STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 07-M-0548 – Proceeding on Motion of the Commission Regarding
An Energy Efficiency Portfolio Standard.

REPLY BRIEF OF THE STAFF OF THE DEPARTMENT OF PUBLIC SERVICE ON BRIDGING PROGRAMS AND POLICY ISSUES

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INTRODUCTION

Twenty six parties filed initial briefs on or around April 10, 2008. Staff is heartened by the overwhelming support and enthusiasm for a greatly enhanced energy efficiency program for New York State and wholehearted support for the ambitious 15 by 15 electricity reduction target (with a comparable target for natural gas) that has been the cornerstone of this proceeding. Numerous parties express their willingness to participate in collaborative implementation efforts. The excitement to go from the talking stage to implementation planning is palpable. The EEPS Staff team shares this sentiment and stands ready to participate in the implementation phase of the proceeding.

This reply brief on behalf of the Staff of the Department of Public Service (Staff) summarizes areas of agreement and responds to those points with which we disagree. The reply brief also addresses matters raised by parties that require more attention before final resolution is appropriate. We have chosen to discuss some elements of each party's initial brief separately for ease of presentation and coordination. In several cases, comments common to more than one commentator are considered collectively. The next section of the brief explains Staff's view of the process going forward.

Several themes emerge from these filings. Prominent among these themes is the stark contrast in tone between the initial briefs prepared by entities with deep current experience with energy efficiency program administration and delivery and the initial briefs prepared by entities with less current experience. Niagara Mohawk Power Corporation d/b/a National Grid (Grid), for example, expresses an eagerness to operate its own programs in New York similar to those it now operates in New England, but states that it would also participate in the programs proposed by Staff. As explained in its Initial Brief, "National Grid plans to file with the Commission shortly a comprehensive set of electric and gas efficiency programs modeled on its existing programs in Massachusetts, Rhode Island and New Hampshire and tailored to complement existing NYSERDA [New York State Energy Research and Development Authority] programs."[1]

Although lacking the depth or breadth of experience gained from administering large energy efficiency programs over the last decade, Consolidated Edison of New York, Inc. (Con Edison) and Central Hudson Gas & Electric Corporation (Central Hudson) also express an eagerness to operate their own programs (as long as the financial reward for doing so is adequate). One cannot miss the defiant tone of their initial briefs, in which they truculently disparage NYSERDA programs and/or Staff's bridging proposals,[2] insist they can start large scale energy efficiency efforts involving a number of new programs immediately, and accomplish their portion of the 15 by 15 goal without an expressed commitment to meaningful coordination. The stance of these utilities reveals a disturbing lack of appreciation for or understanding of the complexity attendant to energy efficiency program implementation in the current market environment and the need for integrated, coordinated efforts in order to meet the ambitious energy usage targets of the EEPS proceeding.

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[1] National Grid's Initial Brief, footnote 9.

[2] Con Edison even objects to on-bill financing. Con Edison Initial Brief at 42.

Another prominent theme is the widespread support by more than 20 of the commentators for Staff's bridging program proposals. We urge the Commission to approve immediately the programs and implement the policy-related initiatives described in the March 25, 2008 DPS Staff Report on Recommendations for the EEPS Proceeding (March Staff Report) and Staff's Initial Brief (Staff IB). Doing so will clear the detritus from the path leading to achievement of the 15 by 15 objective and allow the parties–and the Commission–to move forward while providing the opportunity to further examine important issues fundamental to the design of the long-term portfolio standard, and to make timely adjustments based on new information as it becomes available between now and 2015.

CREATING A DYNAMIC, ORGANIC PROCESS REGARDING THE PRESENT AND FUTURE ROLE OF UTILITIES AND OTHER PROGRAM ADMINISTRATORS

As Staff explained in its Initial Brief and other filings, we believe that attaining the ambitious targets established for the EEPS proceeding, New York will need the best thinking and sustained efforts of numerous parties. Utility participation and cooperation is an important factor in achieving New York's goals. The utilities have repeatedly pointed out that they have a unique relationship with their customers, which should be reflected in the design of energy efficiency implementation efforts. Staff agrees, and believes that program design should take advantage of utilities' ability to communicate with their customers and understand the needs of their service territories.

Utilities have an opportunity to communicate with their customers each month in the form of bill inserts or customer news letters that accompany utility bills. This as an important vehicle to let customers know about new energy efficiency programs or expansions, or updates to current programs. In addition, utilities have regular outreach functions. Staff encourages utilities to put special emphasis on developing outreach and education materials and participating in events related to energy efficiency and "green" topics, in coordination with statewide outreach efforts. As we have said in previous filings, it is important that there should be a statewide umbrella message so that the effectiveness of any individual outreach effort is leveraged, but within that framework it will certainly be useful to tailor outreach events and specific messages to let customers know about what is happening in their local area and how they can participate.

In terms of commercial and industrial customers, utilities have customer representatives that focus on the needs of larger customers. These representatives can be an important conduit to let customers know about available programs and to funnel information from customers back to the implementation process so that appropriate modifications can be made to ensure that programs are designed in a way that optimally meets customer needs. It is important, too, that the needs of smaller commercial and industrial customers be addressed in a systematic way, which is why Staff has recommended that the Small Business Direct Installation bridging program be implemented by utilities.

As utilities point out, they have customer data that will be important in designing programs and marketing campaigns. We agree that utilities should take advantage of this information to develop outreach approaches and programs that meet the needs of their service territories, but believe that there needs to be a much greater sharing of this information with other market participants than has been the case in the past. We recognize that there may be some privacy concerns that must be addressed, but we do not see these as insurmountable problems. Staff recommends that a collaborative effort should address the issue of how to improve sharing of data among all energy efficiency entities so that a transparent, open process can occur.

Staff recommends implementation of an EEPS governance process that will provide input from all interested parties, as presented in Attachment 1 to our Initial

Brief.[3] We consider this governance model as an organic approach to implementation of energy efficiency programs. Rather than carving up slices of responsibility and assigning pieces to various organizations at the start of the program and expecting that allocation to make sense through 2015, we recommend that the governance body should initially make sure that the expansion/new program recommendations embodied in Staff's bridging proposals are implemented in a logical, integrated way so that customers are presented with a coherent set of options that make their participation straightforward and encourage their participation. Although the City of New York, the National Resources Defense Council (NRDC), PACE, and the Association for Energy Affordability continue to support their proposed Partnership governance model, we repeat our firm conclusion that their proposed approach would lead to balkanization of programs statewide, inefficiencies and delays, and thereby jeopardize achievement of the 15 by 15 goal.[4] Much of what these parties were seeking to accomplish can be achieved through voluntary collaboration among the parties, which Staff endorses.

Utilities and other potential program administrators should also have the opportunity to recommend programs, or suites of programs that complement existing offerings to the governance organization. A utility would present its proposal for discussion prior to making a filing with the Commission. The utility would have the opportunity to demonstrate that it can administer a specific program more efficiently and effectively than the current administrator, in the case of an existing program, or than other potentially interested administrators, in the case of a new program. The governance board would serve as a forum to discuss program approaches, make suggestions, work through implementation details to

[3] Perhaps this governance body could report to the State Energy Planning Board described in a recent Executive Order from the Governor.

[4] Please refer to Staff's January 25, 2008 filing on this issue for a comprehensive discussion of the flaws of the Partnership model.

ensure that opportunities are not overlooked, and also present recommendations to the Commission. As the statewide portfolio of programs evolves, the emphasis should be on how to leverage the strengths of both utilities and NYSERDA to provide maximum effectiveness without duplicating effort or creating confusion in the marketplace.

We agree with the concept that utilities should have the opportunity to receive incentives to align their interests with the goals of the 15 by 15 target. It is important, however, to make sure that incentive levels are reasonable; that they preserve most of the program benefits for utility customers; and that there are consequences, in the form of negative revenue adjustments, for failing to achieve program goals. If New York is counting on the effectiveness of energy efficiency programs to avoid the need for new generation or gas pipelines, it is critical that parties and the public have confidence in the effectiveness of the programs that are implemented. Consequently, it will be crucial for utilities and other program implementers to be held accountable for the effectiveness of the programs they implement in the form of analysis and verification performed by independent third parties, overseen by the Department of Public Service, using a fully transparent process.

In descriptions of its bridging proposal, Staff has described an 18-month period during which utilities would establish new programs and assist with marketing for, and enrolling customers in, existing NYSERDA programs. This bridging period would also be a time for working out the details for a longer term program period. Some parties may have had the misperception that there would be a stark discontinuity between the fast track period and a long-term EEPS period. Staff's vision is much different; we see this as a much more dynamic process where unnecessary delays are avoided and once the Commission approves new programs or approaches they can be implemented to continually improve the structure and reach of the programs under the Commission's jurisdiction.

RECOMMENDED PROCESS FOR
ESTABLISHING BRIDGING PROGRAMS

Staff proposes that once the Commission issues an order on the bridging programs, the utilities should file appropriate tariffs to put in place a collection mechanism for collection of the revenues associated with an expanded energy efficiency program for electricity and a new program for natural gas efficiency; guidance on this should be clearly defined in the Commission's Order. In addition, the utilities, NYSERDA, and the Division of Housing and Community Renewal (DHCR) should have 30 days to file descriptions of their programs, including projected costs and savings, and evaluation and reporting plan proposals. A collaborative effort would then be convened expeditiously within the next 30 days (a total of 60 days for the entire process) to discuss the recommendations and make suggestions. In other words, each program administrator will file a compliance filing with the Commission within 60 days of the Commission Order; this filing should reflect input from interested parties.

Once utilities file their implementation plans with the Commission to get the bridging programs underway, they should be allowed to submit into the governance process (which the Commission is expected to establish) any additional programs that they believe can be coordinated with the existing program structure to help New York reach its energy targets, as described above.[5] Accordingly, there will not be a discontinuity caused by a change in approach. The bridging programs will start an expansion of New York's energy efficiency efforts and improvements will follow as soon as they have been vetted and approved by the Commission.

Staff also recommends that the Commission authorize use of a competitive solicitation framework for obtaining energy resources to be administered by Staff, for obtaining energy resources that would allow utilities, utility subsidiaries, and

[5] Filings and the information supporting the filings should be public and open to review by all interested parties.

other parties to participate. As Staff explained in its Initial Brief, we recommend that the initial solicitation should take place in 2009 for the commercial retrofit market. Depending on the results of the initial solicitation, subsequent solicitations could take place in 2011 and 2013 and could potentially include additional markets.

In its Initial Brief, NYSERDA recommends that the fast track period be extended for a year (making these 30-month programs) to ensure stability of programs so that energy efficiency providers will be more willing to participate. Staff has no objection to that concept but wants to emphasize that: 1) other programs or approaches that are ready to go before then and have been approved by the Commission should not have to wait until the end of the 30 month period to be implemented; and 2) Staff does not consider the bridging programs to be the final word on energy efficiency programs – we have designated them "bridging" programs because we fully expect that better approaches will emerge as parties gain experience with the new energy efficiency paradigm for New York.

ISSUES RAISED BY MULTIPLE PARTIES

Cost Allocation and Cost Recovery

NYSERDA Program Spending

Central Hudson, Con Edison, and Multiple Intervenors (MI) assert that EEPS program spending in any particular service territory should closely align with the amount of ratepayer funding from that service territory. NYSERDA agrees with the concept of equitable treatment of service territory funding/program spending but is concerned about the potentially complicated tracking system that would be required.

Staff generally concurs (Staff IB at 39). We have observed that NYSERDA is making greater efforts in recent months to ensure that the money collected in a particular service territory matches the expenditures on program offerings in that service territory. We also believe, however, that NYSERDA, as NYSERDA suggests in its Initial Brief, must have some flexibility in its operations across the State. There may be certain efficiency opportunities in a particular county or municipality which may be lost if not acted upon at that moment. However, all reasonable efforts should be made to match collections and expenditures within a utility service territory, to the extent practicable. To position energy efficiency investments to capture avoidable infrastructure investments to the degree possible, NYSERDA's efficiency program targets need to be more utility territory specific than they have been historically.

Use of Regional Green House Gas Initiative (RGGI) Funds

Several parties spoke about using the proceedings from upcoming RGGI auctions to fund energy efficiency initiatives. Con Edison states in its Initial Brief (at 19) that "NYSERDA would most likely receive over $300 million annually" from RGGI allowance sales, in addition to the $175 annually in SBC funds NYSERDA already collects, and therefore "evidence has not been provided that NYSERDA is in need of additional funding to expand its programs." IPPNY (at 2) objects that it would be premature and inappropriate to target use of RGGI money for EEPS funding. Similarly, Staff notes that the amount and use of potential RGGI funds is uncertain at this time and should not be relied upon; in the event that RGGI funds materialize the Commission can adjust the EEPS surcharge accordingly. Con Edison (at 23) also proposes a novel way to eliminate the parity concern: "[U]tilities should collect and use customer money for their own service territories only and there will be no service territory parity issues to resolve."

Staff believes that the process of setting up the RGGI auction process and determining how resulting funds will be used, should not be allowed to hold up the implementation of EEPS program implementation.

Funding Exemptions and Inter/Intra Class Issues

Con Edison asserts that existing SBC program funding responsibility exemptions for New York Power Authority (NYPA) customers should not be continued in its service territory; that funds collected from a particular class should not be used only to fund programs for that class; and that costs, for both gas and electric customers, should be allocated based on usage. By contrast, Multiple Intervenors (MI) states (at 14) that EEPS surcharges must not be imposed on NYPA allocations, and that "an equitable cost allocation would assign cost responsibility for each efficiency program to the responsible customer classes." Con Edison states (at 29) that "funds collected from a particular class should not be used only to fund programs for that class because it will create administrative burdens and restrict program flexibility for programs that are designed to benefit all customers through the environmental and possible infrastructure benefits they produce, as well as through potentially lower commodity prices."

MI asserts (at 24) that "[i]f costs are allocated consistently with causation, targeting certain customer types for increased expenditures would not create or exacerbate interclass subsidies." MI (at 32) is "troubled by, and opposes, proposals that [EEPS] surcharges be recovered solely on a volumetric basis." NYPA states in its Initial Brief (at 3) that it offers "full turn-key energy efficiency services" to its customers, with NYPA "providing upfront financing of all costs" and the costs are being recovered from program participants' energy savings. NYPA also points out that many municipal electric utilities that purchase power from NYPA are members of the Independent Energy Efficiency Program (IEEP), through which NYPA invests and implements energy efficiency programs.

Staff continues to believe that, during the bridging or fast track period, NYPA customers should be exempt from EEPS surcharges. As NYPA points out, these customers have other efficiency programs to take advantage of, and this issue can be discussed more fully in the collaborative discussions comprising the long-term EEPS effort. Our intention has been to expand the pool of customers that can participate in energy efficiency opportunities, not to undercut current NYPA programs. NYPA's concerns should be considered when details about implementation of an opt-in program are developed. Regarding geographical equity, as urged by Con Edison and MI, Staff reiterates that, for the bridging period, NYSERDA is in a better position in the short run than the utilities to offer statewide programs (which already exist and are well regarded nationally).

Regarding the intra-class and inter-class equity issues, and the related issue of EEPS surcharges being collected on a volumetric basis brought up by MI, Staff agrees that costs should be allocated to those customer classes for whose benefits the costs were incurred. However, this needs to be balanced with the administrative burden and flexibility issues brought up by Con Edison in its (Initial Brief. Also, it is clear that all customers benefit from efficiency programs through the reduced greenhouse gas emissions, reduced imports of energy from outside of the state and the country, increased system reliability, and potential delay of costly capacity additions that efficiency programs can achieve. Since Staff is advocating the exemption of certain large and interruptible gas customers from the fast track programs, MI's concerns regarding those customers potentially being burdened by having to pay for programs they are not eligible for should be allayed. These tend to be the customers that use the largest volumes of energy, and would therefore pay the largest amounts with a volumetric EEPS surcharge. While there are other methods for collecting EEPS surcharges, for the fast track programs, a volumetric charge makes the most sense, and alternative means can be discussed for the longer term.

Bill Impacts

The City of New York (the City) believes that the estimates of increases in customers' bills in the early years shown in Staff's proposal may be overstated, and the reduction in customer bills in later years may be overstated, because of an overstatement of lost revenues resulting from ignoring the effects of energy efficiency measures on customer bills. Furthermore, the City believes that an analysis of Staff's estimates cannot be properly completed because Staff has not provided sufficient documentation for analysis. LIPA believes that the bill impacts shown in Staff's proposal are understated because they do not include the bill impacts from the recovery of lost revenues.

Staff has provided all documentation in its possession that relates to its computation of bill impacts. Any further information that the City believes it needs to conduct a proper analysis is simply unavailable. In response to LIPA's concerns, Staff's bill impact analyses do account for costs associated with recovery of lost revenues.

Access to Data

Natural Resources Defense Council (NRDC)/PACE/Association for Energy Affordability (AEA) and The Northeast Energy Efficiency Council – New York Chapter (NEEC – NY) urge that utilities should make customer end-use data available to other parties. Staff agrees and believes that access to customer data, with appropriate customer privacy protections, will be critically important in designing, implementing, and marketing new and enhanced energy efficiency programs.

Codes and Standards

Both the Joint Supporters and the City raise concerns related to Staff's forecast of the impact of future enhancements to, and enforcement of, building codes and appliance efficiency standards. The City believes that Staff's forecasts regarding the contribution to be expected from codes and standards are overly optimistic because some changes will take place beyond 2105. Joint Supporters believes that Staff's proposal overrelies on codes and standards.

Staff's analysis of codes and standards savings is based on extensive input from ACEEE, a nationally recognized expert on building codes and appliance standards. Our projections reflect ACEEE's informed judgment about what is likely to occur if New York makes a serious effort to take advantage of savings available via enhanced codes and standards, including improved enforcement of the codes that are in place.

On-Bill Financing

DASNY has provided extensive information on the record in this case about how on-bill financing might be constructed and has expressed a willingness to work with utilities and other parties to develop a framework for implementing it. Energy East and Con Edison believe that it is premature to require on-bill financing for utilities. However, National Grid supports further investigation of on-bill financing. Joint Supporters believes that the Commission should require the utilities to participate in on-bill financing programs.

In its Initial Brief, Staff recommended that the Commission direct the utilities to begin working on the implementation of on-bill financing for customers seeking to implement large energy efficiency projects. Staff continues to support this position. Substantial work has been done to evaluate the efficacy of on-bill financing. The time is ripe for initiating collaborative efforts to work through the mechanics of how best to implement systems in a cost effective and expeditious manner.

PARTIES' INITIAL BRIEFS

In this section, for each of the initial briefs submitted, we summarize the major areas of agreement, concerns that have not been addressed earlier in this Reply Brief, and Staff's responses to these concerns. Parties' concerns are shown in bold followed by Staff's response.

TRC Energy Services (TRC)

According to TRC, "[s]everal other parties have submitted independent fast track Proposals (the NYC Consensus Proposal and the Central Hudson White Paper) that are not nearly as well reasoned nor as comprehensive and effective as the Staff Fast Track Proposal." IB at 1. TRC agrees with Staff's assessment that the newly revamped NYSERDA multi-family program is progressing well and notes that TRC would be interested in being involved in a collaborative effort to further expand services to the multi-family building sector.

Concerns

Staff should revise statements about the multifamily program serving mostly townhouses and low-rise buildings, and that coops and condominiums are not being served.

Staff Response: Staff agrees with this clarification.

Confusion and double dipping could result from multiple programs serving a single market sector.

Staff Response: Staff agrees and believes that new and/or expanded programs need to be carefully coordinated.

The Commission's antiquated rules requiring coop and condo shareholders to vote before advanced metering is implemented should be waived whenever a building participates in an SBC-funded program.

Staff Response: Staff agrees that the rules should be updated and recommends that this concern be addressed by a collaborative effort to expand and improve the multi-family building program as part of the bridging effort.

Northeast Energy Efficiency Council – New York Chapter (NEEC – NY)

NEEC - NY is generally highly supportive of Staff's proposals. It agrees with Staff in the following nine areas: 1) it commends Staff for reconsidering Home Performance with ENERGY STAR® as a fast track program; 2) supports renewed utility involvement under well-defined rules and a reasonable level of incentives and negative revenue adjustments; 3) supports the goals and parameters Staff laid out for coordination and interface between utility and NYSERDA/LIPA programs; 4) agrees with gas rate payers paying for gas programs; 5) supports Staff's expanded funding for low income programs; 6) commends Staff for expanding a robust multifamily program with emphasis on New York City;

7) supports an emphasis on training and would be willing to participate on a working group on this issue; 8) endorses on-bill financing; and 9) supports efforts to influence construction decisions in the early stages of building planning and design.

<u>Concerns</u>

Unspent portions of annual EEPS funds should be rolled over rather than trued up.

Staff Response: Staff agrees.

NEEC highlights a possible typo on page 23 of Staff's brief regarding marking, outreach, and education.

Staff Response: NEEC is correct. The phrase it notes on page 23 should have read "for energy efficiency marketing."

EEPS will need more money for marketing than Staff's plan allocates.

Staff Response: Funds for marketing are included as part of the budgets for the proposed fast track programs.

Staff's projected savings for CFLs appear to be overstated

Staff Response: See response in the Central Hudson section.

NEEC generally supports Staff's approach to HVACs but has some concerns about including low-flow showerheads and aerators.

Staff Response: As this program is discussed among interested parties in preparation for implementation, this comment should be considered before finalizing program design.

Relying soled on the Total Resource Cost test does not take into account environmental benefits. We should have an expedited Task Force to look at cost effectiveness measures.

Staff Response: Staff has also recommended that the Commission establish a collaborative effort to look at issues associated with analysis and verification such as this.

Demand response opportunities need to be addressed.

Staff Response: Staff agrees and has recommended that the Commission establish a collaborative to address this important issue.

Plans for long term programs should be completed by July 2009.

Staff Response: Staff has no objections to this goal. We recommend that planning for longer term programs begin immediately after a Commission decision on the framework for EEPS implementation.

<u>Niagara Mohawk Power Corporation d/b/a National Grid (National Grid)</u>

In its Initial Brief National Grid makes a strong statement that it believes energy efficiency is sound public policy that should be pursued further. It supports the need for consistent monitoring and evaluation of program offerings and emphasizes the importance of coordination among the various parties offering energy efficiency programs. Further, it supports establishment of targets based on thorough bottom-up studies in the manner generally described in the consensus recommendations issued by Working Group III. In addition, National Grid is willing to explore the process that will be required to initiate on-bill financing.

National Grid asserts that it is prepared to play an active role in achieving the EEPS' 15 by 15 target. As it states on page 1, "[National Grid] stands ready to implement an aggressive set of energy efficiency programs for its customers that will complement existing New York State Energy Research and Development Authority ("NSYERDA") programs." In a footnote on page 6 it states that it plans to file a comprehensive set of energy efficiency programs modeled on its existing programs for New England "tailored to complement existing NSYERDA programs." Staff looks forward to reviewing these programs and working with National Grid and other interested parties as part of the EEPS implementation process.

<u>Concerns</u>

National Grid believes that the program dollars in the Straw Proposal and Staff's fast track proposals may not be sufficient.

Staff Response: Staff is unable to comment on how the Straw Proposal funding levels were determined. However, with respect to the bridge program proposals that Staff has made in this proceeding, the program budgets were based on real world experience with best practices programs using the corresponding ramp up rates and savings targets scaled to a New York State market. Some of this data came from National Grid's programs for New England. In determining the initial budget levels for the EEPS initiative, the Commission will need to balance program costs with rate impacts to create a robust program at a feasible level of expenditures.

It may be that the full measure portfolio that National Grid has in other states can not be implemented initially in New York. Program administrators in New York may have to be careful about what measure payback periods can be financially supported to manage rate impacts. EEPS program administrators should be first required to propose programs that fit with the budget authorization and the energy savings goals and then propose, with justification, any amendments, including benefit cost analysis on the incremental funding requested.

Utility participation in energy efficiency efforts will be needed as soon as possible to achieve the EEPS targets.

Staff Response: Staff agrees. We recommend that as soon as the Commission issues an order in this proceeding, collaborative efforts should begin to start implementation for the fast track efforts, examine other energy efficiency programs that can be implemented in tandem with approved programs, and begin discussions of planning for the longer term energy efficiency framework.

National Grid seeks lost fixed cost recovery until revenue decoupling mechanisms are approved.

Staff Response: Commission policy in recent rate proceedings has been to initiate revenue decoupling mechanisms and to allow lost fixed cost recovery in the interim. We have no objection to this approach.

However, the evaluation protocols for some existing programs may not be sufficient without modifications to support lost revenue recovery. National Grid would need to propose the protocols for the Commission's consideration. Staff would prefer that any proposed protocols also be discussed in the proposed Evaluation Task Force.

National Grid believes that all utilities who can demonstrate the ability to implement energy efficiency programs should be able to also submit programs, i.e. ,"utilities that are ready, willing and able".

Staff Response: Staff's concern is that while National Grid may be ready, willing, and able to implement programs, some of other utilities in the State may be willing but not nearly as able in Staff's view to take on a greatly increased role in efficiency program implementation. National Grid is the only utility in New York that has clearly stated that it wants to implement programs that are incremental to Staff's proposed programs in a complementary manner with NYSERDA programs and has demonstrated (in New England) that it has the experience and capability to do so.

Staff's fast track proposals for utility administered programs are completely complementary with NYSERDA's proposals and could result in a common "look and feel" within New York State. A process needs to be established whereby proposals for utility administered programs can be properly reviewed and recommended for implementation. Staff recommends that its EEPS governance proposal should be approved and implemented to accomplish this task.

New York State Foundation for Science, Technology and Innovation (NYSTAR)

NYSTAR recommends that the role of near and long-term research and development should be better highlighted in the fast track proposal, including a stronger role for State agencies with a technology focus. It also recommends that the role of New York's research institutions and community colleges should be part of any energy efficiency proposal.

Concern

The proceeding should focus more on R&D because New York cannot reach the EEPS goals using only current technology

Staff Response: Staff's summer 2007 charge from the ALJs was to focus on end-use programs that can be implemented quickly. We do, however, recognize the importance of research, development, and demonstration projects and have recommended that a collaborative effort on this subject begin soon after a Commission decision in this case.

New York State Energy Research and Development Authority (NYSERDA)

According to NYSERDA's Initial Brief (at 2), ". …[Staff's] suite of programs and the additional funding presents a reasonably balanced mix of efforts that will serve all classes of customers, and provides for a logical, systematic ramp-up of activity. NYSERDA agrees with Staff's identification of the keys to program success, and finds that the recommended programs incorporate, and are consistent with, an overall strategy that can be adopted with confidence".

Concerns

At least one year should be added to the bridging period because 18 months is too short an implementation period. Contractors and energy service providers may hesitate to take on commitments without the assurance of some degree of program continuity. Further, New York is in competition with other states for these services. In addition, customer decisions and service provider work involving large facilities require long lead time before commitments can be made.

Staff Response: Staff does not object to extending the bridging period as long as it is clear that the process is dynamic and that appropriate changes would be able to occur, such as adding new programs and new program administrators, during the 30-month bridging period.

The March Staff Report is silent on incentives for utilities implementing the two bridging programs. NYSERDA suggests there be no incentives for these two programs until the Commission has made a comprehensive decision on program-wide incentives and that incentives should be counted in any calculation of program costs.

Staff Response: Staff proposed an incentive framework in its Initial Brief that we believe should apply to all utility-administered programs, not just the bridging programs. We agree that incentives should be counted in any calculation of program costs.

The March Staff Report does not provide for full integration of electric and gas efficiency strategies because no gas funding is provided for those programs; integrated programming provides more objective information and services to customers than single energy source programs.

Staff Response: Staff agrees that full integration of electric and gas efficiency strategies should a goal of the EEPS proceeding. We have recommended, and continue to recommend, that funding from gas customers for energy efficiency needs to be addressed as part of this proceeding. Furthermore, programs aimed at energy efficiency in buildings address both gas and electric opportunities. Three gas utilities (National Fuel Gas Distribution Corporation, KeySpan New York, and KeySpan Long Island) do not have an electric business, so it will be extremely important that they coordinate their efforts with the appropriate electric utilities.

NYSERDA does not believe $8.8 million is enough for market development. It proposes that it be allowed "to reprogram funds from other program areas into the Market Development Program when needed."

Staff Response: The $ 8.8 million should be sufficient to jump start some new market development initiatives until more specific plans can be developed and discussed. The possible reprogramming of some uncommitted SBC funds needs to be looked into before Staff would recommend more ratepayer funds for additional market development initiatives.

NYSERDA requests clarification as to whether the cost of hiring consultants to support the ERTF will come out of the "5% evaluation budget, part of the 2% general fund adder on Staff's NYSERDA budget, or a deduction from program budgets." If the latter, it believes that targeted savings must be adjusted downward.

Staff Response: The additional 3 % (over the 2% in SBC funds for evaluation, in total 5%) Staff is recommending to fund additional evaluation work (including consultants) and needed end-use and market-oriented studies that can inform statewide energy planning, would come from the program budgets. Staff believes this can be accommodated and the savings goals achieved as forecasted through proper attention to program design which balances program funding and efficiency measure payback periods.

New York State Department of Environmental Conservation (DEC)

DEC states that it is in general agreement with the EEPS Staff's positions. It appreciates the positive and inclusive approach taken in the proceeding.

Specifically, it supports funding for low income customers and applauds Staff's recommendations on marketing, outreach, and education.

Concerns

DEC disagrees with investigating environmental justice in the long term planning process and recommends addressing it now.

Staff Response: Staff agrees that environmental justice is important and should be considered as part of the planning process for implementation of bridging programs as well as during long-term planning efforts. We look forward to meeting with DEC Staff in the near future.

New York State Consumer Protection Board (CPB)

CPB notes that many of its recommendations have been reflected in Staff's March 2008 Proposal. CPB urges the Commission to take action in the EEPS proceeding as soon as practical and to "adopt the DPS Staff March 2008 Proposal, modified to establish clear procedures for managing the transition from interim programs to longer-term EEPS initiatives and to ensure that energy efficiency programs administered by NYSERDA are evaluated by DPS Staff…" (IB at 2).

Concerns

Staff's bridging proposal should be modified to establish clear procedures for managing the transition from interim programs to longer-term EEPS initiatives.

Staff Response: Staff agrees. This transition process is discussed earlier in this reply brief.

Staff's bridging proposal should be modified to ensure that energy efficiency programs administered by NYSERDA are evaluated by DPS Staff.

Staff's Response: See response in the Con Edison section of this document..

CPB urges the Commission to assess, no less frequently than every three years, whether EEPS is on track with regard to goals and costs.

Staff's Response: Staff agrees that periodic comprehensive program reviews are necessary and should occur every two or three years.

New York Power Authority (NYPA)

NYPA's Initial Brief reaffirms its commitment to energy efficiency and asserts that it "is prepared to aggressively and effectively assist in achieving New York's '15 by 15' goal of reducing Statewide electric usage by 15% from projected levels by the year 2015." IB at 1. NYPA goes on to say that it plans to significantly increase its investment in energy efficiency programs, which will eliminate the energy savings "gap" shown in the ALJs' Straw Proposal wedges.

Concerns

The ALJs' wedge for NYPA understates the commitment it will be making.

Staff' Response: We are heartened to hear the extent of NYPA's commitment to attaining the statewide 15 by 15 objective and look forward to working with NYPA to coordinate efforts.

Natural Resources Defense Council (NRDC)/PACE/ Association for Energy Affordability (AEA)

NRDC/PACE/AEA (NRDC et al.) state their belief that the State's 15 by 15 initiative will produce multiple benefits for New York State. They write, "We commend Department Staff ('Staff') for its March 2008 *DPS Staff Report on Recommendations for the EEPS Proceeding* ('Staff Report'), which identifies a portfolio of energy efficiency programs that could be implemented quickly and efficiently." IB at 3.

Concerns

NRDC et al. does not support utility-administered programs as part of a fast track. These parties believe that utility involvement is ultimately important, but would be premature at this time.

Staff Response: Staff continues to believe that utilities will play a large role in achieving the 15 by 15 goal and that they should be given an early role so they can gain experience in planning and implementing energy efficiency programs. Staff encourages utilities to develop programs that complement existing NYSERDA programs and address underserved markets. These proposals should include detailed program descriptions, budgets, and benefit/cost analysis. Collaborative discussions will be needed to determine how efforts can best be coordinated.

NRDC et al. state that Staff is proposing a top down approach for utility program design and asserts that this would not be the most prudent or cost effective approach for integrating utility involvement with that of NYSERDA or other potential program administrators.

Staff Response: Staff does not understand why these parties consider Staff's proposal for utility involvement to be top-down. In fact, Staff, in its Initial Brief, stated that building a comprehensive market-oriented EEPS from the ground up is a sensible, well-accepted approach. All of Staff's proposed programs, whether administered by NYSERDA, DHCR or utilities, are designed to focus on specific market segments that have identified needs and have the potential to be developed to a greater extent than current funding allows. Staff recommended that new programs launched by utilities be targeted at currently under-served markets where NYSERDA does not have an active presence and, at the same time, utilities should be provided the resources to actively market NYSERDA's existing programs within their service territories. Staff opposes a top-down approach that would simply allocate funding and allow the recipients to independently develop energy efficiency programs without coordination with existing programs.

NRDC et al. states that "the PSC should establish a natural gas efficiency target of a 15% reduction below forecasted 2015 levels, similar to electricity." NRDC goes on to recommend that initial minimum annual funding should be set at 1.53% of revenues, analogous to the current electric SBC, and that this figure should be adjusted as necessary to achieve the 15 by 15 goal.

Staff Response: In Staff's Initial Brief, we stated that we are in the process of finalizing an update to the 2006 natural gas efficiency potential study, which is being performed by Optimal Energy. Staff plans to develop a proposal based on that update by mid-May, which will then be distributed to the EEPS parties for comment. That proposal will contain a statewide target with a corresponding budget and a recommendation for apportioning that target among the State's natural gas local distribution companies. It is premature, in Staff's view, to determine a specific percentage savings until the study update process is complete.

The PSC should require utilities to submit, within 45 days of the issuance of an Order in this proceeding, a comprehensive plan for the administration and delivery of energy efficiency programs within their service territories, developed cooperatively with other program administrators, regarding the development of programmatic and financial parameters of each program,

opportunities for coordination and integration of program delivery, and marketing and outreach that present a common look and feel to customers.

Staff Response: As Staff explains earlier in this document, we believe that the utility's first step should be to put in place the necessary tariffs to establish a funding mechanism for the enhanced energy efficiency spending that the Commission authorizes. Once utilities file their implementation plans with the Commission to get the bridging programs underway, they should be allowed to submit into the governance process (which the Commission is expected to establish) any additional programs that they believe can be coordinated with the existing program structure to help New York reach its energy targets.

Incentives should be awarded to utilities based on total resource net benefits.

Staff Response: NRDC et al. concur with Staff that properly designed performance-based incentives can play a role in aligning the corporate interests of a utility with the goals of energy efficiency programs. Staff also agrees that the incentive model recently adopted by the California Public Utilities Commission merits consideration. A concern about the California approach is that it may result in incentive awards that are unacceptably high. For example, in Staff's Initial Brief (4/10/08), we found that applying a general approximation of the California model to the two programs identified as candidates for utility administration, ENERGY STAR® HVAC and Small Business Direct Installation would result in incentives payments equal to 33% and 18% of their respective program budgets. Staff's view is that utility performance rewards should not exceed 12% of program costs. Staff has concerns about the use of total resource net benefits as the basis for incentives because their use requires use of numerous forecast assumptions.

Incentives and goals should be set on a multi-year basis to allow utilities the flexibility to modify programs as needed over time and allow for programs that do not demonstrate results for multiple years.

Staff Response: Staff generally agrees, but this is an issue appropriate for discussion in future collaboratives. Staff does agree that targets and budgets should not be set once and remain static between now and 2015.

National Fuel Gas Distribution Corporation (Distribution)

Distribution recently implemented a natural gas energy efficiency program known as the Conservation Incentive Program (CIP). Its Initial Brief explains, "…the CIP is a conservation program that leverages the unique strengths of

NYSERDA and Distribution as program administrators. At this early stage of the process, CIP is performing better than expected, to the direct benefit of customer participants and indirectly, the Company's service territory" (IB page 5). Distribution urges that this program should continue with performance targets added while the program is in progress.

Concerns

Staff erred in saying that the natural gas efficiency program in Distribution's territory has been approved for only a year; the EEPS should not disturb Distribution's efficiency program.

Staff Response: Distribution is correct that the Commission approved its Conservation Incentive Program in two phases, the first for expedited implementation for winter 2007-08, and the second, for years 2008-09, is subject to design in a collaborative setting. Staff expects that the Commission will require that the phase two program be incorporated into the EEPS governance structure and be incorporated into the EEPS framework. We do not expect that this will be difficult to accomplish.

National Association of Energy Service Companies (NAESCO)

NAESCO recommends that Staff's fast track portfolio be adopted on as expedited a schedule as feasible. It recommends that utilities that want to administer energy efficiency programs immediately begin preparing detailed program plans (with targets and budgets) that can be compared to current NYSERDA programs. NAESCO believes that the development, approval, and implementation of new utility programs will take at least two years and should be sequential, not competitive with the fast track programs.

Concerns

Program administrations should not be allocated a specific energy savings target at the outset.

Staff Response: Staff agrees.

It is not wise to allocate full funding to new programs up front (NAESCO cites California as an example of how difficult it is politically to reclaim funding going to under-performing programs).

Staff Response: Staff agrees.

Multiple Intervenors (MI)

MI generally agrees with Staff's approach to resource allocation and load reduction responsibility by which existing successful programs are expanded and duplication of effort is avoided. MI also agrees with Staff's recommendation that the entity administering any given EEPS program should be determined based on what is most sensible for that energy efficiency application and consumer sector. It agrees that program administrators should be selected based on the merits of their offerings and only then should efficiency targets be established for each administrator (not just utilities) based on the specific programs they have been authorized to administer. It generally supports Staff's call for increased funding for the evaluation of, and reporting on, EEPS programs and supports Staff's recommendation that some funding should be allocated to facilitate the statewide adoption of more stringent energy building codes and appliance standards.

Concerns

MI opposes the level of customer funding proposed for an EEPS as well as Staff's recommended approach to cost allocation and cost recovery. From MI's perspective, an equitable cost allocation would assign cost responsibility for each efficiency program to the responsible customer classes. If costs are allocated consistently with causation, targeting certain customer types for increased expenditures would not create or exacerbate interclass subsidies. Also, two of Staff's C&I fast track programs are targeted at small commercial and industrial (C&I) customers, and it is likely that other proposed programs would enjoy greater participation from small C&I customers than from large C&I customers. EEPS costs should be allocated to, and recovered from, the regions and customer classes for whose direct benefit the costs were incurred. MI opposes proposals that EEPS surcharges be recovered solely on a volumetric basis.

Response: MI's arguments regarding cost allocation and recovery revolve around its basic premise that costs should be allocated based on their causation, including costs at both the service class and regional level. Since larger C&I customers are in different service classes than smaller C&I customers, MI's proposal would have these service classes paying different surcharge amounts. While Staff does not oppose this, Staff's approach would result in ease of administration for utilities. Also, Staff has proposed to continue during the bridging period the exemption for certain large electric customers who already have exemption from SBC surcharges. To the extent demand for electricity is reduced, whether at the service class, regional, or statewide level, all customers benefit from the resulting reduced prices. Also, as discussed above, all New Yorker's benefit from reduced greenhouse gas emissions, decreases in energy imports, and improvement system reliability due to EEPS program results, regardless of the customer class served. Finally, MI does not provide any definitions for "small C&I" and "large C&I" customers, so it is difficult to gauge possible amendments to Staff's filing.

The EEPS funding levels proposed by Staff for the fast track period are high and need to be reduced; the March Staff Report does not devote sufficient attention to customer rate impacts which would have detrimental economic impacts, particularly among some of New York's largest employers.

Staff Response: As mentioned above, Staff has recommended continuing the exemption for certain large customers that are already exempt from SBC surcharges for the fast track period, so that there will be no rate impact on these customers. Regarding the funding levels, they were developed using best practices from around the country. Customers who take part in efficiency programs will see low, or even negative bill impacts (savings to the customer), because of their reduced energy usage.

MI states that interruptible gas customers should not be subject to the costs of an EEPS, and most interruptible gas customers, it suggests, are large C&I customers.

Staff Response: Staff notes that while it may be correct that for upstate LDCs most interruptible gas customers are large C&I customers, this is not the case for downstate LDCs, where many interruptible and temperature controlled customers would not be considered large C&I. However, Staff agrees with MI that interruptible gas customers should not be included at this time, but that their potential inclusion should be discussed as part of the long-term EEPS planning efforts. One factor that needs to be considered is that although interruptible gas customers represent a potentially large market for efficiency improvements, they can also be price-sensitive. In some utility service territories, moreover, revenues from interruptible customers are being used to reduce bills to firm ratepayers.

MI recommends that a reputable outside contractor should be retained to provide independent evaluations of EEPS efficiency programs. The concept of independent evaluation should be extended to NYSERDA and any other entity administering EEPS efficiency programs.

Staff Response: While Staff agrees with MI that independent evaluations are necessary, Staff disagrees with MI's allegation that Staff would be biased because of its advocacy of an EEPS. Since Staff advocates only those efficiency programs that have benefit/cost ratios greater than 1.0, any programs that do not meet that criteria would not be supported by Staff, and any approved programs would also help to forestall the need for capacity additions that would be more expensive, in terms of economics and environmental cost, than efficiency programs. Staff does not favor one administrator over another, but Staff does favor the most effective way to meet the needs of New York's ratepayers for safe, reliable energy. Furthermore, Staff's recommendation is not that we perform the measurement and verification studies, but rather that Staff would oversee the work of independent, third party analysis and verification contractors.

Although MI is a strong proponent of demand response, it opposes at this time the adoption of Staff's recommended requirement that there should be no net reduction in system load factor as a result of energy efficiency programs. Reducing electricity consumption by 7.5% and demand by 7.5%, rather than just reducing electricity consumption by 15%, may produce far greater benefits than focusing solely on consumption reductions. The Commission should relax the aggressive consumption based goal adopted previously.

Staff Response: Staff believes that demand response is an important component of the EEPS effort and recommends that the work begun by Working Group IV should continue.

<u>Long Island Power Authority (LIPA)</u>

LIPA supports the objectives of the EEPS proceeding. It believes that its existing programs are consistent with fast track initiatives, and it will provide Staff with data about its programs. LIPA is designing new and expanded programs which it will be presenting to its Board and hopes to implement soon.

Concerns

LIPA is concerned there is a lack of clarity concerning decision making authority of the Evaluation and Reporting Task Force.

Staff Response: Staff has recommended that once a Commission decision is issued in this case, a collaborative group should address analysis and verification issues, including the operation of the ERTF.

It is important that the PSC allow recovery for KeySpan Long Island's share of costs arrived at through arms-length negotiations

Staff Response: Staff has no conceptual objections to this comment.

Energy savings targets in the Straw Proposal will need to be revisited as more information is gained.

Staff Response: Staff has concerns about the approach used to establish the targets set forth in the Straw Proposal. Staff agrees that targets should not remain static between now and 2015.

Joint Supporters

Joint Supporters want to see an augmented/modified version of Staff's fast track proposals implemented as soon as possible. The augmentation would add items related to distributed generation and demand response. Joint Supporters agrees that it makes sense to initially build from successful NYSERDA programs. It also endorses Staff's recommendation that system load factors not be allowed to degrade.

Concerns

Joint Supporters favor the higher allocations for existing buildings in the NYSERDA fast track proposal (rather than Staff's allocation) since this will provide greater resources for demand response and combined heat and power (CHP).

Staff Response: Discussions of program design for expanded program offerings should begin once a Commission decision is issued.

Joint Supporters recommends the roll out of micro-CHP and smaller CHP as fast track resources in conjunction with heating, ventilation, and air conditioning (HVAC) in new installations and/or as retrofits. The current Energy Smart requirement for micro-CHP is a barrier and should be removed.

Staff Response: See response above.

Joint Supporters is concerned with Staff's implicit decision that responsibility for correcting load factor degradation should rest only with the utilities. NYSERDA should have a role.

Response: Staff does not object to having all interested parties, including NYSERDA, involved in discussions of load factor degradation and how to address it, if that circumstance were to occur.

Staff's fast track proposal may be resistant to innovation and new entry.

Staff Response: Staff has recommended that one of the initial collaborative efforts that should be part of the implementation process is research and development. Staff also recommends that prospective program administrators be able to propose new program offerings during the fast track program period. In these ways, innovative ideas will be encouraged and can be included in implementation efforts as soon as they have been fully vetted and have received Commission approval.

The ALJs need to address the relationship of peak demand savings as a result of EEPS activities.

Staff Response: As Staff recommended in its Initial Brief in the discussion on environmental justice, we believe that demand response is an important component of the EEPS effort and recommend that the work begun on this topic by Working Group IV should continue.

Funding should be assigned on an incremental basis.

Response: Staff agrees that setting budgets through 2015 is inappropriate. We do, however, believe that short term budgets (2008 and 2009) can be determined now, based on costs associated with successful programs similar to those that Staff has proposed.

Independent Power Producers of New York, Inc. (IPPNY)

IPPNY agrees with Staff's proposal for competitive procurements for energy efficiency resources that would apply throughout the state. It also agrees with the intent of PSC Staff and the ALJ's Straw Proposal 3 which recommend that electric generation should be excluded from energy savings calculations.

Concerns

It is premature to target use of RGGI money for efficiency programs.

Staff Response: Staff agrees.

Study is needed into the best way to flatten the City's load shape

Response: Staff agrees and recommends that work on demand response issues should continue as part of the EEPS proceeding.

IPPPNY urges parties to focus efforts on energy efficiency rather than requiring additional emission reductions at facilities or reaching goals though measures focused on generating facilities

Staff's Response: Staff's focus in this proceeding has been on end-use energy efficiency programs.

Generators need access to regulatory processes that enable replacement of facilities.

Staff Response: Staff agrees with IPPNY that legislation, similar to Article X, which addresses siting of new generation would be desirable, but this matter is outside of the scope of this proceeding.

Independent Energy Efficiency Programs (IEEP)

IEEP represents municipal electric public power systems. Since 2001, the IEEP has provided energy efficiency programs for its member systems, working closely with NYPA. IEEP will continue to participate in the EEPS proceeding and evaluate its own programs in light of the work that is done for EEPS.

Energy East [New York State Electric & Gas (NYSEG) and Rochester Gas & Electric (RG&E)]

Energy East generally supports the concept of enhancing energy efficiency efforts but is unable to take definitive positions now because of its pending merger.

Concerns

Energy East asserts that demand for skilled personnel will increase EEPS costs, however, increasing the scale of programs will offer both economies and costs.

Staff Response: Energy East is correct that there will be increasing demand for skilled energy efficiency professionals. For that reason, we recommend getting implementation efforts underway soon and take seriously the importance of ramping up infrastructure development efforts, including training initiatives, immediately.

Energy East generally supports the thrust of EEPS but can take no position until the pending merger is completed.

Staff Response: As Staff has said before, achieving the ambitious targets of the EEPS proceeding will require contributions from all parties. We encourage active participation from Energy East as implementation planning moves forward.

The desirable level of EEPS support activities has not been explored (e.g., market research, green workforce development, establishing databases, etc.)

Staff Response: Staff has previously proposed initial resource levels for workforce development. More specific expenditure requirements for support services will need to be addressed during the implementation planning process.

Individual performance targets and funding levels cannot be accurately set yet.

Staff Response: Staff agrees that setting budgets through 2015 is inappropriate. We do, however, believe that short term budgets (2008 and 2009) can be determined based on costs associated with successful programs similar to those that Staff has proposed.

Dutchess County

Dutchess County believes that utility programs should be coordinated with NYSERDA programs, but would like to see a bigger role for its local utility, Central Hudson.

Dutchess County asserts that utilities should play a bigger role right away.

Staff Response: The State's utilities are not uniform in their ability to take on new energy efficiency responsibilities. Staff recommended two programs for utility fast track implementation because we believe that they are beneficial programs, will not conflict with existing programs, and will help build the capacity for taking on additional programs in the future. We recommend that the Commission allow utilities that can demonstrate an ability and willingness to undertake additional programs that meet these criteria to hold collaborative meetings with interested parties to develop these programs more fully and decide how best to integrate new program plans with existing offerings.

Dutchess County recommends doing only part of Staff's fast track proposal to save money.

Staff Response: The approach that Dutchess County has recommended will mean that many opportunities will not begin for some time and important customer segments may not receive additional attention at all. For a goal as massive as the 15 by 15 target, New York State needs to start now, taking advantage of opportunities in all market sectors.

Staff is recommending too many meetings.

Staff Response: The Public Service Commission has a tradition of inviting input from interested parties and making sure that there are forums for good ideas to be raised and addressed. While this takes some effort, it ultimately leads to desirable outcomes reflecting the best thinking of a wide array of participants and implementers. Getting a massive effort like this underway will require many opportunities for input initially with fewer, but sustained, opportunities for comments by parties in the future. To make the best use of everyone's time, Staff recommends that meetings address several issues; to minimize travel requirements, agendas should be distributed in advance with estimated time needs so that parties can make informed choices about which parts to attend.

Dutchess County does not need a single statewide brand – we should focus on the local community's needs.

Staff Response: Generally accepted marketing principles state that customers need to hear a message multiple times before they are moved to take action. Using a unified brand means that the impact of messages can be leveraged to get customers' attention and increase the likelihood that they will take action. It is certainly possible and desirable within that single brand framework to tailor a message to a local area – perhaps with outreach events for a local community or with brochures that include the statewide brand along with a utility logo.

Dutchess County does not like the proposal to allow exempt customers to opt in to SBC participation. Dutchess County would prefer that these customers not be allowed to participate.

Response: Many of the customers that are exempt from SBC participation are large customers that represent a large potential for energy efficiency savings. By providing them with a reasonable way to participate in energy efficiency programs, New York State will have an opportunity to tap that potential and meet its aggressive energy savings goals.

Dutchess County has concerns about why WAP costs more than EmPower NYper household.

Response: WAP and EmPower NY are separate programs with different objectives (WAP focuses on heating cost savings by providing building envelope, insulation, and heating improvements and EmPower NY enhances that amount by focusing on electric savings, often in the same dwelling targeted by WAP) that together provide comprehensive services to low income customers.

Dutchess County is concerned about the ALJs' recommendation that all issues be decided based on the current record.

Staff Response: Staff agrees and recommends that collaborative discussions continue to work out the details of key implementation issues.

EEPS is taking on topics that are tangential to the goal (<u>e.g.</u> power plant emissions, low income programs, non-jurisdictional customers, and affecting customer behavior)

Staff Response: Staff considers these programs central to the EEPS case and believes that they should not be ignored when designing program implementation strategies.

Dormitory Authority of the State of New York (DASNY)

DASNY supports Staff's recommended approach to on-bill finance and has supplied extensive documentation about how such a program might be structured.

Utility bridging proposals that are consistent with Staff's proposals should not be ignored.

Staff Response: Staff encourages utilities to develop programs that complement (and potentially supplant) existing NYSERDA programs during the bridging period. These proposals should include detailed program descriptions, budgets, and benefit/cost analysis. Collaborative discussions will be needed to determine how efforts can best be coordinated.

Consolidated Edison Company of New York, Inc. (Con Edison) and Orange & Rockland Utilities, Inc. (O&R)

Concerns

Funding for fast track programs is not justified. Staff has failed to provide evidence that demand for NYSERDA programs is exceeding available funds. SBC spending is well below SBC contributions in the Con Edison and O&R service territories and the SWP program is also significantly under spent.

Staff Response: A timing difference between the collection and the expenditure of SBC funds is expected. Marketing, enrollment, and fulfillment associated with energy efficiency programs takes time, especially on larger projects due to the decision making cycles of customers and the time needed to engineer and install equipment. Some customers also have seasonal constraints that preclude work from being done in their facilities at certain times of the year.

To achieve the 15 by 15 goal, all program administrators, including NYSERDA, will need to develop effective strategies to reduce the project cycle time. While the funding for NYSERDA's programs, particularly in the commercial and industrial sector, has been significant, it has not been sufficient on a per capita basis to fund the marketing and customer support services needed to achieve higher levels of market penetrations that have been achieved with similar programs in other venues. Staff's program proposals to increase funding for certain NYSERDA programs include the expectation that NYSERDA will then be able to make improvements in marketing and customer support services that will increase enrollment and throughput, and that NYSERDA will have the resources to fund the higher participation levels at least through the bridge program period.

Staff has proposed programs and a structure that "predetermines how the State will seek to achieve the 15 X 15 goal and virtually forecloses utility participation." Con Edison/O&R state that if utility programs are not well represented in the bridge programs, they will be disadvantaged for future consideration by the Commission. The companies believe that bridge programs should be used for developing infrastructure and testing programs that will shape the future of the EEPS long term.

Staff Response: There is no basis on the record that would support this presumption. There will, however, need to be a thorough review process for programs to be authorized beyond any initial bridge stage. Accommodating more utility administered efficiency programs may require program funding adjustments and any needed transitions will need to be careful planned and coordinated. Staff recommends that any proposals for additional programs be taken up immediately and processed through its proposed governance process.

Con Edison/O&R claim that Staff's proposed governance structure is "designed to delay" implementation of new programs proposed by utilities because of "insurmountable hurdles" and micro management.

Staff Response: There is a need for a disciplined process to assess new program proposals and evaluate needs. The amount of time needed for review will be dependent on how well thought through a particular program design is and what the performance history of the design has been in other venues. Additionally, the degree of impact a new program may have on an existing statewide program and the level of planning that has been undertaken to address potential conflicts could also affect the review time.

As to the issue of fairness in evaluating utility programs versus NYSERDA programs, the transparency Staff would like to see in the governance review should address that issue. Staff advocates a single high standard for evaluation for all programs both prospectively or retrospectively. There is going to need to be a period of transition to achieve uniform standards for both new and existing programs.

Ratepayer funding should not be used to fund energy programs offered by agencies other than NYSERDA. Con Edison/O&R agree that funding low-income energy efficiency programs is laudable, but argues that if DHCR needs additional funding, it should come from RGGI auction revenues, not ratepayers.

Staff Response: As noted elsewhere, the amount of RGGI funds and how those funds would be used is unknown as this time. Surcharges can be adjusted as appropriate should RGGI funding for EEPS materialize. Since there is a great need to weatherize the homes of low income New Yorkers now, it makes no sense to wait.

Staff's two-tier standard for evaluation is not explained. Higher standards appear to be required for lost revenue recovery, but Con Edison/O&R maintain that there must be one high standard for all evaluation. They also note an inconsistency in Staff's view that oversight of program evaluation is the responsibility of Staff, not the program administrator. This policy does not appear to apply to NYSERDA nor appear to be consistent with WG III's position on this point. Con Edison/O&R add that it is in agreement conceptually with the creation of an ERTF, but thinks it is premature to discuss funding for this group.

Staff Response: Con Edison/O&R introduce the discussion of evaluation and reporting issues by endorsing a conclusion by Working Group III (WG III) that "there should be a single set of statewide program protocols that are applicable to all program administrators (including program administrators that may not be subject to the Commission's jurisdiction) and all programs." Like Con Edison/O&R, Staff agrees with this concept.

As WG III explained, statewide evaluation protocols "should focus on identifying clear, understandable definitions of requirements and acceptable approaches that will allow results to be shared and combined statewide." The term "acceptable approaches" does not imply a rigid doctrine that precludes a reasonable level of flexibility to allow evaluation objectives to be met using the most reliable, responsive and cost effective approaches. The California Energy Efficiency Evaluation Protocols, prepared for the California Public Utilities Commission in 2006, make clear that the primary goal of the 276-page document is "to specify **minimum** acceptable evaluation approaches and the operational environments in which evaluations are conducted." (page 2) Consistent with this approach is a discussion of establishing the level of rigor and evaluation budgets for various program groups.

Staff's view is that rigorous evaluation protocols are essential for all programs, but it is possible that even higher levels of rigor may be necessary when lost revenue recovery or incentives payments are at stake. These payments will likely cost millions of dollars, making proper verification of the energy savings eligible for incentive payments critical to protecting ratepayer interests. This view is not inconsistent with views expressed by WG III and the protocols being used in California.

The companies expressed concern over our recommendation that Staff have oversight over evaluation contractors for utility programs, but not for NYSERDA programs. We stand by what Con Edison/O&R term our "purported justification" that "the group performing the evaluation should not be the group installing the energy efficiency measure to allow for internal control." There are several reasons for not advocating Staff management of evaluation of NYSERDA programs, at least, at this time. These reasons include: (1) NYSERDA utilizes a team of highly respected and competitively selected evaluation specialists from around the nation that currently are under contract to NYSERDA; (2) over the past approximately 10 years, NSYERDA has developed a highly skilled internal evaluation staff and has continually refined and improved its evaluation process and product; (3) Con Edison and other utilities are requesting generous incentive payments or lost revenue recovery which makes the need for increased internal and independent control over the evaluation process a high priority; and (4) while Staff advocates improved evaluation, NYSERDA's performance has generally been good, especially considering the modest evaluation budget and the large program portfolio requiring evaluation.

Utilities, including Con Edison, as members of the SBC Advisory Group, have regularly signed off on NYSERDA's annual Program Evaluation and Status Reports. On April 14, 2008, the Advisory Group wrote in a letter to Public Service Commission Secretary Jaclyn Brilling:

> The SBC Advisory Group has reviewed the evaluation report prepared by NYSERDA and its independent evaluation contractors. We have each individually reviewed the report and we have reviewed and discussed it as a group during an Advisory Group meeting at NYSERDA on March 19, 2008. The Advisory Group finds that the report represents a comprehensive, objective, and professional effort. We commend NYSERDA and the independent evaluation contractors for doing an excellent job.

Staff does not rule out changes regarding NYSERDA's evaluation role in the future and will be looking forward to reviewing recommendations that may result from the proposed Evaluation and Reporting Task Force. Both Con Edison/O&R and Staff endorse the establishment of this task force.

According to Con Edison/O&R, Staff's marketing, outreach, and education proposal "completely ignores" utilities, by failing to provide additional funding for utility efforts.

Staff Response: Staff's bridging proposals include marketing and outreach funding as part of each program budget.

Con Edison/O&R assert a lack of detail concerning Staff's role in this area and the lack of evidence of Staff's capability to perform these functions.

Staff Response: DPS staff has an extensive and successful history of designing and implementing outreach and education programs related to energy efficiency, dating back to 1982. Each year, for the past 10 years, DPS Staff has implemented statewide summer and winter energy efficiency campaigns using multifaceted vehicles, including paid broadcast and print media, direct mail, and grassroots outreach and education targeted to many consumer audiences including low income, seniors, and businesses.

In 2007, for example, DPS implemented statewide outreach and education initiatives for its summer peak load reduction campaign, *Summer Energy Smart -- Saving Energy Is Cool*, and winter heating costs campaign, *Rise To The Energy Challenge – Winter Cold Relief*. By utilizing a combination of radio and print advertising, urban subway panels and posters, Internet Banner ads, the AskPSC.com Web site, and minor league baseball sponsorships, over 660,000 impressions of the campaign messages were seen or heard across New York State. In addition, an extensive grassroots outreach and education campaign complemented the education efforts. The grassroots campaign included mailings to thousands of consumer and community leaders around the State and disseminating energy efficiency brochures, in English and Spanish, at home shows, business shows, energy fairs, senior fairs, and state and regional conferences. As a result of this multifaceted grassroots outreach and education effort, DPS Staff reached over 3.65 million consumers across NYS.

The effectiveness of Staff's programs has been demonstrated through statistically valid market research. For example, in a 2005 advertising awareness study conducted on behalf of NYSERDA, DPS's "Conserve a little, save a lot" campaign ranked number one in consumer recognition upstate and downstate, among a group of 15 energy campaigns. In addition, pre- and post-campaign evaluations of other Staff-directed awareness campaigns have displayed significant increases in consumer awareness and understanding.

Based on its past performance with multifaceted consumer outreach and education programs across the State, DPS staff has demonstrated that it is more than capable of performing the necessary outreach and education functions required for the EEPS. These efforts, however, do not preclude utilities or other entities from pursuing their own outreach and education efforts. Furthermore, Staff will bring its experience in running a successful outreach and education campaign to the table as an active participant in the outreach and education collaborative proposed in the DPS Staff Report on Recommendations for the EEPS Proceeding.

Con Edison/O&R "vigorously" object to Staff's recommendation that if, as a result of implementing the EEPS portfolio, the net system load factors decline, then it is the utility's responsibility to file a plan to restore the net system load factor. Con Edison/O&R maintain that if the utilities controlled the energy efficiency programs, they would take into account load factor issues (e.g., balance on and off peak reductions).

Response: In recommending that utilities develop and submit a plan to correct any erosion or deterioration in net system load factor resulting from energy efficiency program implementation, Staff is not suggesting that any other efficiency program administrators should or can ignore their responsibilities to prevent that outcome. The utilities should include other program administrators in the development of a remediation plan since there is a possibility that multiple program administrators will be active in the Company's service territory.

The Straw Proposal "wedges" regarding the allocation for achieving the goal through 2015 is premature. Con Edison/O&R support the WG III recommendation that targets should be based on building programs first and then matching them to overall goals. Certain types of programs may be far better suited for certain service territories.

Staff Response: Staff agrees.

Other Issues

Marketing Study (Con Edison/O&R Initial Brief at 4, 12)

Con Edison explained that its proposed suite of energy efficiency programs is based upon market analysis and information from its "close relationships with its customers." In addition, the company reports that it devoted over 4,000 staff hours to this effort supplemented by $125,000 in consultant services. Despite these considerable investments, Con Edison indicates that there is still a need to refine the programs through additional market research and plans to spend an additional $500,000 to $700,000 in this area (see footnote 9, Con Edison IB at 12).

While there is value to injecting detailed planning and analysis into program design, Staff is concerned about the cost of the process. If the 4,000 staff hours already invested are valued at a hypothetical $75 per hour (labor and overhead), the cost of the research to date equals approximately $300,000, plus

$125,000 for a consultant. If we add $700,000 in proposed future spending, the total bill will exceed $1.2 million or the equivalent of over $100,000 for each of the 11 program proposals. These costs appear especially high considering that Con Edison frequently speaks on its extensive knowledge of its customers and markets.

While the Commission, in the recently concluded Con Edison electric rate case (Case 07-E-0523), authorized the company to spend $2 million on energy efficiency, with a minimum of $250,000 for market research, it is important to note that the Commission made clear that the marketing research effort must be in coordination with Staff and interested parties and the results will not be classified as proprietary.[6] The Commission also required that a plan for spending the $2 million must be submitted to Staff no later than April 25, 2008. Staff urges Con Edison/O&R to consider carefully how it invests in marketing research, especially since more of the $2 million invested in marketing will result in fewer dollars to build Con Edison/O&R's energy efficiency program infrastructure.

Considering the company's apparent devotion to marketing research, Con Edison's strong opposition, in the fore mentioned rate case, to conducting a comprehensive evaluation of the Targeted Program continues to be puzzling. To date, the company has committed approximately $150 million to the Targeted Program. Staff maintained that a comprehensive evaluation was necessary to determine where, and to what extent, the Targeted Program is being effectively administered, the most appropriate and cost effective measures are being installed and that the ratepayers are receiving maximum value. The company argued that because the Targeted Program was established through a collaborative, and the company occasionally meets with Staff, an independent evaluation is unnecessary. Under this theory, it is likely that the entire portfolio of EEPS programs would be

[6] This appears to be inconsistent with Con Edison's filing of a business plan for proposed energy efficiency programs with the Department of Public Service's Records Access Officer for a determination of trade secret status. See Con Edison's IB at 5. This filing also seems to contravene Section 6-1.4 of the Commission's Rules and Regulations.

exempt from a comprehensive evaluation. The company did finally agree to conduct an independent evaluation of the Targeted Program and the Commission ordered the delivery of the evaluation report by November 25, 2008.

A major reason for investing in evaluation beyond basic accountability is to learn about the strengths and weaknesses of a program with the goal of optimizing future performance. Despite proposing to achieve 137 MW from the Targeted Program by 2015, surprisingly, the company never mentioned the evaluation and the possibility that the results could influence the scope and design of the Targeted Program. In fact, the evaluation was never mentioned at all. While it may have been an accidental omission, the company's silence sends the wrong message.

Rationale for Utility Administration

In response to a request from the ALJs, Con Edison/O&R provided a detailed rationale for the utility administration of energy efficiency programs. The brief noted that Con Edison, O&R and other utilities have an in depth understanding of their customers and regularly and effectively communicate with them. Moreover, this connection with the consumer, combined with a detailed knowledge of the electric networks, will facilitate the implementation of cost effective energy programs that can also contribute to enhanced electric system forecasting and planning.

Staff has frequently acknowledged that utilities offer positive attributes for administering energy efficiency programs. These attributes, however, need to be placed in context. For example, Con Edison has not administered a large portfolio of energy efficiency programs, similar to its proposed 500 MW initiative, in over 10 years. The ability of Con Edison to implement, in 2008 and beyond, a large portfolio of programs is untested. To-date, its own Targeted Program is only responsible for about **nine** MW of savings. Not surprisingly, when Con Edison cited examples of effective utility administration of programs they are not from

New York State, but California and Connecticut. It is unknown if the New York utilities will be more, or less, successful than utilities in other states.

Absence of Coordination

Although in their April 14 Ruling, ALJs Stein and Stegemoeller said that "parties need not comment on or reply to the proposal for Commission approval of these suites of programs and plans," Staff notes that Con Edison's proposed program mix appears to lack coordination with its own programs contained in its 2008 Gas Collaborative Report, filed with the Commission on April 15, 2008. For example, the list in its April 10 brief contains two programs, an appliance dealer program and a residential space heating and cooling program, which both feature natural gas savings from natural gas appliances. Neither program is part of the program suite contained in the Gas Collaborative Report. The company has before it a clear opportunity to provide the type of coordination between gas and electric efficiency programs that has been called for by many parties to the EEPS proceeding, but failed to do so.

Con Edison also states in its April 10 brief that it "disagrees with the automatic up-front exclusion of interruptible customers because significant efficiency opportunities could be missed." IB at 29-30. A footnote to this passage indicates that the company will include a pilot program for certain interruptible customers in its Gas Collaborative Report. However, Staff would like to reprise its points, summarized by the company in the Gas Collaborative Report, about concerns with including interruptible gas customers in the EEPS at this time. First, Staff requested data from the company to support its contentions that certain interruptible customers are not price sensitive and that they will often pay a 10 or 20 percent premium to burn natural gas instead of their alternate fuel. Second, Staff is concerned that imposing a surcharge on interruptible customers who are price sensitive could lead to increased petroleum usage by these customers, and therefore increased air emissions. Third, the company has not disclosed how firm ratepayers could be impacted by including interruptible customers in efficiency programs. Revenues from interruptible customers, above a certain level which is imputed in the company's revenue requirement for calculating base rates, are shared between the firm ratepayers and shareholders. The ratepayer portion flows through the gas adjustment clause, and is used to reduce commodity costs for those customers. Reduced sales to interruptible customers will result in higher bills for firm ratepayers. Fourth and last, the company has not indicated how interruptible customers will be accounted for in a revenue decoupling mechanism. Interruptible customers are currently not subject to paying the Monthly Rate Adjustment, the mechanism which the company uses to collect the costs for its current gas efficiency program administered by NYSERDA. Some mechanism needs to be developed to ensure that interruptible customers pay for the programs they benefit from, and that firm ratepayers are not subsidizing such programs, since interruptible customers receive discounted rates in return for the company's ability to interrupt their service.

Community Environmental Center (CEC)

In its Initial Brief, Community Environmental Center states, "We support Staff's emphasis on practical and effective administration of programs." IB at 2. It supports Staff's market-centric approach and believes that it would be illogical to decentralize program implementation. CEC believes that municipal governments can play an important role in program outreach and in an advisory capacity and encourages establishment of a governance structure that will ensure greater municipal participation.

Concerns

CEC recommends an increase in the percentage of total Assisted Home Performance project costs that an individual grant can cover.

Staff Response: Staff believes that this is an issue that should be considered when looking at the design of this program, in the event that Commission agrees that the scope of this program should be expanded.

CEC encourages development of an organizational structure to assure greater municipal participation.

Staff Response: Staff agrees that participation from municipalities in the planning process for achieving the EEPS targets is desirable.

EEPS needs to encourage efficiency programs for fuel oil.

Staff Response: This issue came up in Working Group II discussions. Further discussion of how best to address heating sources other than natural gas as part of the overall discussions for meeting the 15 by 15 target (and associated natural gas target) is necessary.

City of New York (the City)

According to the City's Initial Brief, "[t]he City generally supports the Staff's updated portfolio of fast-track programs listed in the Staff Report. This is a significant improvement from the prior Staff proposal and reflects the Staff's consideration of stakeholder input. Staff has compiled a reasonable list of programs that can be quickly ramped up and that will contribute to increasing energy efficiency in New York State." (IB at 4)

Concerns

Staff's forecasts regarding the contribution to be expected from codes and standards are overly optimistic because many changes will take place beyond 2015.

Staff Response: Staff has recommended in its previous submittals in this proceeding that a working group process should be initiated to achieve a broader agreement on the contribution from efficiency building codes and standards that should achieved for 15 by 15 and to also identify any needed actions and resource levels required to obtain those objectives.

There should be a prominent role for utilities in both short and long term efficiency efforts (lead administrators: NYSERDA and Con Edison for electric; NYSERDA, Con Edison, and National Grid for natural gas).

Staff Response: The City continues to support the Partnership governance model, which includes no significant role for either Staff or NYSERDA. In addition, it lacks any type of formal coordination with efficiency programs in other areas.

The City recommends that the design of financial incentives for Tier III programs be changed because paying a fixed price per kWh saved encourages "cream-skimming." The fast track program for large and medium C&I customer retrofits should have customized financial incentives that "buy down" the customer's contribution. The City also states that Staff's fast-track proposal for C&I customers is missing prescriptive incentives for purchased equipment. This program may serve as an initial gateway to C&I customers, it states, who might then participate in other C&I programs.

Staff Response: Staff has no objections to the use of prescriptive rebates for specified measures in some program designs. However, we would want to examine the specific parameters proposed before endorsing a specific proposal. There should also be opportunities, especially for the largest customers, to be able to take advantage of customized incentives as well. It is our understanding that NYSERDA has been looking into ways to simplify procedures for its C&I programs to make them more customer friendly. This includes having a component with prescriptive (standard offer) incentives as well as performance based (customized) incentives.

Funding for NYSERDA's workforce development and market development programs should be significantly increased for the fast track period from Staff's recommended level because these programs are instrumental in developing the capacity for a large scale ramp-up of energy efficiency efforts.

Staff Response: Staff believes that its proposed funding level is adequate to initiate a meaningful increase in current workforce development activities pertinent to accomplishing EEPS objectives. More planning and the specific outcomes to be achieved should be developed before additional funds are allocated to this activity.

Staff is underestimating the costs required to achieve the electricity savings projected from some of the fast-track programs, perhaps by 20–30 %, because of failure to consider diminishing marginal returns and the need to offer higher incentives to increase market penetration.

Staff Response: Staff's proposed funding levels are adequate to achieve a meaningful and cost effective ramp up in energy efficiency resource acquisition for the bridging programs. Program budget levels can be reviewed and adjusted should implementation experience indicate that such action is needed. Customer rate impacts for enhanced efficiency initiatives are a significant concern and a thoughtful balance will have to be achieved between rate impacts, marginal returns from efficiency measures, and program market penetration rates through an ongoing program review and evaluation process.

Particularly in New York City, the utilities should play a much greater role in administering programs during the fast-track because the market is distinctively different from that in other parts of the State and they can bring resources that are not practicable for delivery by others, such as direct installation. This is also true because NYSERDA has a lack of presence in NYC which suggests that it does not have a genuine commitment to a truly accelerated efficiency effort.

Staff Response: New York City is a critical market for energy efficiency resource acquisition because of its growth in demand, infrastructure constraints, and the price of energy. The utilities and NYSERDA need to work in very close coordination and in a seamless manner to achieve EEPS objectives in the City in the most efficient and effective manner. Staff's bridge proposals provide for opportunity for the City's utilities to administer some new programs on their own and assume an increased role in the delivery of NYSERDA programs. Additionally, Staff supports the utilities' proposal to recommend new programs that can complement existing programs or propose superior programs for which a well-planned transition can be implemented. Future role designations in the planning and delivery of efficiency programs should be based on the capability of the participants, stakeholder confidence and performance that various entities can demonstrate.

Staff's "Gas Bill Impact" is even less documented than its electric analysis. There is no way to determine how Staff defined the avoided gas costs and Staff appears to have omitted the effect of gas and electric conservation on market gas prices, as well as the accompanying effect of reduced natural gas market prices on electric rates.

Response: The Gas Bill Impact analysis is very preliminary, due to the fact that no natural gas target or spending level for a statewide program has yet been determined.

Central Hudson Gas & Electric Corporation (Central Hudson)

Central Hudson wants to implement energy efficiency programs. It accepts allocation of energy savings targets among utilities "on an energy ratio basis" with various caveats, and "does not object in principle to the targets proposed for the first three years in the Straw Proposal." The caveats relate to accountability for the goals versus assurance of means.(IB at pages 34 and 37)[7]

Concerns

According to Central Hudson, Staff has changed the tenor of its proposal from fast track to default programs, in which proposed utility replacements programs would not be fairly considered.

Staff Response: Central Hudson is incorrect. The bridging programs would become permanent only if there are no proposals for new, better programs and/or programs enhancements. Utilities programs will be considered on the same basis as other program proposals. Our Initial Brief and the first section of this brief explain our interest in utility involvement in the EEPS effort. Our core principles have remained consistent; Staff wants New York State to have high quality energy efficiency programs at a reasonable cost. Staff's fast track portfolio continues to be a bridge program that will produce energy savings while long-term approaches are developed.

Staff proposes that "future ratepayer-provided energy efficiency funding be channeled preferentially and predominantly to NYSERDA." Staff mistakenly assumes that NYSERDA can expand its current programs more rapidly and cost-effectively than the utilities can initiate programs. "The many changes [called for] negate the supposed advantages of relying excessively on the incumbent." (IB at 6-8, 21-22)

Staff Response: Staff stands by the discussion of NYSERDA's unique readiness previously provided in its Initial Brief (at 2-3, 19-22, 32). The proposed enhancements would be more easily accomplished within the existing NYSERDA infrastructure than by utilities ramping up entirely new programs. Central Hudson's specific arguments as to why Staff is mistaken about NYSERDA's readiness are summarized and responded to below.

Central Hudson's Initial Brief contains a section entitled "Staff's Assumption that its NYSERDA 'Fast Track' Programs Will Be 'Implemented Quickly' is Contradicted by NYSERDA's Representations." Central Hudson claims that NYSERDA documents show "a lag period of three years before NYSERDA would be able to fully implement" new fast track programs. Staff, the company insists, "ignored" the lag, although apparently "aware" of it,

[7] In Case 07-M-1139, Central Hudson insisted on modifications to its current rate plan, which expires on June 30, 2009, before it would implement any energy efficiency measures. Given the recent ALJ ruling in that case, it is not certain whether Central Hudson would be willing to implement programs any time soon.

undermining its "picture of the expected savings and costs-effectiveness." (IB at 8)

Staff Response: The supposed implementation lag admission attributed to NYSERDA in fact refers to only the four NYSERDA-operated, contractual C&I programs, and only to phase-ins of contracted measure installation, not program implementation.

As its sole evidence for its contention that there is a three-year implementation lag, Central Hudson, in footnote 8, quotes a NYSERDA document as saying "an installation time lag of 20-40-40 (20% of the proposed MWh are achieved/installed in the first year after the contract is signed, 40% in the second year") and so forth. Obviously, this refers to project completion and not program implementation. Staff was aware of the phase-ins to which Central Hudson is actually referring and did not ignore them in any way. Central Hudson's footnote 9 details its claim: "It appears that Staff may have been aware of the implementation lag, as the note in the table (at 8) of the March 25 Proposals admits that: 'Several Phase-ins, of costs are ignored'."

In fact, the Staff footnote says "disregarded," not ignored, and refers to "several," and not all of NYSERDA's programs. It continued: "This table shows the full budgets as spent and encumbered." In Staff's Technical Appendix (Attachment 4, page 2), the table showing statewide budgets and energy savings for 2008/2009 carries a footnote disclosing that the phase-ins have been disregarded for savings as well as for costs, adding to the sentence quoted above: "and the savings which these dollars will yield."

For large projects with large customers, the path from contract signing to completion of the project is often a multi-year process. This process is reflected in Staff's program spreadsheets, distributed to all parties, for all the C&I programs to be operated by NYSERDA. The worksheets first show funds spent or encumbered and energy savings contracted for in 2008 and 2009. Rows below then show projected phase-ins of installation of the contracted measures and the energy savings from 2009 through 2011.

For the summary tables displaying budgets and savings for only the first two years, Staff's encumbrance and contracted savings approach is a reasonable way to display the full programs. For benefit cost testing, however, the measure phase-ins are modeled, and such estimates are not undermined.

Staff does, however, believe that NYSERDA should review its processes and take whatever steps it can to manage implementation to shorten the process for completing large projects.

Central Hudson states that Staff's proposal relies heavily on "'enhancements' to NYSERDA's lighting programs" for both savings and cost-effectiveness. Staff is assuming excessive savings per CFL and fixture: 94.7 kWh/CFL and 116 kWh/fixture, whereas Central Hudson uses only 50.5 kWh and 73 kWh, respectively, based on Maine's program experience. Staff is assuming high penetration levels for rebate programs, and very high for NYSERDA's "market transformation" program. The lighting fast track program is just NYSERDA's market transformation program expanded and cannot be expected to achieve start achieving such penetrations.

Staff Response: Central Hudson may be correct. The 94.7 kWh figure is from a recent NYSERDA Energy $mart program evaluation. Staff recently learned that NYSERDA more recently has been using an assumption of 64 kWhs/CFL/year in its SBC reports, based on an unpublished Nexant analysis. Staff is currently reviewing the 64 kWh/year estimate and cannot, at this time, comment as to its appropriateness. Staff will advise the parties as soon as it is able to analyze the basis of the figure. However, we note that if the lower kWh savings estimate were to be used, the TRC Benefit/Cost ratio would drop from 7.9 to 5.7. Costs and peak MW savings would be unchanged. The 2008 GWh savings increment for all of the NYSERDA-operated electric bridging programs would drop about 10% (11% for the 2009 increment).[8]

As for the comment that the bridging program is just market transformation, as our program descriptions in the March Staff Report detail (p.7), NYSERDA's current lighting program would be extended from market transformation by an enhancement: incentives for retailers, which could mean consumer discounts, would be added, and coupons or in-store rebates will be considered. The retailer incentives have been very effective in California and the Northeast.

Central Hudson states that it has not been able to identify the numerical value of incentives for Staff's proposals or to verify how incentive costs were reflected in Staff's cost-effectiveness calculations. It requests that Staff clarify this point.

Staff Response: The spreadsheet for 2008 shows a $2/bulb incentive to retailers ($40/fixture) affecting 30% (35% for fixtures) of the program's incremental sales, yielding average costs of $0.60 per bulb and $14 per fixture. These costs are

[8] Staff does not have any new NYSERDA estimates for CFL fixtures. The impacts of any changes, however, would be modest. The GWh savings of the fixture program approximate only 11% of the savings of the CFL bulbs program, as published in Staff filings.

figured into the budgets and resource costs. For CFL bulbs, the footnote explanation of the non-incentivized bulk of the incremental sales of the program is: "Program estimate based on market activity and expanding program reach into other retail locations."

Central Hudson's programs should be included in the fast track – they are much more detailed than Staff's, "can be implemented more quickly," and "are of equivalent or better benefit/cost ratios".

Staff Response: Central Hudson does not mention that, in its own materials, the benefit/cost ratio for one of its programs is well below 1.0 (which one and how much can not be revealed publicly).

Central Hudson asserts that Staff and others, throughout the case, have avoided "the most fundamental and important issue: whether it is better … [that efforts] be funneled through NYSERDA or [a utility] approach …" A competitive structure for energy efficiency, customer choice between NYSERDA and utility programs, would be better than the NYSERDA monopoly. NYSERDA is historically and prospectively less cost-effective than utilities and other authorities. Central Hudson's Statewide Plan would be more cost-effective than NYSERDA's even counting incentives to the utility.

Staff Response: Central Hudson's chief evidence for its claim of NYSERDA's poor historic cost effectiveness is a chart (pps. 30-31) derived from reported expenditures and claimed saving for NYSERDA (1998- 2006), NYPA (1987-2006), LIPA (1995 – 2005), and Utilities (1990 – 1996). These numbers were taken from the Order Instituting Proceeding, issued May 16, 2007 in this proceeding.

Central Hudson is drawing improper inferences from the numbers in the Instituting Order. Those numbers are illustrative and covered different time periods. Further, the costs were not converted into current dollars. An additional weakness in Central Hudson's analysis is that the $/MWh measure it derived from the data provided in the Order, unlike benefit/cost ratios, does not capture measure life. Furthermore, there is no consideration of the objectives of the various programs, i.e., whether the programs targeted comprehensiveness versus capturing low-hanging fruit.

The differences in the bases for the numbers is highlighted by the range of cost effective figures shown in the table; $/MWh saved were calculated as $326.8, $110.5, $35.5, and $214.3, respectively, for NSYERDA, NYPA, LIPA, and the utilities. At $35.5/MWh saved, LIPA's cost effectiveness is clearly an outlier, however, Central Hudson provides no clarification about the obvious and significant difference from the other programs. Staff therefore considers this comparison to be inconclusive. It is this type of comparison that argues for the consistent evaluation protocols which EEPS Working group III suggested are essential.

Alliance for Clean Energy New York (ACE NY)

ACE NY believes that improved energy efficiency in New York State should be undertaken as soon as possible and should build on existing effective programs. ACE NY supports a strong and central role for NYSERDA. It also supports Staff's recommendations on outreach and education.

Concerns

There is an insufficient record for implementing utility programs. Beginning with the utility programs proposed by Staff may not be the wisest path because there are unresolved issues, including getting utility buy-in. Utilities should develop programs and we need decisions on incentives/penalties.

Staff Response: In Staff's Initial Brief, we recommended a framework and parameters for energy efficiency incentives. We recommend that as soon as the Commission makes a decision in the EEPS case, a collaborative effort should begin to examine incentive issues in further detail. In terms of utility programs, Staff believes that it is important for utilities to begin building a capability for administering energy efficiency programs going forward. The bridging programs that we proposed will help build that capability while details on additional utility efforts are developed. It is important that as new plans are developed, careful consideration is given to make sure that the efforts of NYSERDA and the utilities are complementary rather than being in competition with each other.

ACE does not support the allocation of 2015efficiency targets among program administrators at this time.

Staff Response: Staff agrees.

CONCLUSION

Staff urges the Commission to expeditiously approve the bridging programs and implement the policy initiatives described in the March Staff Report and Staff's Initial Brief, as modified and amplified herein. Taken together, these programs and initiatives are designed to provide a comprehensive, sensible, and organic approach to building a successful energy efficiency policy standard in both the short term and the long term in a way that will meaningfully engage all stakeholders. The 15 by 15 goal is ambitious; a similarly ambitious beginning step is required.

Respectfully submitted,

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