Dormitory Authority
State of New York

Gail H. Gordon, Chair
David D. Brown, IV, Executive Director

April 18, 2008

VIA COURIER

Hon. Jaclyn A. Brilling
Secretary
New York State Public Service Commission
Empire State Plaza
Agency Bldg. 3
Albany, New York 12223-1350

Re: Case 07-M-0548 – Energy Efficiency Portfolio Standard

Ruling on Staff Motion for Reconsideration and Revising Schedule (issued March 20, 2008), as revised April 3, 2008

REPLY BRIEF

Dear Secretary Brilling:

Pursuant to the above-referenced *Ruling*, the Dormitory Authority of the State of New York ("Dormitory Authority") submits this letter, and five copies hereof, as and for its Reply Brief in the Energy Efficiency Portfolio Standard ("EEPS") Proceeding. Copies of this Reply Brief have been served on the Administrative Law Judges via electronic mail and on the Active Parties via the EPS ListServer.

The Initial Briefs submitted in this proceeding reflect broad consensus on several points:

- It will not be possible to achieve the energy efficiency goals established in this EEPS Proceeding unless new and innovative energy efficiency programs are developed and implemented.

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- The responsibility for the design and administration of energy efficiency programs should not be limited to the New York State Energy Research and Development Authority ("NYSERDA"), but should also include the utilities and other parties to this proceeding.
- Utilities, by virtue of their knowledge of their customer base and direct access to their customers, are well situated to design programs that will be utilized by customers.
- New energy efficiency programs will not be able to be successfully implemented unless the parties willing to pursue these programs are given an opportunity to do so.
- Undue reliance on the System Benefits Charge or analogous ratepayer surcharges to fund energy efficiency programs is not realistic and therefore, alternative funding mechanisms, such as an on-bill financing program, or Tariffed Installation Program ("TIP"), must be pursued.
- Under a TIP, only the customers benefiting from the energy efficiency improvement would be required to bear the cost of the same thereby avoiding undue burdens on other ratepayers and questions of interclass equity.
- Utilities will be reluctant to undertake energy efficiency proposals due to the resultant lost revenues unless the Commission takes the steps necessary to remove the economic disincentives to utility participation in these programs and to provide appropriate incentives.

Consistent with the above principles, the Dormitory Authority asserted in its Initial Brief that the Commission should immediately endorse the concept of a TIP and proceed toward establishment of the policies and guidelines necessary for its prompt implementation. DASNY also stated in its Initial Brief that utilities should be permitted to undertake energy efficiency programs that are capable of being implemented as "bridging programs." In DASNY's view, bridging programs should include any utility energy efficiency program that is able to be implemented quickly, is consistent with the energy efficiency objectives of this EEPS Proceeding and is cost effective

Some of the investor-owned utilities, *i.e.*, Central Hudson Gas and Electric Corporation ("Central Hudson") (Initial Brief p. 21) and National Grid (Initial Brief pp. 16-17) shared DASNY's view that on-bill financing should be adopted. Central Hudson further stated that it is "prepared to work immediately with DASNY and Staff to develop and implement a TIP pilot program" (Initial Brief p.21). Other parties, including the New York State Consumer Protection Board (Initial Brief, p.9), the Northeast Energy Efficiency Council ("NEEC") (Initial Brief p. 5), the Joint Supporters (Initial Brief p. 12) and Staff of the New York State Department of Public Service ("Staff") (pp 41-43) also support implementation of on-bill financing or a TIP. (Initial Brief pp. 41-43), The Joint Supporters have stated further that such financing should commence within six months from the date of any Commission Order implementing fast-track programs (Initial Brief p. 12).

New York State Electric & Gas Corporation ("NYSEG") and Rochester Gas and Electric Corporation ("RGE"), however, have suggested that it would be premature to adopt a TIP at this time. In support of their position, they attach a list of purported financial, technical, legal and policy reasons why a TIP should not be adopted until these issues are "resolved collaboratively." (Initial Brief p. 7 & Attachment IV-1). Staff similarly suggests that further collaboration should be undertaken before a TIP is adopted (Initial Brief pp. 42-43)

DASNY strongly disagrees that further collaborative proceedings are necessary prior to adoption of the TIP concept. As the list of issues submitted by NYSEG and RG&E reflect, none of the issues to be resolved go to the legality or wisdom *vel non* of a TIP. All relate solely to implementation issues. The Commission thus has authority to adopt forthwith the concept of a TIP.

With respect to the outstanding implementation issues, most all of these matters relate to purely legal and policy matters, such as payment pro-ration, utility cost recovery, utility balance sheet issues, disconnections for non-payment, and meter-based charges. All of these issues have been previously raised by the Dormitory Authority in the collaborative portion of the EEPS Proceeding.

This Commission should resolve all legal and policy issues, including those raised by NYSEG and RG&E, in accordance with its usual procedures, i.e., invite briefs on the issues and thereafter issue a decision resolving the issues. Resolution of such issues cannot be delegated to parties in any further collaborative proceedings and can only be undertaken by the Commission. Further collaborative proceedings, which would then be followed by the same above-described briefing process, are therefore unnecessary and would only delay their ultimate resolution by the Commission.

The remaining implementation issues deal exclusively with individual utility matters, such as billing system-related issues. As such, the Dormitory Authority believes that these matters do not lend themselves to collaborative proceedings and instead, should be resolved on a utility-by-utility basis, such as in the context of individual utility compliance filings.

In short, the Dormitory Authority strongly believes that utilities interested in implementing TIP pilot programs should be permitted by this Commission to do so as soon as is reasonably practical. New energy efficiency programs, such as TIP, can benefit where parties responsible for their design and implementation are given the opportunity to actually offer such programs and work-through issues as they arise. As was the case with the so-called Dairylea electric retail access programs, which were ordered to be fully implemented by the utilities within 90 days from issuance of the Commission's order, the Dormitory Authority believes that the full development of all final TIP-related guidelines and policies is not required as a condition precedent to moving forward with a TIP and that actual TIP implementation may instead inform the development of such policies. *See* Case 96-E-0948 – Petition of Dairylea Cooperative Inc. to Establish an Open-Access Pilot Program for Farm and Food Processors Electricity Customers, *Order Concerning Retail Access Proposals*, pp. 13-17 (issued and effective February 25, 1997) and *Order Denying Petitions for Reconsideration*, pp. 5-7 (issued and effective May 22, 1997).

Notwithstanding all the benefits that would be achieved through a TIP, no TIP will be successfully implemented on a large-scale basis, and indeed, 15 by 15 will not be successfully accomplished, until the legitimate economic concerns of the utilities are addressed. The Long Island Power Authority ("LIPA"), in its initial brief (Initial Brief pp. 6-7), states that the implementation of its energy efficiency programs will result in lost revenues that will approximate 70% of the program expenses. This statement clearly demonstrates that achievement of 15 by 15 cannot be achieved until utilities and their investors are given appropriate assurances that utility participation in energy efficiency programs will not disrupt their bottom line. DASNY therefore urges the Commission to promptly address the pending revenue decoupling petitions and other related matters.

For the above reasons and those cited in its Initial Brief, the Dormitory Authority urges the Commission to (i) adopt a TIP as a bridging program; (ii) invite public comment on outstanding legal and policy issues and issue an order resolving such issues as soon as possible; (iii) solicit individual utility compliance filings and associated tariff leaves to implement the TIP and issue one or more orders addressing such compliance filings as soon as possible; (iv) encourage all utilities to move forward immediately with TIP pilot programs; and (v) resolve all outstanding revenue decoupling and other issues that stand in the way of achievement of 15 by 15.

Respectfully submitted,

Jeffrey M. Pohl /s

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General Counsel

cc: ALJ Eleanor Stein (via e-mail)
ALJ Rudy Stegemoeller (via e-mail)
Active Parties (via the EPS ListServer)