including medium voltage and backhaul facilities. The retailer would then be responsible for connecting its network to the access network and providing approved end-user equipment to its subscribers. Retailers would also be responsible for all customer interface functions, including sales, marketing, billing and help desk services.

Under this arrangement the utility would require a retailer to interconnect to the BPL network at a central location. This connection would likely be some form of fiber, copper or wireless circuit from a local or regional telecommunication provider in the area. The utility could also offer tiered service to the retailers (1.5 Mbps – 3 Mbps, etc.) depending on how complex an arrangement the utility wants to get into.

The Wholesale Business Model insures the safety and reliability of the electric distribution system within a utility's service area, a primary concern of NYAPP. This model would allow utilities to provide oversight to all contractors working on the power lines. The Wholesale Model would also allow the utility to maximize the electrical and homeland security benefits of the BPL. With the utility in control of the lines, the likelihood of realizing the

benefits for future technology changes and opportunities for improved electric service and homeland security via BPL will increase. NYAPP is concerned that a Landlord-Tenant Model will, both legally and practically, restrict the ability of utilities to make these important upgrades.

2. Partnering

Rather than the utility incurring the entire financial burden associated with establishing a BPL network, a partnering arrangement could be deployed. A partnering model blends the assets and capabilities of the utility and retailer to create the optimal mix of investment and operating responsibility for the BPL venture. Responsibility can be broken down for investment, network operation, and customer interface. One possible investment scenario is as follows:

1. The utility would purchase, install and own the medium voltage BPL system and backhaul equipment.
2. The retail operator would provide all other capital equipment including subscribers' equipment, Internet services and voice services.
3. The utility maintains all of the medium voltage equipment.
4. The retailer could provide network monitoring and outage notification on the network as well as report electric system outages.
5. The retailer would provide all maintenance and administration of all broadband services.
6. The retailer provides all customer interface including help desk, billing, sales and marketing.

Dealing with a single retailer allows for more financial flexibility. In this model the financial arrangements will depend on the extent to which each party chooses to participate in the development. This is the foundation for the revenue sharing.

3. Landlord-Tenant Model

The Landlord-Tenant Model appears to be the preferred model of the Commission Staff. The Landlord-Tenant Model is one in which the utility has no involvement in the deployment of the BPL network. Rather, the utility leases access to the utility infrastructure for some combination of fixed and variable fees. Fixed fees might be associated with attachment fees and variable fees might be tied to revenue generated by the retail provider within the utility's service territory.

NYAPP disagrees with limiting utilities to this approach. The opportunities for maximizing the electric utility uses of BPL are better in the Wholesale Market model. Further, that model assures the safety of the public and employees in regard to the electric grid. Although a contractual agreement for the utility to perform all electrical work and maintain BPL equipment could mitigate some of these concerns, NYAPP prefers a Wholesale Business Model.

D. Electric Utility Regulatory Issues

NYAPP encourages the Commission to provide regulatory certainty in this area to maximize opportunities for development of BPL. The Commission should adopt general but clear ratemaking principles at the outset, and decide on more detailed ratemaking mechanisms in future proceedings. Uncertainty regarding technological and financial issues associated with BPL renders it impossible to set compensation for use of the utility's electric delivery system, other than the pole attachment fees for the portion of the utility facility that is occupied by BPL attachments.

As discussed in more detail above, NYAPP has concerns with the Commission mandating a Landlord-Tenant Model for BPL. While NYAPP does not object to the Commission setting regulatory standards for the Landlord-Tenant Model, NYAPP encourages

the Commission to give utilities the flexibility to use other models. NYAPP limits its comments in this section to the Landlord-Tenant Model discussed by the Commission.

NYAPP supports the Commission's proposal for an access fee based on market rates and competition. Unfettered competitive markets are highly efficient at providing goods and services and will help ensure that broadband rates to consumers are kept lower than otherwise. Having leveled the playing field, removed regulatory barriers, and set a mechanism that encourages utility participation, the Commission can allow the market to function. Utilities will be more likely to engage in BPL transactions if they do so of their own volition, if the revenue mechanism offers adequate incentive, if they are allowed to negotiate freely in the market, and if the utilities are not subject to reasonableness reviews or the chance that the regulatory barriers are subject to change.

As an alternative, NYAPP could support a revenue sharing mechanism at the outset to encourage BPL deployment. NYAPP believes the fairest and most effective revenue sharing mechanism initially would allocate net revenues equally between customers and shareholders, so that utilities will be given adequate incentives to pursue BPL deployment, and ratepayers will directly benefit as well. The particular terms of BPL transactions between utilities and BPL providers could be left to the market. Revenue sharing should be in addition to current pole attachment rates because the BPL provider needs access to a variety of electric utility facilities, including wires, which the utility is not compensated for in pole attachment rates.

NYAPP believes that the Commission's Order correctly focuses discussion on the most immediate regulatory issue for BPL, namely compensation for BPL access.² Other issues should be addressed if and when BPL deployment is more widespread.

² Issues such as provider access, and legacy and telephone regulation, if any, should more appropriately be addressed at a later time. As discussed in more detail above, NYAPP believes that it may be technically

III. CONCLUSION

The New York Public Power Association appreciates this opportunity to provide comments on the Commission's Broadband Over Power Line Proceeding and looks forward to providing further input as this proceeding moves forward. NYAPP supports the Commission's efforts to provide regulatory certainty to maximize New York's electric and telecommunications infrastructure and believes that Municipal utilities have an important role to play in furthering the Commission's goals.

Respectfully submitted,



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difficult or impossible to provide BPL access to multiple BPL providers on one line at a time. This issue should not be addressed until there is more widespread deployment of BPL.
