

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

**INITIAL BRIEF OF THE STAFF OF THE
DEPARTMENT OF PUBLIC SERVICE
ON BRIDGING PROGRAMS AND ISSUES**

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INTRODUCTION

This initial brief on behalf of the Staff of the Department of Public Service (Staff) is responsive to the four issues/questions to which the Administrative Law Judges (ALJs) directed the parties in their March 20, 2008 “Ruling on Staff Motion for Reconsideration and Revising Schedule” (Ruling). The Ruling states that parties’ briefs are expected to address: (1) Staff’s and other fast track proposals; (2) the policy rationale for including utility administration of energy efficiency programs; (3) “whether the program cost and bill impact figures presented in the Technical Appendix to the Straw Proposal represent a reasonable estimate of the overall cost of those elements of the 15 x 15 initiative to be achieved through utility ratepayer-funded and on-bill financing”; and (4) whether energy efficiency targets and funding should be allocated in advance among NYSERDA and each utility as the Straw Proposal did.

Summary of Responses

Discussion of these issues/questions is presented in the context of Staff’s vision of best practices regarding how one constructs an energy efficiency portfolio standard (EEPS). These are the short responses:

1. Staff chooses not to comment on the fast track proposal previously submitted by the New York State Energy Research and Development Authority (NYSERDA) because it may be modified in its initial brief. We reserve the right to respond to NYSEDA's proposal in our reply brief. Similarly, Central Hudson Gas & Electric Corporation may modify and amplify its proposal in its initial brief. Staff reserves the right to comment on that company's proposal in our reply brief.¹
2. Staff believes that an effective and efficient way for New York to achieve accelerated energy efficiency goals is to increase the role of utilities in the delivery of energy efficiency programs in a manner that is fully complementary with the roles of other market participants, including NYSEDA, regional, and national energy efficiency service and equipment providers. Administration of energy efficiency programs could benefit from utilities' knowledge of the characteristics of their service territories and their unique relationships with and access to their customers. By themselves, these are not the most important attributes needed to achieve high levels of energy efficiency market penetration success. What is most important is that program administrators have acquired the skill and wherewithal to intervene effectively in market processes to influence customers' decision making and taken steps to increase the energy efficient appliance and equipment options available to customers. This requires the ability to work on local, regional, and national levels and to develop effective relationships with market participants and service providers. These tasks also often have to be coordinated closely with the actions of other states to send the most effective signal to the marketplaces where energy consuming decisions are made.

¹ Should the company request that its filing be accorded confidential treatment, the ability of the parties to discuss the filing is curtailed.

Currently in New York, NYSERDA is the only entity that has demonstrated that kind of capability. Staff believes that the State's utilities, for the most part, will need time to develop their capabilities in this important dimension and, therefore, a period and an opportunity for transition is needed. In assuming a larger role in efficiency program delivery, utilities (or any new program administrators) must be able to demonstrate that they can administer a program as efficiently and effectively as the current administrator (in the case of an existing program) before such programs should be approved for alternative administration. The emphasis in long-term planning should focus on how to leverage the strengths of both utilities and NYSERDA to provide maximum effectiveness without duplicating effort or creating costly confusion in the marketplace.

For interim (or bridge) programs,² Staff recommends that utilities undertake the Small Business Direct Installation and Residential ENERGY STAR® HVAC and Efficient Gas Equipment programs. These are best practice programs and currently represent under-served markets for energy efficiency services. In addition, utilities should be given resources to enable them to market to and enroll customers in existing NYSERDA programs, particularly in the Commercial and Industrial market segments. In addition, utilities should have opportunities to achieve reasonable levels

² In several previous documents, Staff characterized programs that can be implemented quickly as "fast track" programs. Page 3 of the ALJs' March 20, 2008 "Ruling on Staff Motion for Reconsideration and Revising Schedule" (Ruling) refers to the fast track programs as "bridging" programs. The terms "bridging" or "interim" are appropriate because the programs identified in this document are tested programs, with proven track records that can be put in place quickly and form a solid basis for making meaningful progress in the near term toward achievement of the aggressive energy saving goals of the EEPS proceeding. We will use the terms "interim" and "bridging" throughout this document because they convey the concept of programs that can be superseded by even better programs in the future.

of incentives for measurable contributions toward achieving program goals and targets.

3. Staff believes that “the program cost and bill impact figures presented in the Technical Appendix to the Straw Proposal” do not “represent a reasonable estimate of the overall cost of those elements of the 15 x 15 initiative to be achieved through utility ratepayer-funded and on-bill financing.” Programs should be built from the ground up based on market segment analyses. It is unknown at this point how much money utility-administered programs in total would cost and the overall contribution that on-bill financing component could achieve. Choosing a 50/50 split between NYSERDA and the utilities and a 6.25% contribution from on-bill financing, as did the Straw Proposal, is much too arbitrary an approach for a proceeding like this one with such large financial and environmental repercussions.

It cannot be determined now what will be the most effective long-term approaches for program delivery and, hence, the most appropriate funding allocations for the entire period through 2015. Furthermore, the broad based allocation of EEPS funds among potential administrators without an examination and qualification of specific programs creates a large opportunity for duplication of effort and other harmful inefficiencies. The Straw Proposal also ignores the potential costs of still-to-be-determined utility incentives. Further, the bill impacts presented in the Straw Proposal are over-simplified. They do not provide rate impact analysis and are based on subjective assumptions. Staff is also concerned about creating expectations that energy prices will fall as demand is reduced. Recent trends in the oil markets are showing a lessening in the relationships between local demand and price.

4. Staff believes that energy efficiency targets and funding should not be allocated in advance among NYSERDA and each utility as did the Straw

Proposal. Our answer here is similar to the response above. Staff believes that the Commission would fail in its obligation to ensure that rates are just and reasonable if it were to designate targets and funding allocations for each potential administrator before approving an actual budget and administrator for each approved program. Making such commitments now for the full seven years of the EEPS Program would be especially troubling. Instead, the Commission should require, at a minimum, a biennial review of the overall energy efficiency portfolio and make adjustments in programs, administration, and related policies, as appropriate.

Staff showed in its March 25, 2008 DPS Staff Report on Recommendations for the EEPS Proceeding (March Staff Report) that a combination of projected impacts of improved building codes and appliance standards, planned activities of other state agencies and authorities, and Staff's proposed bridging programs (if extended through 2015) could achieve the bulk of the 15 by 15 goal. It is simply uncertain at this point in the proceeding just how large the utilities' (or other program administrators') role in program administration will ultimately become. If the Commission were to decide upon targets and budgets now for utility programs, it would be more difficult for the Commission to resist agreeing to high incentive rewards that may be required to promote performance by the utilities. Conversely, if the utilities reject the incentive structure ultimately adopted by the Commission and do not participate willingly in the EEPS Program, achievement of the 15 by 15 goal would be in jeopardy. Furthermore, the approach used in the Straw Proposal provides no sense of benefit/cost relationships. Staff has provided benefit/cost information on each of its proposed programs, using information from real programs as the basis for our analysis and using the Commission's current policy on

benefit/cost policy;³ all of Staff's proposals are cost effective using this analysis, which is based on verified program information.

Sixteen Decisions the Commission Should Make Now

1. Approve bridging programs and activities for 2008-2009 as proposed in the March Staff Report. Direct the utilities, NYSERDA, and the New York State Division of Housing (DHCR) to file implementation plans, which should include a discussion of evaluation and reporting protocols, within 60 days of issuance of the order. NYSERDA's and DHCR's plans shall explain how they will align funds coming from a specific utility service territory and specific customer classes (residential, commercial, industrial) with program implementation in the individual utility service territories.
2. Approve the EEPS governance proposal previously made by Staff (see Attachment 1), which is similar to a proposal described at the Technical Conference by Assemblyman Andrew Hevesi, that would employ a single statewide collaborative process model (but would provide for regional differentiation where market circumstances warrant) facilitated by Staff for the purpose of reviewing and recommending to the Commission EEPS programs; designating membership of the collaborative, or establishing membership criteria.
3. Establish an EEPS surcharge (which, on electric bills, should be a combined line item with the System Benefits Charge and the Renewable Portfolio Standard charge) at levels, for electric utilities, of \$137.54 million in 2008

³ In the future it may be appropriate to revise the Commission's policies on performing benefit/cost analysis for energy efficiency programs to reflect externalities, such as the impact of carbon on the environment. For now, Staff is using the Total Resource Cost test as specified by the Commission in Case 04-E-0572, Consolidated Edison – Electric Rates, Order Adopting Three-Year Rate Plan (issued March 24, 2005).

and \$267.82 million in 2009, and for gas utilities, of \$19.92 million in 2008 and \$40.69 million in 2009.⁴

4. Direct the electric and gas utilities to file appropriate tariff amendments and enter into agreements with NYSERDA and, for gas utilities, DHCR, regarding a schedule of transfer payments.
5. Authorize Staff to begin designing, and conducting in 2009, a competitive solicitation framework (Request for Proposals or RFP) for obtaining electric energy efficiency resources in the commercial retrofit market that would allow utilities and third parties (including ultimate customers) to participate.
6. Direct the utilities to work with the Dormitory Authority of the State of New York (DASNY) and other interested parties to design an on-bill financing mechanism for not-for-profit and public entities that are eligible for tax exempt financing, which should be filed with the Commission within 60 days of the issuance of the Commission order.
7. Direct the utilities to develop a common study protocol, with Staff's facilitation, to identify and reduce, to the extent practicable, transmission and distribution system inefficiencies in the context of attainment of EEPS goals, and require each electric utility to undertake, or take part in, such a study, with results reported to the Commission within 6 months of a Commission order.
8. Establish the proposed Evaluation and Reporting Task Force; set out its responsibilities and designate membership.
9. Direct the ALJs to initiate a collaborative planning process among a wide range of interested parties to determine how to organize and implement

⁴ The mechanics of developing specific funding levels for some of the gas utilities must accommodate existing energy efficiency programs. Staff recommends that the Commission hold in abeyance approving any additional such programs coming out of rate proceedings until critical policy issues have been decided in this proceeding.

- marketing, outreach, and education efforts and present an initial plan of action within 60 days after issuance of the Commission order.
10. Direct the ALJs to initiate meetings among NYSERDA, Staff, and interested parties regarding increased training for energy efficiency practitioners and present an initial plan of action within 60 days after the issuance of the Commission order.
 11. Direct the parties to initiate collaborative meetings to explore in greater depth the potential contributions to the 15 by 15 goal of demand-reduction projects within 30 days from the issuance of the Commission order.
 12. Direct NYSERDA to meet with stakeholders involved in codes and standards and file an action plan with the Commission within 60 days after issuance of the Commission order regarding steps to develop and implement enhanced codes and standards.
 13. Set incremental funding levels during the fast track period (mid-2008 through 2009) at an annual level of \$6 million (half to NYSERDA and half to the Department of Public Service) for increased program marketing, and increased funding for market and workforce development; direct NYSERDA and Staff to develop proposed budgets for these activities and submit them to the Commission within 45 days from the issuance of the Commission order.
 14. Authorize Staff to submit a recommendation by mid-May, based on Optimal Energy's findings, regarding a statewide natural gas energy efficiency target, as well as how the target should be allocated among the state's LDCs, and resulting program budgets. Parties should then file comments according to a schedule established by the ALJs.
 15. Direct NYSERDA and interested parties to put in motion this summer programs to greatly enhance the visibility of New York State's energy efficiency efforts. This should include authorizing formation (and designating members thereto) of a New York City residential multi-family program design team.

16. Direct NYSERDA and the utilities to engage in discussions that could result in a redefinition of the role those utilities have in the delivery of System Benefit Charge funded energy efficiency programs and that would increase the utilities' role in achieving service territory specific program goals and provide their initial recommendations to the Commission within 90 days of an order.

STAFF'S BRIDGING PROGRAMS OFFER A UNIFIED EEPS STRATEGY

For ease of review, we repeat here selected material from the March Staff Report.

In developing its fast track proposals, Staff researched best practice programs from around the world and identified a portfolio of programs that meet the following criteria:

- Provide programs that have proven to be effective and useful to customers, easy for them to understand, and encourage their participation
- Build on existing successful energy efficiency programs offered in New York State and fill current gaps in under served markets
- Meet specific key market segment needs
- Provide sufficient funding to expand current successful programs that are oversubscribed
- Include programs for all customer classes and for electric and gas customers
- Contain significant roles for a variety of market players
- Build the needed infrastructure for expanded energy efficiency program delivery in a systematic and logical way
- Develop an overall framework of programs that, taken together, form a logical and comprehensive world class energy efficiency portfolio approach

Staff, working with consultants with extensive experience in implementing energy efficiency programs, examined the costs, energy savings, and ramp up rates of best practice programs with real world success and scaled these to New York State levels to come up with projected benefit/cost ratios using the traditional TRC

test and establishing realistic ramp up rates based on experience with actual best practices programs.

It is tempting to say that only the most cost effective programs should receive funding. However, with that approach, some customer classes, key efficiency market segments, and regions of the state could potentially receive few (if any) benefits in relation to the funding for the programs that they provide. In addition, implementing only the highest benefit/cost ratio programs can lead to “cream skimming” where only the least cost energy efficiency measures are acquired or installed initially. It then becomes more costly to acquire additional resources at the same customer premise later to reach the State’s goals.

To reach the aggressive energy reduction goals established for this effort, it will be necessary to achieve deep savings that include a number of energy savings initiatives undertake within existing buildings being addressed by EEPS programs. Furthermore, in the initiating order for this case, issued on May 16, 2007, the Commission established a number of objectives for the proceeding that go beyond simply choosing the individual measures with the highest benefit/cost ratio (e.g., environmental justice, support for low income weatherization programs, demand response, etc.).

Staff firmly believes that our recommended approach to developing program cost and energy savings estimates is the most appropriate basis for establishing initial resource allocations and energy savings targets needed to achieve the EEPS energy reduction targets. In particular, we are aware that some may take issue with our recommendation to increase funding for residential weatherization programs despite low benefit/cost ratios. Staff recommends that 12.4 percent of the 2008 bridging budget and 12.8 percent of the 2009 bridging budget should be assigned to Weatherization Assistance Project (WAP) and EmPower New York. This recommendation, we believe, is appropriately responsive to the Instituting Order’s urging that EEPS program design should include “expansion of existing low income weatherization programs to create a

more comprehensive low income program.”⁵ About one in five New Yorkers live in families whose income is below the federal poverty level; more than 25 percent of New York families are HEAP-eligible.

Weatherization activities tend to be labor intensive, which reduces the energy benefit/cost ratio while still providing program recipients with meaningful bill savings. These programs, however, also satisfy another requirement set forth in the Instituting Order: “An EPS should be designed ultimately to reduce customer bills, stimulate State economic development, and create jobs for New Yorkers.”⁶

Aside from the Commission’s directive to ensure that low income New Yorkers receive a special focus in program design, there is good reason to propose a relatively large share to programs that assist impoverished New Yorkers even though the benefit/cost methodology used by Staff shows a less favorable ratio than many other programs. Although middle income and upper income New Yorkers tend to use more electricity and gas than lower income New Yorkers, the costs for that use account for a much higher percentage of the annual incomes of low income New Yorkers than the annual incomes of the better off New Yorkers. Consequently, programs designed for this market segment can make it possible to achieve needed energy reductions for these customers.

Poorly insulated buildings and difficulty paying electricity and gas bills may have a cascading effect on the health of low income families. Drafts and cooler inside temperatures may increase the frequency with which people become sick. This, in turn, has a deleterious impact on job and school performance, and, ultimately, negatively affects the State’s economy. In addition, as noted, weatherization programs are labor intensive and thus contribute to improved job

⁵ Case 07-M-0548, supra (issued May 16, 2007), pp. 15-16.

⁶ Id., p. 6.

opportunities and economic development, which are two of the objectives of the EPS proceeding

Summary of Proposed Bridge Program Budgets and Benefit/Cost Analyses

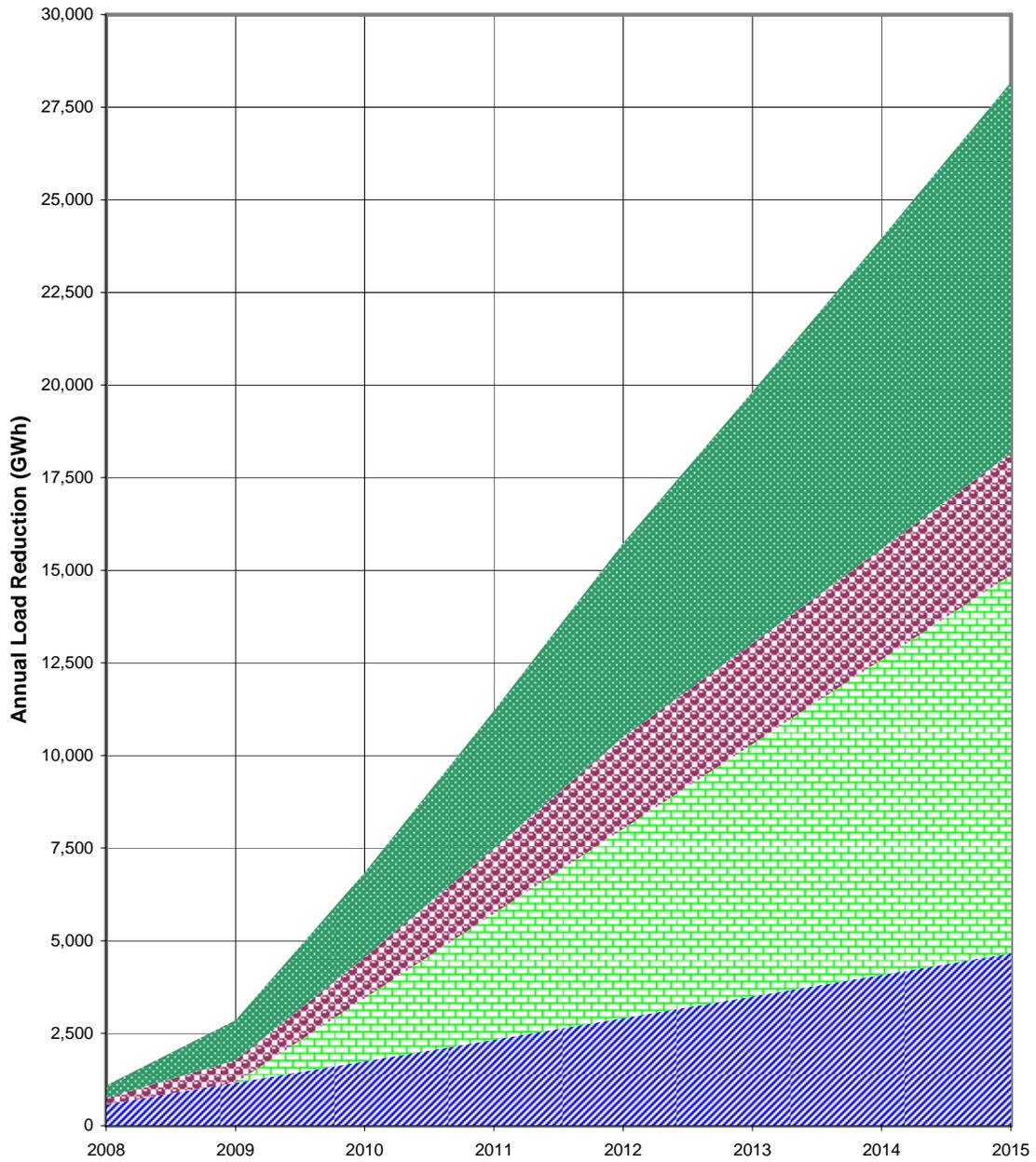
Staff's proposed program budgets for 2008 and 2009 are summarized below. The detailed breakdowns by company/administrator were presented in the March Staff Report. A summary of the benefit/cost analysis for each program is provided below using the TRC test in a manner that comports with current Commission policies. All proposed programs are cost effective.

Statewide Program Budgets: March Staff Report		
<i>(No participant costs; millions, nominal dollars)</i>		
Electric	2008	2009
NYSERDA		
<i>Residential</i>		
New construction expansion	\$ 3.33	\$ 9.10
CFL expansion	\$ 3.49	\$ 4.90
CFL fixture expansion	\$ 4.00	\$ 6.47
Low-income – expand EmPowerNY	\$ 5.21	\$ 10.64
Multifamily	\$ 25.48	\$ 26.02
Home Performance with Energy Star expansion	\$ 7.05	\$ 15.32
	\$ 48.57	\$ 72.46
<i>Commercial and industrial</i>		
New construction expansion	\$ 8.24	\$ 21.10
Flex Tech expansion	\$ 1.91	\$ 3.91
Flex Tech industrial process	\$ 13.40	\$ 27.36
Existing commercial	\$ 25.87	\$ 63.39
	\$ 49.43	\$ 115.77
<i>Standards and Codes Support</i>	\$ 2.55	\$ 2.61
NYSERDA Program Budgets	\$ 100.55	\$ 190.84
<i>PLUS</i>		
Workforce Development	\$ 2.76	\$ 5.88
Market Development	\$ 2.10	\$ 6.70
NYSERDA Program Budgets with Development Costs	\$ 105.41	\$ 203.42
NYSERDA 2% General Fund Adder	\$ 2.11	\$ 4.07
NYSERDA Budgets	\$ 107.52	\$ 207.49
Investor-Owned Utilities		
Energy Star HVAC	\$ 3.63	\$ 6.73
Small C&I	\$ 19.66	\$ 40.14
Utility Marketing Costs	\$ 3.73	\$ 7.46
Investor-Owned Utilities Budgets	\$ 27.02	\$ 54.33
<i>General Marketing of Both NYSERDA and IOU Programs</i>	\$ 3.00	\$ 6.00
<i>Electric Grand Total</i>	\$ 137.54	\$ 267.82
Gas Programs		
Gas equipment	\$ 5.91	\$ 12.07
Low-income – expand WAP	\$ 14.01	\$ 28.62
<i>Gas Grand Total</i>	\$ 19.92	\$ 40.69
Fast Track Grand Total	\$ 157.46	\$ 308.50

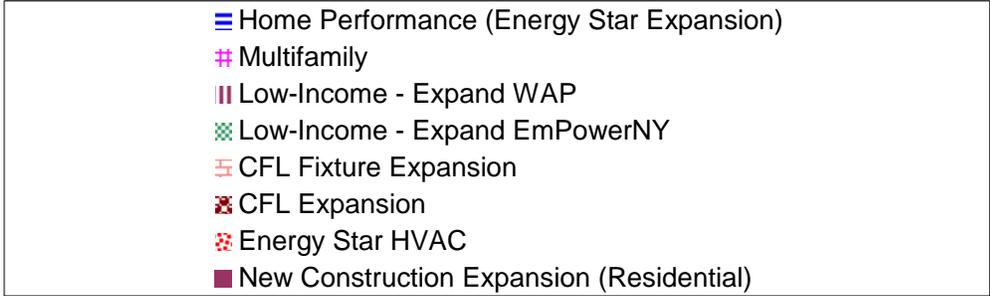
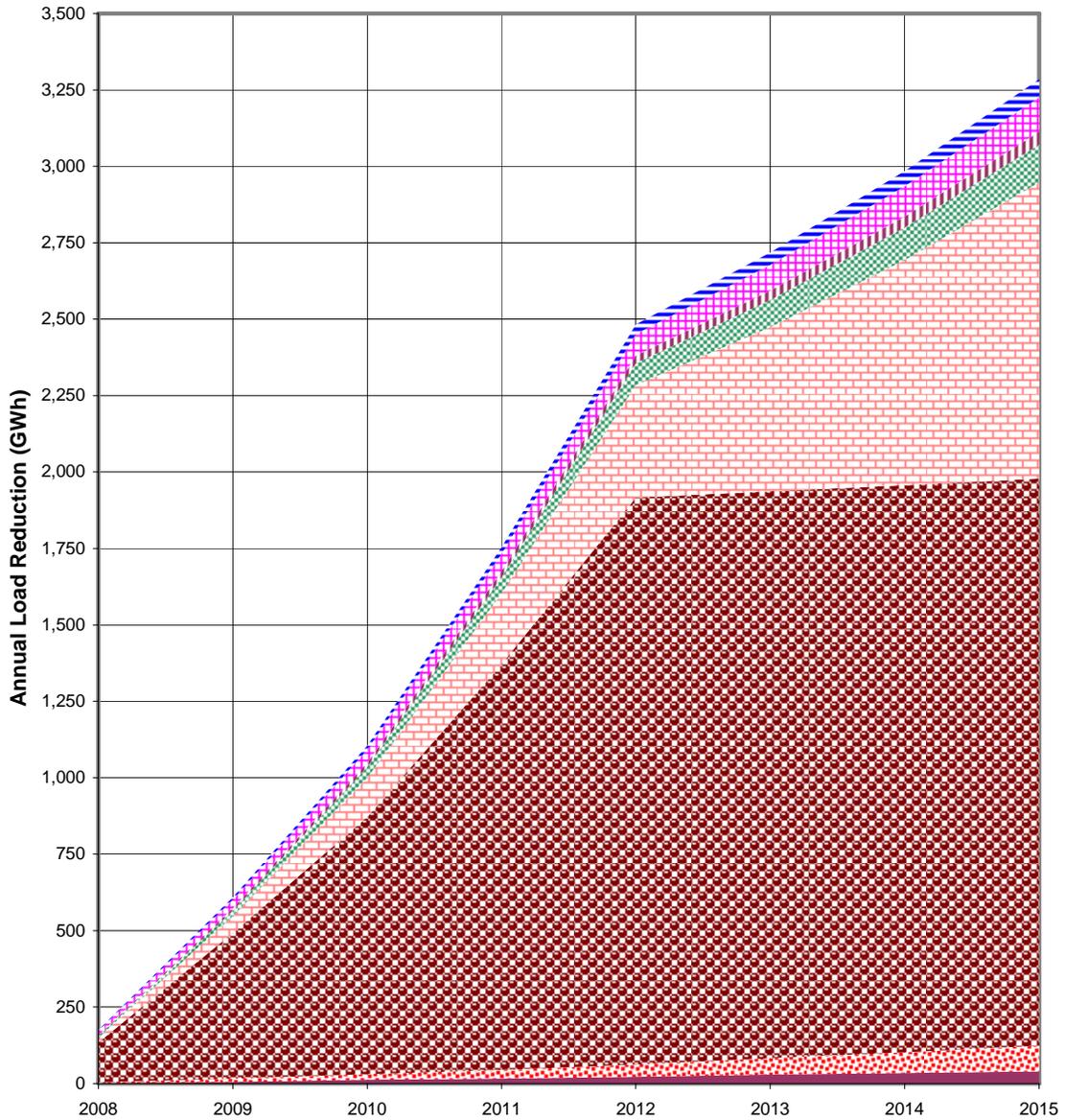
Statewide Fast Track Programs TRC Benefit/Cost Ratios					
Millions 2007 Present Value Dollars					
	Energy \$ Savings		Total Resource Costs	Net PV	Benefit/ Cost
	Electric	Gas*			
Electric Programs					
NYSERDA					
Residential					
New construction expansion	\$7.9	\$23.9	\$18.8	\$13.0	1.7
CFL expansion	\$217.6	\$ -	\$27.6	\$190.0	7.9
CFL fixture expansion	\$55.6	\$ -	\$31.5	\$24.1	1.8
Low-income – expand EmPowerNY	\$15.3	\$6.7	\$14.0	\$8.0	1.6
Multifamily	\$30.0	\$74.0	\$78.4	\$25.6	1.3
Home Performance with Energy Star expansion	\$9.8	\$34.1	\$39.6	\$4.3	1.1
<i>Subtotal</i>	\$336.2	\$138.7	\$210.0	\$264.9	2.3
Commercial and industrial					
New construction expansion	\$89.9	\$7.3	\$46.6	\$50.6	2.1
Flex Tech expansion	\$90.2	\$29.2	\$49.6	\$69.8	2.4
Flex Tech industrial process	\$299.9	\$26.8	\$93.7	\$233.1	3.5
Existing Commercial**	\$498.8	\$0.4	\$164.4	\$334.7	3.0
<i>Subtotal</i>	\$978.8	\$63.7	\$359.3	\$683.2	2.9
Standards & Codes	\$9,623.2	\$1,205.8	\$3,039.6	\$7,789.4	3.6
<i>(for spending and increments thru 2015)</i>					
Totals for NYSERDA	\$10,938.2	\$1,408.1	\$3,608.9	\$8,737.4	3.4
Investor-Owned Utilities					
Energy Star HVAC	\$52.2	\$ -	\$14.4	\$37.8	3.6
Small C&I	\$189.1	\$ -	\$71.0	\$118.2	2.7
Totals for Investor-Owned Utilities	\$241.3	\$ -	\$85.3	\$156.0	2.8
Electric GRAND TOTALS	\$11,179.5	\$1,408.1	\$3,694.2	\$8,893.4	3.4
Gas Programs					
Gas equipment	\$ -	\$120.4	\$35.3	\$85.2	3.4
Low-income – expand WAP	\$9.4	\$31.2	\$37.7	\$3.0	1.1
Gas GRAND TOTALS	\$9.4	\$151.7	\$72.9	\$88.2	2.2
Fast Track Grand Totals	\$11,188.9	\$1,559.8	\$3,767.1	\$8,981.6	3.4

The charts on the following three pages show that if the portfolio of programs that Staff has identified were extended through 2015, the projected energy savings levels would be sufficient to meet the necessary contribution to the 15 by 15 target of approximately 27,500 GWh for entities under the Commission's jurisdiction (i.e., utilities and NYSERDA) and illustrates that the interim programs that Staff has identified focus on those market segments that will be important to address in order to reach the target electric goal. We fully expect that market players may propose even better ideas for programs to be implemented during 2010 to 2015 that will obtain more energy savings than the programs we have identified as the planning process for 2010 and beyond is developed. To ensure that this periodic market evaluation occurs, Staff recommends biennial reviews to determine how well programs are working and where adjustments should be recommended to the Commission using the governance process proposed by Staff.

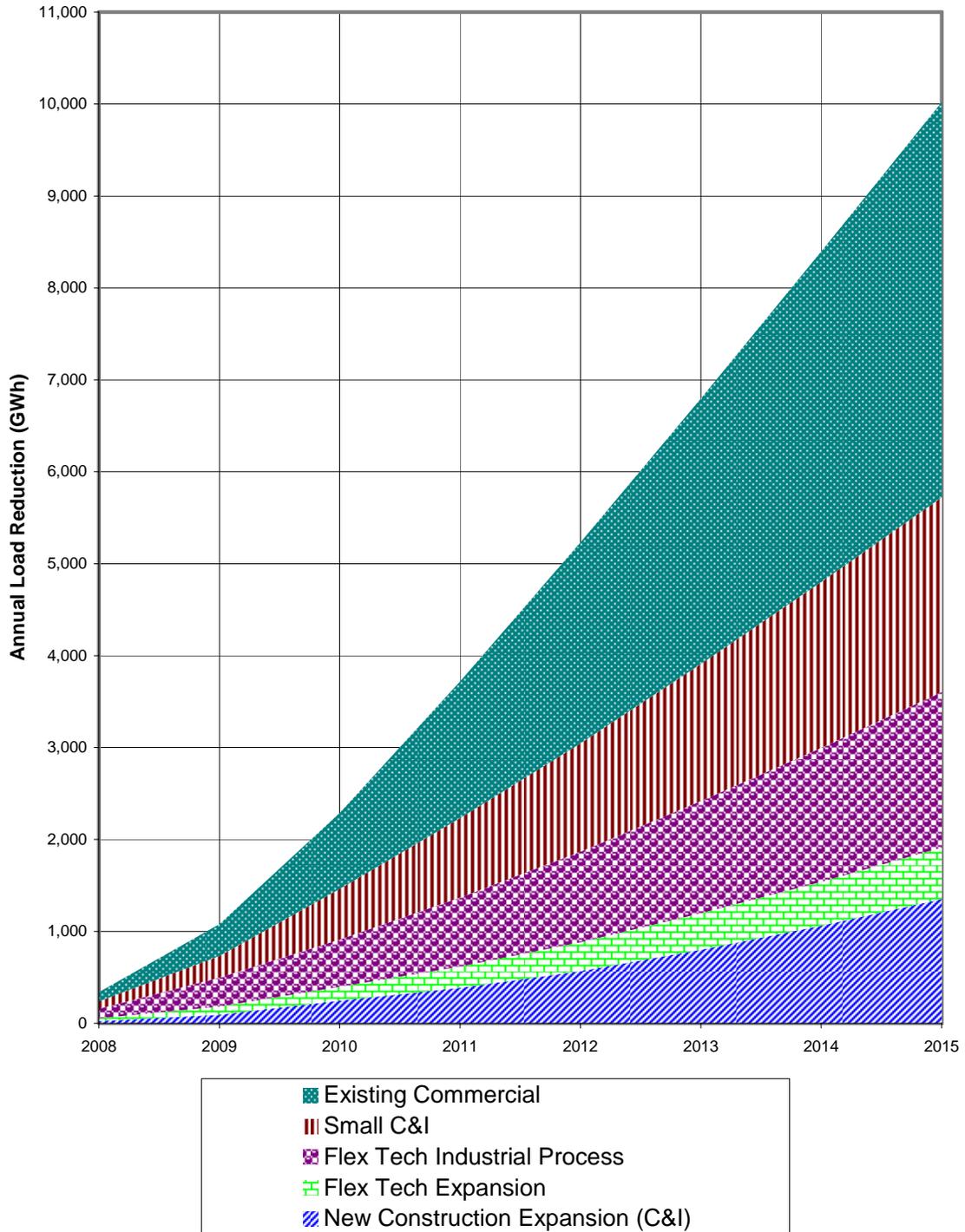
All Programs - Contribution to 15 by 15 Energy Efficiency Goal (GWh)



Residential Fast Track Programs - Contribution to 15 by 15 Energy Efficiency Goal (GWh)



C&I Fast Track Programs - Contribution to 15 by 15 Energy Efficiency Goal (GWh)



BUILDING A COMPREHENSIVE EEPS FROM THE GROUND UP IS A SENSIBLE, WELL-ACCEPTED APPROACH

Staff agrees that there is a vital role for the utilities in delivering energy efficiency programs. A major difference between Staff and the ALJs' Straw Proposal is the approach to allocating responsibility between NYSEERDA and the utilities. In their Straw Proposal, the ALJs propose, a 50/50 split in the administration of programs between NYSEERDA and the utilities. Staff proposes giving NYSEERDA a much larger role initially because of the expertise that NYSEERDA has developed over the years and the current relative lack of expertise on the part of utilities in delivering energy efficiency programs. NYSEERDA currently, through the System Benefit Charge framework, is spending about \$175 million annually to develop energy efficiency resources. NYSEERDA's current program portfolio is comprehensive and there could be a debilitating effect on both new and existing programs if those programs are competing for customer enrollment with similar programs offered by different program administrators. Staff recommends that new programs be launched by utilities be targeted to currently under-served markets where NYSEERDA does not have an active presence and, at the same time, utilities should be provided the resources to actively market NYSEERDA's existing programs within their service territories. Staff believes that this will result in greater amounts of energy efficiency being installed in the near term while a transition to a longer term framework can be planned and implemented.

This fundamental difference in the approach to portfolio development and resource allocation recommended by Staff (and supported by national experts such as the National Association of Energy Service Companies, or NAESCO⁷ and Conservation Services Group⁸), and the method used in the ALJs' Straw Proposal, cannot be overstated. The Straw Proposal first broadly allocates resources and load reduction

⁷ See, for example, NAESCO's filing of January 25, 2008.

⁸ Technical Conference, March 5, 2008, Transcript page 101.

responsibility to program administrators for an extended period of time and then allows the administrators to develop plans independently to acquire the assigned level of efficiency resources. In their description of the Straw Proposal, the ALJs acknowledge that this would create overlap, which we believe would be inefficient and wasteful. As Conservation Services Group, energy efficiency practitioners with programs running in many states, wrote in a letter submitted in this case on February 28, 2008:

We are concerned about multiple programs with multiple administrators operating uncoordinated in the same customer space. The combination of public and utility programs operating simultaneously will require careful planning to avoid customer and market confusion. Indeed, the result of a confused administrative mandate can be devastating to the achievement of effective results. The energy efficiency industry went through such a period of confusion in California in the late 1990s, which resulted in three years of paralysis while the various jurisdictions were sorted out. A similar experience occurred in the transmission-constrained Southwest Connecticut load zone where ISO-NE and the utility programs competed to achieve efficiency solutions. The conflict only increased the cost and decreased the effectiveness of programs. New York cannot afford to create chaos in its effort to promote expanded efficiency.

Staff's program portfolio is based on a market-centered approach that identifies the best practice program for obtaining energy savings within key market segments. Rather than using the "top down" approach of the Straw Proposal, Staff's method builds a portfolio of expanded programs from a base of existing, effective programs. This approach of building a portfolio from programs to address the needs of market segments has been used to develop highly successful energy efficiency programs in other jurisdictions.

The reality is that NYSERDA has a tremendous institutional understanding of how to successfully leverage resources through alliances with trade allies, manufacturers, educational institutions, and third party service providers on a statewide, regional, and national basis. The utilities, for their part, have unique information and access to customers that could greatly enhance the marketing of existing and new programs. The

emphasis in long term planning should be placed on how to leverage the strengths of both groups to provide maximum effectiveness without duplicating efforts or creating confusion in the marketplace.

Interviews that Staff held with public utility commission staff and others in states that have the most successful energy efficiency programs consistently showed that the keys to success are:

- Programs that have a common look and feel to customers throughout the state
- Programs that identify the needs of specific customer segments and design approach that address those needs
- Approaches that build the necessary infrastructure for program delivery, including training of professionals in energy efficiency delivery
- A system for working with manufacturers and retailers offering energy efficiency solutions, and a system that encourages participation by third party providers
- Programs that are easy for customers to understand and that enable well-functioning enrollment and service fulfillment processes
- A portfolio of programs that includes both whole building approaches, that obtain deep and comprehensive energy savings, as well as programs that allow customer participation in a more targeted way (e.g. encouraging purchases of ENERGY STAR® appliances and equipment when faced with a replacement or new purchase situation)
- Programs that meet cost effectiveness criteria and have favorable benefit/cost ratios

Utility programs should meet these criteria and must be capable of being successfully integrated with existing programs. As soon as programs of this type are developed, with input from interested parties, they should be assessed in an open and transparent process to determine how best to assimilate them into the statewide portfolio, presented to the Commission for approval, and implemented.

The focus at this juncture in the planning process should not be on radically changing administrative responsibilities, since a cost-effective and competent program administration structure is already in place. Instead, the focus should be on extending the reach of programs and expanding participation to the broadest range of customer groups. A critical issue that needs to be addressed is how best to leverage existing programs that

have proven successful and design new programs that reach out to ratepayers not currently participating in existing programs.

Like NAESCO, Staff suggests that NYSERDA costs be used as the benchmark for program administration costs, particularly the administration of existing NYSERDA programs. If utilities are proposing higher administrative costs, the onus should be on them to demonstrate that their programs achieve proportionally higher results to justify the higher costs. In any case, the Commission should not, in our opinion, agree to a prospective increase in administration costs, but rather allow a retrospective reimbursement, based on a formula that links increased administrative costs to demonstrated increases in energy savings achieved by programs.

Staff believes that utilities should be permitted to implement a specific program only if the program does well when evaluated against the following criteria:

- **Cost-effectiveness** as measured by the Total Resource Cost Test
- **Co-benefits**, such as load relief; service to low-income customers; demand reductions beyond those accounted for in specific demand reduction programs; improved building stock; and improved customer health, particularly in environmental justice and other communities hosting a disproportionate number of power plants and other emission sources.
- **Scalability** through stable, multi-year funding commitments.
- **A Portfolio Approach** that allows flexibility to shift resources if necessary.
- **Fuel Integration** by developing programs that address gas and electric simultaneously through a single-point-of-contact whole building approach.
- **Market Acceptance** as demonstrated by similarity to programs with an already proven benefit/cost track record.
- **Customer Outreach and Program Marketing** that is well-defined and well-coordinated with community organizations and other market participants (including NYSERDA) along with paid media advertising.

Staff recommends that the allocation of responsibility for achieving energy savings goals, and the use of the ratepayer funding that will be required to achieve the goals, be captured in contracts between the program participants – the PSC, the utilities, NYSERDA, third parties, etc. In the near term, we believe that NYSERDA should continue to administer its nationally recognized energy efficiency programs, expanded as recommended in the PSC Staff Fast Track proposals, while the utilities develop their

internal procedures, identify programs that can meet the criteria designated above and hire and train core program administrative staffs. In this way, utilities can gain experience and develop program implementation capability in a systematic, logical way. Staff also believes that the Commission should consider directing NYSERDA and the utilities to develop and submit a new approach to the delivery of SBC funded energy efficiency funded programs that give the utilities specific responsibility for achieving program participation targets within their service territories.

UTILITY PERFORMANCE REWARDS SHOULD NOT EXCEED MORE THAN 12 PERCENT OF PROGRAM BUDGETS

Incentives

In this Proceeding and in rate cases, we have often heard from utilities, and a few other parties, that it is essential to provide utilities with the opportunity to earn performance-based incentives for implementing energy efficiency programs. A common argument is that incentives could serve as an effective method for aligning the utility's corporate culture, business priorities, and shareholders' financial interests with achieving the goals of energy efficiency programs. Staff agrees that incentives can play a role in encouraging better program performance, but has cautioned that incentives must be carefully balanced so that they are sufficient to encourage high performance, but not so high as to burden ratepayers with unnecessary expenses. The incentive structure must also be transparent and easy to administer.

Among the states, there is a wide range of incentive practices and policies for utility administered energy programs. Incentives are generally the equivalent of 5-12% of the program budget or net resource benefits. Not all the states offering incentives, however, allow for lost revenue recovery or provide revenue-decoupling mechanisms (RDM). Massachusetts and Connecticut, for example, offer incentives but do not provide for lost revenue recovery or an RDM. Goals are usually based on an energy savings goal, but can include other performance measures. In some cases, a utility is eligible for an

incentive for achieving a modest percentage of a program goal (e.g., 65%), but in other cases, achieving at least 85% of the goal is necessary to receive an incentive award. Some states do not offer any type of incentive program.

Developing an effective incentive program is a potentially complex undertaking. For example, the California Public Utilities Commission recently devoted nearly 18 months to a rule making proceeding, culminating in a 227-page decision that provides a new system of incentives and penalties to encourage California's utilities to meet or exceed their energy saving goals. The process included four days of workshops. The incentive program will be the subject of an evaluation study expected to complete by early 2011. The results of the evaluation will help to inform the California Commission on whether modifications are needed in advance of the 2012-2014-program cycle.

While the analysis of incentive issues conducted by California and other states will inform New York's review process, the Commission should examine incentive policy as it relates to the program portfolio and circumstances particular to New York. The California Commission had the advantage of examining a long uninterrupted history of large-scale utility administration of energy efficiency programs, but in New York State, the role of the investor owned utilities in administering energy efficiency programs has diminished sharply since the early 1990s, and currently is limited to only a few programs. It is expected that, at least initially, the focus of utility efforts will be on reinvigorating their energy efficiency program departments and refining their program strategies. These factors and many others (e.g., quality of the evaluation data, specific performance metrics, and regulatory framework) need to also be considered. For example, California established detailed evaluation protocols and invests heavily in program evaluation (about 8 percent of the total program budget). This helps increase the confidence that the energy savings eligible for incentives are sufficiently verified.

Staff reviewed the incentive policies in several states for insight into developing its own incentive proposal for the interim Fast Track programs targeted to be operated by the utilities. We specifically examined the two fast track programs that we recommend be run by utilities, the Small Business Direct installation (Small C&I) and Residential

ENERGY STAR® HVAC programs. To gain additional insights, we estimated the payments under several incentive models used in other states or recommended by New York utilities. In our analysis, we assumed that 100% of the programs' energy savings goals, as proposed by Staff, were achieved. It is important to note that the estimates are illustrative approximations because of the many nuances in how the various incentive plans represent goals and calculate program costs and benefits. The results do provide insight into incentive design and shows the wide differences in the cost of the incentives depending on the plan design. The incentives derived as a percentage of program budgets ranged from a low of 5% to a high of 83%.

Overview of Sample of Incentive Programs

Con Edison

In the recently conducted Con Edison electric rate case (Case 07-E-0523), the company proposed an aggressive three-part incentive scheme that would have allowed it to receive performance incentives for energy programs operated, not only by the company, but also by the New York Independent System Operator, Inc. (NYISO) and NYSERDA. In addition, if a market for greenhouse gas emission credits developed, the company would claim the credits for measures installed through its programs as an additional incentive. For purposes of illustrating the Con Edison incentive proposal, our focus is on the primary component of the plan, "sharing" the value of the energy savings with its ratepayers.

Specifically, the company proposed that it be allowed to receive 20 percent of the net resource benefits associated with the load reduction achieved from its proposed energy program, up to the annual energy savings goal. For savings exceeding the annual goal, the company would receive 30 percent of net resource benefits. Net resource benefits reflect the present value of the estimated avoided costs, including energy and capacity, over the service lives of energy measures installed each year as result of the

company’s programs, minus program costs. Participant costs are not included in the cost calculation.⁹

The Con Edison proposal offers an incentive, even if only a small percentage of the program goal is achieved. For example, if a program with a goal to achieve 500 MW only achieves one MW, the company could still claim an incentive for achieving one MW. Moreover, there are no financial penalties for poor performance. Con Edison would receive this amount of incentive money for administering Staff’s bridging programs under Con Edison’s proposal:

Incentives for Achieving 100% of Program Goals

	Incentive for 100% of goal (\$Million)	2008-2009 budget (\$Million)	Incentive as % of budget
Energy Star HVAC	8.6	10.36	83
Small C&I	27.26	59.8	46

Central Hudson

Central Hudson’s incentive proposal has two major components: (1) 20% of the net resource savings attributable to energy efficiency measures installed through Central Hudson’s proposed energy efficiency programs; and (2) a one-time implementation incentive. The 20% portion of the incentive would also be applied to NYSERDA programs for which Central Hudson provides value added services. Central Hudson proposes further to include 20% of the value of any and all rights to “white tags,” greenhouse gas emission credits and any other environmental benefits as an additional element of its incentive plan. Like Con Edison, discussed above, we have not attempted to estimate the potential value of these credits because a market has yet to fully develop.

⁹ Participant costs are normally included in a TRC test. In our sample calculation we did not factor participant costs in the equation to be consistent with Con Edison’s proposal.

Central Hudson’s proposed one-time implementation incentive consists of four goals with a value of five basis points each (maximum of 20 basis points for achieving all four goals). The four goals include: (1) operation of the on-line audit program, and achieving participation in the (2) Residential, (3) C&I and (4) the Low Income programs. We did not attempt to calculate the value of this incentive because of the differing basis point values among the utilities. Central Hudson would receive this amount of incentive money for administrating Staff’s bridging programs under Central Hudson’s proposal:

Incentives for Achieving 100% of Program Goals

	Incentive for 100% \$Million	2008-2009 budget \$Million	Incentive as % of budget
Energy Star HVAC	7.6	10.36	73
Small C&I	23.6	59.8	39

California

The California incentive plan, adopted in September 2007 by the California Commission, is also based on sharing net resource benefits with ratepayers, but the details differ significantly from the Con Edison and Central Hudson proposal in several important ways. For example, the California plan includes penalties for not meeting at least 65% of the goal, a cap on incentive payments, and a more modest percent of net resource benefits earmarked for incentives (e.g., 9-12% as compared to Con Edison’s proposed 20-30%).

Under the California plan, utilities must achieve between 85 -100% of its program goal to receive an award of 9% of net resource benefits. Achievement exceeding 100% of the program goal results in payment of 12% of the net resource benefits, but achievement of less than 65%, triggers performance penalties. Performance that falls between 65-85% falls into a “dead band” resulting in neither payments nor penalties. The following represents how much incentive would be earned by utilities for administrating Staff’s bridging programs using the California approach:

Incentives for Achieving 100% of Program Goals

	Incentive for 100% \$Million	2008-2009 budget \$Million	Incentive as % of budget
Energy Star HVAC	3.4	10.36	33
Small C&I	10.6	59.8	18

Massachusetts/ Connecticut

Massachusetts and Connecticut offer incentives that equal a percent of program costs. The performance goals are primarily based on achieving energy savings goals, but other performance metrics, such as the level of demand savings and the market share of certain energy efficient products, are sometimes factored into the incentive formula. In Connecticut, an incentive of one percent of the program costs is awarded for meeting at least 70% of the target goal, 5% for meeting the target goal and 8% for achieving 130% of the target goal. A currently accepted incentive rate in Massachusetts is 5% of program costs for meeting program targets. Massachusetts and Connecticut do not have penalty provisions. This represents how much incentive would be earned by utilities for administrating Staff’s bridging programs using the Massachusetts/ Connecticut approach:

Incentives for Achieving 100% of Program Goals

	Incentive for 100% \$Million	2008-2009 budget \$Million	Incentive as % of budget
Energy Star HVAC	.52	10.36	5
Small C&I	2.99	59.8	5

Staff Incentive Proposal

The original EEPS Staff Proposal (August 2007) raised incentives as a possible strategy to encourage energy efficiency programs and offered guidelines for a properly designed incentive policy. These guidelines include: 1) a focus on encouraging

exemplary performance; 2) incentives linked to program goals at the high end of the expected range to encourage long-term commitment; 3) an incentive level that is sufficient to encourage high performance, but not so high as to burden ratepayers with an unnecessary expense; 4) a structure that is simple to understand, administer, and monitor; 5) a design tailored to meet the needs of specific program types; 6) scaled incentive benefits for meeting or exceeding goals in order to avoid the disincentive of “all or nothing” achievement; and 7) downside provisions to protect against poor performance.

Staff proposes an incentive program for the interim programs proposed to be implemented by the investor owned-utilities. The proposal is based on examining the pros and cons of incentive programs in other states and our guidelines for an effective incentive program. Under our proposal, investor-owned utilities would have the opportunity to earn rewards when they have secured 85% of their annual energy savings goal and more generous incentives for performance that exceeds 100% of the goal. Utilities can earn up to 12% of the program budget. So that risks are balanced between the utilities and the ratepayers, a negative revenue adjustment applies in cases of substandard performance, which is defined as achieving less than 60% of the energy savings goal. The incentive plan would be applied to programs on an individual basis and not applied to an entire program portfolio as a group.

Advantages of the Staff Proposal

A key attribute of the proposal is that ratepayer exposure to incentive costs is limited, but utilities can earn incentives for exemplary performance more generous than offered in several states. While Con Edison, in its recently completed electric rate case, noted that sharing a percentage, even up to 30 percent, of the net resource benefits with ratepayers was fair because the ratepayers were able to keep the majority of the benefit, Staff estimated that under the proposed Con Edison Plan the cost of the incentive could easily exceed 90% of the program budget for simply meeting its goal. We found similar results in our estimate for the interim Energy Star HVAC program. Ultimately, incentives reflect a cost to the ratepayers that both program participants and non-

participants will be assessed. While Staff's incentive plan places a limit on the amount of the incentive earnings lower than advocated by Central Hudson and Con Edison, utilities would be eligible to achieve an incentive comparable to the neighboring states of Connecticut and Massachusetts for meeting their goals. For exemplary performance, however, we have added significantly more generous incentives, allowing the utility to earn as much as 12% of the program budget.

The Staff Proposal

Our proposal is straightforward, balances ratepayers and utility interests and stresses superior performance. The following outline is based on a hypothetical program with a 100 GWh energy savings goal and a budget of \$10 million.

Like the California model, we set an incentive cap. In our case, 12% of the program budget (\$1.2 million) would be available for incentives. If the utility exceeded the original program budget, energy savings achieved with the additional funding would not be allowed to count toward the energy savings eligible for incentive payments. If, on the other hand, the utility were able to provide the services at a cost lower than expected, it would free up funds to install additional measures to allow the utility to earn a larger incentive payment and provide additional benefits to New York's citizens.

Incentives Payment Tiers

- Tier 3- Up to 5% of program budget (\$500,000) would be available under this tier as a reward for achieving between 85-100% of the 100 GWh goal. An incentive of \$33,333 would be paid for each GWh between 85 and 100 ($500,000/15 = \$33,333$).
- Tier 2- Up to 9.5% of program budget (\$950,000) would be available under this tier for program achievement between 101-111% of the 100 GWh goal. The \$500,000 Tier 3 incentive plus \$50,000 for each GWh achieved between 101 and 111 ($\$250,000/10 = \$25,000$) would be earned.
- Tier 1- Up to 12% of program budget (\$1,200,000) would be available under this tier for achievement between 112-122% of the 100 GWh goal. The Tier 2

incentive of 950,000 plus \$25,000 for each GWH achieved between (250,000/10= \$25,000) would be earned.

Performance Ineligible for Incentives

Achievement of less than 85% of the program goal, but more than 60% of the goal is ineligible for an incentive payment.

Negative Revenue Adjustment

Substandard performance is defined as not achieving at least 60% of the program goal. Achievement of less than 60% of the goal would require the utility to be subject to a negative revenue adjustment equal to 33% of the maximum incentive (in our example, \$400,000 or 1,200,000/3). The remaining 66% of the maximum incentive amount is assessed as a revenue adjustment for each GWH not achieved between 1 and 59 % of the goal or \$16,500 per GWH in our example (\$900,000/ 59 GWH =\$15,254).

Incentives for Achieving 100% of Program Goals

	Incentive for 100% of goal (\$Million)	2008-2009 budget (\$Million)	Incentive as % of budget
Energy Star HVAC	.52	10.36	5
Small C&I	2.99	59.8	5

Other Incentives

Staff is willing to consider incentives for utilities working with NYSERDA to implement programs. In order to develop a full-scale proposal, we need more detail so that performance metrics and incentive levels that would form the basis of the utility program portfolio.

**STAFF'S BRIDGING PROGRAMS ARE THE FASTEST WAY TO
DECREASE ELECTRICITY DEMAND THIS SUMMER**

It takes time to develop effective programs from scratch. According to NAESCO,¹⁰ which has direct in-the-field experience, recent utility program initiatives have been more expensive, less transparent, and less productive in obtaining energy savings than comparable NYSERDA programs.

By relying heavily on NYSERDA's experience and infrastructure, Staff's bridging programs, which NYSERDA has emphasized it can implement quickly, will achieve meaningful energy savings beginning this summer, with savings of over 202 GWh expected by the end of 2008. Programs such as replacement of incandescent bulbs with compact fluorescent lights, appliance turn-in campaigns, and rebate programs can have an immediate impact.¹¹ Utilities, working cooperatively with NYSERDA, and community organizations can help to get the word out about campaigns that are underway and inform customers about how to participate.

Another program that we believe will have a significant impact in New York City beginning right away is the "Multi-family Building Performance" program. In the past, NYSERDA has operated several programs targeting multifamily buildings, but barriers, such as split incentive issues, have also frustrated attempts to implement widespread programs for high rise buildings. In May 2007, NYSERDA revamped its multifamily

¹⁰ January 25, 2008 filing at 4.

¹¹ Regarding programs that would be developed by the Partnerships described in the Straw Proposal, a significant period of time will be needed to come up with the organizational frameworks for the Partnerships and other organizational bodies described in the Straw Proposal, develop Memoranda of Understanding, establish operational policies, hire appropriate staff (or hire consultants), research best practices, determine what types of programs are needed, determine how these programs can fit into a reasonable portfolio that meets the needs of all customer classes, prepare program proposals, develop and implement marketing approaches, obtain Commission approval for proposed approaches, determine how the Partnerships' programs will be coordinated with other programs in the state to minimize duplication and provide a cohesive set of programs to the public, and get programs on the street.

building program and has had encouraging results, including increased interest and participation in the program.

Staff's recommended fast track program expands on the new NYSERDA program. We recommend additional funding to meet the increased demand and recommend that greater attention be paid to coops and condos in the New York City market because this market segment represents a large potential for energy efficiency gains. There are more than 82,000 multi-family apartment buildings, including coops and condos, in the metropolitan New York City area that have been underserved by existing energy efficiency programs. Staff recommends that over 80% of the increased program funding in the multi-family program be directed to the New York City market because over 80% of the multi-family buildings with five units or more are in New York City.

In order to expand program activity in New York City, including a targeted effort aimed at condos and coops, Staff recommends that the Commission form a New York City residential multi-family program design team to develop recommendations for the Commission on how to effectively address the condo and coop market segment. Success in reaching this market with significant levels of energy efficiency has proven to be elusive up to this point. The transaction costs associated with achieving market success are high, in part because the project approval and decision making processes are cumbersome. The multi-family program design team should be directed to develop cost effective recommendations on program elements, incentive levels and criteria, program administration, program goals, and budgets in a concise report within 90 days of a Commission Order. The collaborative design team should include: the City of New York, Con Edison, KeySpan, Staff, NYSERDA, the Real Estate Board of New York, and other interested stakeholders. What is learned with the coop and condo segment of the multi-family housing market can later be used to inform work for all parts of the high-rise apartment marketplace.

NYSERDA should implement this fast-track program, expanding upon their recently redesigned Multi-family Building Performance program. New York City and local utilities should be actively involved in program marketing. For the longer term, the

possibility of increasing involvement in implementing the program by the New York City Economic Development Corporation (NYCEDC) should be explored. The NYCEDC currently does work with the City's real estate interests and oversees redevelopment projects within the City and, therefore, understands the unique aspects of undertaking such projects in the City.

In addition, work should begin this summer on the two fast track programs that Staff identified for utility implementation: Small Business Direct installation, which targets a market segment that has previously been underserved by energy efficiency programs, and Residential ENERGY STAR® HVAC, Including Efficient Gas Equipment, a program that should begin gearing up as soon as possible to be prepared to help customers deal with cold weather during the 2008-2009 winter season.

**STAFF'S GOVERNANCE PROCESS AND
PROGRAM ADMINISTRATION FRAMEWORK PROVIDES A
COHERENT END-STATE VISION**

To help put Staff's bridging proposal into context, it is useful to have a sense of what the long-term EEPS Program might look like. A desirable end-state, in Staff's opinion, would allow for the presence of a competitive dynamic in the future administration of efficiency programs to ensure both a high quality and timely outcome in terms of energy efficiency market penetration and the overall cost effectiveness of the entire portfolio. Such an end-state would cultivate the program administration capabilities of third party administrators, as well the utilities and NYSERDA, while providing the Commission with future options for allocating and directing resources to achieve state-wide policy objectives for energy efficiency.

To achieve a robust future end-state, Staff recommends that the Commission proceed as follows:

- Approve the Fast Track program proposals contained in the March Staff Report. Doing so would provide the following benefits:

1. It would quickly ramp up energy savings in 2008 and 2009 by enhancing some currently under-funded initiatives to improve their market penetration. This will allow progress to be made toward attainment of the 15 by 15 goal for electricity usage reduction beginning in 2008 and help build expertise and infrastructure for later undertakings.
2. Provide the utilities with an opportunity to administer new programs in currently under-served markets for small business customers energy efficiency and residential HVAC equipment replacement. This will provide a stepping stone in the utilities' development of technical capabilities and ability to deliver energy efficiency programs.
3. Allow NYSERDA and the utilities the opportunity to submit a joint plan describing the process for transitioning program administration responsibilities as follows:
 - a. NYSERDA would have the primary administration responsibility for new and retrofit construction programs, market transformation Programs, the EmPower NY Program, statewide marketing initiatives, and research and development initiatives. DHCR would have administration responsibility for its Weatherization Assistance Program (WAP).
 - b. In the short term, utilities would have the primary administration responsibility for a Small Customer Direct Install program and rebate programs for HVAC equipment replacement.
 - c. For large commercial/industrial customer programs NYSERDA would retain responsibility for statewide program design, the hiring of service delivery or services fulfillment contractors and providing program quality assurance monitoring. A solicitation program for part of this load could begin in 2009.
 - d. The utilities would provide intake and referral functions and oversee the timely completion of individual efficiency projects for efficiency programs available in their service territories.
 - e. The utilities would be allowed to recover direct costs for their marketing and customer recruitment activities consistent within Commission-approved program budgets and would be eligible to collect incentives payments based on measurable program with regard to enrollment and related energy savings performance.

4. Authorize now a competitive solicitation framework (RFP), administered by Staff, for obtaining commercial retrofit energy efficiency resources that would allow utilities, utility subsidiaries¹² and other parties to participate. Staff recommends that the initial solicitation take place in late 2008 or early 2009, with the evaluation of bids and awards processes taking from between nine and twelve months. Depending on the results of initial solicitation in terms of cost and delivery performance (benchmark data), subsequent solicitations could be made in 2011 and 2013 and include additional markets. The resources acquired through the competitive solicitation process could be allocated to specific NYISO reliability zones as reliability needs dictate. We recommend that the initial solicitation focus on the existing commercial sector since this is an area that can produce significant energy savings using multiple approaches. a minimum of 5% of the existing building markets goal (about 225GWh) be addressed by the solicitation.
- Implement the governance proposal made by Staff in Working Group 1 (see Attachment 1), that would employ a single statewide collaborative process model facilitated by Staff to review and recommend to the Commission EEPS programs, and that would provide for regional differentiation where market circumstances warrant. The goal would be to develop a consensus on a statewide integrated portfolio of energy efficiency programs and the related plans and budgets for Commission review. Parties could advocate in an evidentiary proceeding for another outcome they believe to be better than the consensus proposal.
 - The collaborative process would include:
 - a. NYSERDA, the utilities, other state agencies and authorities, or third party administrators would submit proposed program plans to the collaborative process for review and comment.
 - b. An EEPS Program Plan, developed collaboratively, would be sent to the Commission for approval.

¹² The Commission should establish a clear set of rules, based on a consensus of the stakeholders, about the participation of unregulated utility affiliates in programs administered by utilities. New York had unfortunate experiences with this issue during the 1990s. Staff's position on this issue is similar to the one adopted by the California Public Utilities Commission several years ago – that the participation of utility affiliates be carefully regulated with respect to such issues as access to customer data, branding, and percentage of program funds available to the affiliate.

- c. The Commission would approve, reject, or modify the Plan as appropriate and issue an Order authorizing the designated program administrators to develop and file detailed implementation plans as a prerequisite to granting funding allocations.
 - d. The Commission would approve the implementation plans and any required tariffs.
 - e. The overall program would be reviewed periodically and updated recommendations sent to the Commission.
 - f. A formal progress reporting framework would be established by Staff to keep the Commission and all stakeholders informed on the status of program implementation.
- Program Evaluation for non-SBC programs would be done by third party, independent evaluation contractors, with work overseen by Staff with input from a statewide Evaluation Task Force. This approach provides an opportunity in a planned manner to develop and enhance the roles and capabilities of multiple entities in the delivery of energy efficiency programs within the state, for those entities to demonstrate their effectiveness, and a forum to ensure that programs are complementary rather than duplicative and cannibalizing resources from each other. It also gives the Commission the flexibility to adjust the allocation of resources for the administration of the energy efficiency resources as circumstances and the performance of the various administration entities require.

**FURTHER INFORMATION ON EFFORTS THAT THE
COMMISSION SHOULD IMPLEMENT QUICKLY**

Several critical initiatives should begin now, both to lay the groundwork for the design of the long-term EEPS Programs and to provide support for the achievement of the 15 by 15 goal.

Compliance Filings

Staff recommends that the Commission require submission of implementation plans as compliance filings, within 30 days of the issuance of the order regarding interim programs, for the Residential ENERGY STAR® HVAC and Efficient Gas Equipment and Small Commercial/Industrial Direct Installation programs. The filing should address

projected savings and costs (broken into administrative costs, marketing expenses, support services, incentives to customers, and other costs). An initial evaluation and reporting plan for the program should also be included. If the utility expects significant differences from the Staff proposed fast track estimates for program budget and/or energy savings, these deviations should be explained and justified. This should include an updated benefit/cost analysis using Staff's avoided cost assumptions and the Total Resource Cost methodology. The compliance filings should also include tariff filings that provide for collection of an EEPS surcharge.

To help ensure consistency, Staff recommends that a lead utility be designated to convene a collaborative meeting of all relevant utilities, interested parties, NYSERDA, and Staff to discuss the parameters of each program and to ensure that marketing and outreach present a common look and feel to customers throughout New York State. Given their expertise and interest, we recommend that the Small Commercial/Industrial Direct Installation program be convened by National Grid and that the Residential ENERGY STAR® HVAC and Efficient Gas Equipment program be convened jointly by KeySpan and Con Edison, with KeySpan taking the lead on gas issues and Con Edison taking the lead on electric issues.

Expansions of existing NYSERDA programs identified in this document should also be the subject of collaborative meetings among all interested parties.¹³ This will allow an opportunity for input from interested parties to ensure that the revisions have the benefit of a wide range of constituents' best thinking. NYSERDA should update its current Operating Plan information to reflect increased funding and enhanced goals. Progress in achieving the goals and information on expenditures should be reported to the Department of Public Service on an annual basis.

The process of holding these collaboratives and preparing a compliance report should take about 60 days. We recommend a 30-day period for collaborative discussions

¹³ It is not necessary to have a separate meeting for each program expansion. For example, one meeting might cover changes to all residential programs.

followed by 30 days to prepare a compliance filing describing how each program will be implemented.

Cost Allocation and Recovery

In its comments, Multiple Intervenors presented a detailed analysis of cost allocation issues. It asserted that EEPS surcharges should not be imposed on billing for customers that have reduced energy costs due to NYPA low-cost power allocations and flex-rate contracts. Multiple Intervenors stated that EEPS costs must be recovered in a manner that promotes interregional, inter-class, and intra-class equity. These and related issues deserve more attention, but in order to get the bridge programs up and running quickly, Staff recommends continuing existing customer exemptions from SBC payments. Furthermore, we recommend that funds collected from a particular class should be used to fund programs for that class.

The model described in the ALJs' Straw proposal (page 18) explains how this might work:

Cost allocation will be performed using the SBC model, updated with the most recently available utility operating revenues. Interclass equity will be achieved through program distribution and design, not cost allocation; programs will be targeted toward classes so as to match the sources of program funds. Intra-class equity issues will be addressed in the same manner, and program administrators will demonstrate that customers of different sizes have an opportunity to participate that is reasonably related to the proportion of the program funds. Programs utilizing on-bill financing must not rely unduly on one customer class for customer participation.

Staff further recommends that costs among utilities be allocated based on energy usage (kwh).¹⁴

¹⁴ Staff recognizes that programs in the New York City area are likely to have higher costs. We have reflected this in our cost estimate calculations.

Staff recommends that a new EEPS surcharge be instituted at applicable gas and electric utilities. The surcharge amount will be based on the budgets developed as part of this proceeding for each utility service territory and spread over the expected commodity sales for the year. On electric bills, this charge should be a combined line item with the System Benefits Charge and the Renewable Portfolio Standards charge. There should be an annual true-up of expected to actual commodity sales so that the charge can be adjusted appropriately.¹⁵

For the Residential ENERGY STAR® HVAC and Efficient Gas Equipment program, which is expected to be offered by utilities that do not currently have equipment rebate programs, Staff has initially allocated the cost to residential gas ratepayers for whom the program is targeted. However, it is possible that some smaller commercial and industrial customers may take advantage of the program. If a gas utility finds this to be the case, it should allocate that portion of program costs for recovery from commercial customers. This adjustment can be done as part of the reconciliation process for program costs.

Staff recommends exempting customers of gas utilities that take interruptible sales service and/or interruptible transportation service from mandatory participation in energy efficiency programs, since many of these customers are dual-fueled (natural gas and oil). Staff also recommends that SBC-exempt customers (both gas and electric) that would like to participate in the fast track programs should be allowed (and encouraged) to do so provided that the customer agrees to contribute to energy efficiency funding (SBC plus incremental EEPS charges) through 2015.

We further recommend that allocations of EEPS gas funding across utilities be based on throughput levels (measured in therms or ccf). Allocation levels should be reviewed as part of the long-term energy efficiency planning process to see if they should be refined based on experience with the new gas energy efficiency programs.

¹⁵ To the extent such funds are available it may be possible to use customer benefit funds to pay for a portion of efficiency program costs. This is an issue that should be examined for the longer term.

Since there are currently four gas local distribution companies (LDCs) in the State that have natural gas efficiency programs in place, with attendant cost recovery mechanisms, Staff recommends that this situation be considered when allocating costs and collecting them from ratepayers through a new EEPS natural gas efficiency surcharge. If the proportional amount to be allocated to a LDC based on its share of total statewide residential throughput is less than what the LDC is already collecting (for example, National Fuel Gas (NFG), KeySpan – New York (KEDNY) and KeySpan Long Island (KEDLI) already have efficient gas appliance programs in place similar to that being advocated by Staff in the interim portfolio), then the dollar amount currently being spent by the LDC should be subtracted from its allocation, and only the increment represented by the difference would be collected through the new EEPS efficiency surcharge. The existing surcharge mechanism would continue to collect the already approved amount for that program. If the utility's current program expenditures exceed what its proportional share of the statewide fast track program would be, the higher amount should prevail. In the case of NFG, whose program was only approved for one year, the EEPS allocation should take the place of the existing surcharge when it expires.

Using the same approach for electric customers, the actual incremental EEPS related rate impacts for Con Edison of New York customers will be minimal over the next year as a result of the Commission's recent rate decision in case 07-E-0523. In the rate case the Commission took steps to create a financial reserve for EEPS programs amounting to approximately \$80 million for the period April 1, 2008 to March 31, 2009.

LDCs that are currently developing efficiency programs as the result of Commission Orders in rate cases should make every effort to ensure that such programs comport with the interim suite of programs and associated program budgets.

On-Bill Financing

One of the major barriers that prevents full participation in energy efficiency programs is customers' inability to raise the up-front costs needed to implement major energy efficiency improvements. For the bridging programs Staff has identified, we

recommend use of currently available customer funding assistance mechanisms, such as buy downs of interest rates, to the extent feasible. We believe that the use of innovative customer payment approaches should be explored and implemented on a pilot basis. Attention must be paid, of course, on compliance with HEFPA rules.

One concept that should be addressed by the EEPS participants is use of a methodology in which the amount of money to be financed would be divided into equal monthly payments over a period of from one to several years with savings resulting from the installation of the energy efficiency measures helping to pay the monthly amount in part or in full.

Lending institutions may be interested in supporting on-bill financing arrangements. DASNY, for instance, has proposed an on-bill financing method that would allow it greater access to private capital to finance energy efficiency improvements.¹⁶ DASNY believes that the bonds secured by the proposed PSC tariff charge will be well received by the market place and that the benefits achieved in terms of enhanced customer access to private capital and reduced subsidies outweigh any incremental costs that may have to be incurred to implement the program or to cover amounts not paid by defaulting customers.

DASNY further believes that: (a) utilities should be able to recover any incremental costs incurred to implement this on-bill financing program through the SBC, a similar charge, or as part of the general utility rates; and (b) if tasked with achieving targeted EPS goals, utilities should be allowed to count energy savings associated with DASNY-financed projects toward those targets.

Over the years, DASNY has partnered with NYSERDA and NYPA in funding energy efficiency services; implementation of the on-bill proposal would enhance the work of these organizations. We recommend that the Commission direct the utilities to participate with DASNY in a meeting convened by Staff to explore this and other

¹⁶ This proposal is likely to be refined as discussions about implementation issues continue. Other lenders may be interested in providing similar funding mechanisms.

approaches to assist customers that want to undertake relatively large energy efficiency projects.

Electricity Transmission and Distribution Efficiency Improvements

Electricity line losses and related inefficiencies, which refer to the energy that is lost in the delivery process, generally through the dissipation of heat, are in the range of 6-8%. Repairs to and upgrades of local distribution systems can significantly increase the efficiency of the New York State electric system.¹⁷

Working Group 3 recommended earlier in this proceeding that New York utilities: 1) file plans to undertake local distribution system voltage analysis; 2) make equipment upgrades to improve the voltage profiles of their loads; and 3) undertake periodic inspection programs. Staff agrees that improving the operation of both transmission and distribution systems can reduce line losses and lead to more efficient energy usage. Accordingly, Staff endorses these recommendations for Commission action, modified to the extent that the analysis should include bulk transmission systems.

Staff urges the Commission to direct the utilities to meet with Staff to develop a process to design analyses of their systems, leading to a report from each utility to the Commission in December 2008. The process could include the utilities, separately or together, working with EPRI or a similar consulting group to develop approaches to improving the efficient operation of their T&D systems.

Measurement and Analysis Protocols/Evaluation and Reporting Task Force

Evaluation and reporting will be integral components of the interim program portfolio, providing accountability to ratepayers and regulators, tracking progress toward the EEPS goals, evaluating individual program performance, and documenting "lessons

¹⁷ Reducing line losses has been identified as a way to significantly reduce electricity usage on a national level as well. The Electric Power Research Institute (EPRI) is investigating methods for improving operations of transmission and distribution systems to reduce overall electricity usage levels.

learned” to help improve future generations of programs. From a planning perspective, reliable forecasts and validation of achieved energy impacts are critical for estimating future electricity generation, transmission, and distribution requirements. Evaluation results need to be presented in such a way that the results and underlying premises are transparent to all interested parties.

Evaluation and reporting issues went through a detailed review by Working Group 3 as part of the EEPs Proceeding. Key objectives of this review included examining various evaluation protocols, benefit/cost test policy, and the concept of establishing a statewide task force to help guide the evaluation/reporting process (i.e., Evaluation and Reporting Task Force or ERTF).

Staff recommends further exploration of issues addressed by Working Group 3, including the establishment of the ERTF. Staff's vision for the ERTF is that it would be a collaborative body designed to serve a variety of functions including developing evaluation and reporting protocols, reviewing evaluation plans and reports and coordinating statewide evaluation studies. We recognize that the ERTF will have responsibilities that require a significant investment of time and technical resources. To aid in this process, administrators of fast track programs will be required to contribute a small percentage of their program budget (probably less than one percent) to the ERTF. These funds will be made available to the ERTF to hire consultants to primarily assist in assessing the technical merit of the plans and evaluations. Additional funds may be requested to fund evaluation work that may be more effectively conducted on statewide basis (e.g., methods for estimating free ridership, baseline studies)

A key principle of program evaluation is that the group performing the evaluation should not be the group installing the energy efficiency measure. Consequently, for utility programs, Staff recommends that it should have oversight of evaluation contractors, at least in the short term.

Staff recommends that, in the short term, for expanded NYSERDA programs, existing mechanisms for program evaluation should be used, with the exception that expenditures of up to 5% of program funding can be used for evaluation (current levels

are 2% of funding). In the longer term, further evaluation of NYSERDA evaluation methods should be reviewed by the ERTF.

Marketing, Outreach, and Education for Customers

The implementation of bridging programs offers the opportunity to increase New York State customers' awareness of energy efficiency opportunities available to them as well as to inform the public about the EEPS target goals and how their actions can contribute to achieving these goals. Rather than wait until the long-term energy efficiency program implementation phase to increase outreach to customers, Staff recommends that the process begin as soon as possible after approval of a portfolio of bridging programs. We believe that the Staff, NYSERDA, the New York Power Authority, the Long Island Power Authority, DHCR, DASNY, New York City and other municipalities, third party energy efficiency providers, ESCOs, and utilities will all be major participants in communicating about energy efficiency initiatives. To be effective, these outreach efforts should have a consistent message and a common look and feel. A consistent statewide theme can provide the umbrella framework for all energy efficiency marketing efforts. This will allow customers to identify with a "brand" associated with New York energy efficiency efforts, thus leveraging the value of the marketing messages they receive, while also allowing the groups doing the marketing to include their logo as part of the marketing message.

We recommend initiating a collaborative planning process among the groups listed above and other interested parties to determine how to organize and implement this effort within 30 days after a Commission decision on bridging proposals is reached. The parties should determine the budget needed for such a campaign and prepare a plan for how and when the money will be spent.

An educational component aimed at school age children should be part of this effort. The major outreach effort is expected to be a statewide multi-media campaign focused on residential and small business customers. In addition, some NYSERDA programs have been oversubscribed in the past and marketing has been limited since the

supply of funds has been unable to meet demand. The parties should look at whether enhanced marketing is appropriate for programs that will be receiving additional funding as a result of the interim process.

Discussions among the outreach and education collaborative should include developing campaign messages to be sent, deciding on effective media vehicles, determining the timing and coordination of the outreach campaign, and deciding on funding for this effort. Funding levels and coordination of efforts to avoid customer confusion will be key considerations.

To more fully and effectively engage the investor owned utilities in the implementation of energy efficiency programs Staff recommends that additional financial resources be made available to the utilities for energy efficiency program monitoring. The resources should be primarily used to recruit customers within their respective service territories into the NYSERDA-administered bridging commercial and industrial energy efficiency programs to meet EEPS program goals. The increased resources should be used to provide for increased staffing of customer service personnel and account representatives to directly market the NYSERDA energy efficiency programs and to enroll customers. The utilities should delineate in EEPS compliance filings how they plan to budget the allocated marketing funds and what measurable enrollment levels they would expect to obtain on an annual basis.

Workforce Development

An important element for the success of the overall EEPS effort will be the availability of a workforce of trained energy efficiency practitioners adequate to serve all parts of the state. This will take a number of forms, including the need for increased employment in many specialties, including:

- energy audits and analysis of cost-effective efficiency measures for buildings
- building codes enforcement
- installation of energy efficiency measures
- efficiency measurement and analysis

- installation of renewable energy resources that will allow building owners to use less electricity from the grid
- energy efficiency information for school children
- energy efficient design and engineering
- energy efficient building construction and maintenance practices
- careers in energy sustainability fields (e.g., establishment of college majors in energy efficiency/sustainability).

This large undertaking will require lead time to develop curriculum, arrange for training, develop capabilities within colleges to deliver training programs, and arrange for staffing to offer training. To meet the ambitious goals, planning for building the training capability needs to start now. Staff recommends that collaborative discussions among partners in this effort (e.g., Staff, NYSERDA, community colleges and universities, trade associations, etc.) should begin within 30 days of a Commission decision on the bridging programs.

Demand Response

Some parties mentioned the importance of demand response programs as part of the EEPS effort. Staff agrees and believes that Working Group 4 should continue to examine these issues.

The role of demand response in the overall EEPS resource portfolio needs to be informed by additional collaborative discussion and analysis. Staff recommends that at a minimum a requirement should be placed on the EEPS portfolio that as a result of the implementation of energy efficiency programs there should be no net reduction in system load factor in any utility's service territory. If there is net system load factor degradation, it could produce inefficiencies in the production and delivery of electricity that could increase operational costs for ratepayers. Therefore, if net system load factor appears to be declining, the affected utility should develop and file a plan to bring the net system load factor back to its original state using demand response resources.

Enhanced Energy Codes and Standards

Potential impacts from building codes and appliance standards are so significant, and the lead times needed to effect and implement revised requirements are so long, that we recommend that work in this area should begin immediately and should not wait for completion of a long-term planning process review. Staff recommends an annual budget for these activities of \$2.5 million to be used by NYSERDA to support the efforts of the Department of State, especially in the areas of training for building inspectors, architects, and installers of energy efficient systems on provisions of the energy code and efforts to influence the provisions of updated codes. It is important to begin laying the groundwork for an aggressive round of new code enhancements to be adopted in 2010 and take effect in 2011. We believe that the Department of State, NYSERDA, Staff, and other interested parties, should develop strategies for gaining the maximum contributions from codes and standards that can be obtained between now and the end of 2015.

Environmental Justice

Regarding environmental justice, it should be noted that New York City's dirtiest power plants, which burn oil and tend to be located in poorer neighborhoods and operate just about 100 hours a year during the summer's hottest periods, account for a significant portion of the City's greenhouse gas emissions because they release three to five times more pollution than gas-fueled base units. Staff met with representatives of environmental justice communities in New York City at a Regional Customer Roundtable in this proceeding. Those representatives emphasized the need to eliminate use of these dirty plants. From this perspective, flattening the City's load shape would be a highly desirable achievement. Parties should work to target energy efficiency and demand reduction efforts that can realize that objective. Also, it may be possible to focus programs to those communities most affected by the adverse environmental effects of electricity and natural gas production, delivery, and use. To do so, however, study is needed to identify the most appropriate strategies and approaches. The Commission directed that environmental justice be considered in the development of the EEPS

program. Staff recommends that this issue be fully investigated in the longer-term EEPS program planning process.

Research and Development Initiatives

Staff recommends the reconstitution of a collaborative, to examine the role of Research, Development, and Demonstration in the EEPS proceeding, including priorities and funding criteria.

Natural Gas Targets, Programs and Budgets

In November 2007, Staff contracted with Optimal Energy to perform two tasks: the first was to update the statewide natural gas efficiency potential study Optimal Energy had performed for NYSERDA in 2006 and the second was to compare the performance of Optimal Energy's program mix from that study to the program mix in KeySpan's New York and Long Island natural gas efficiency program. Staff has just received the draft report from Optimal Energy, but still needs time to analyze the results and determine what an appropriate target should be for natural gas efficiency statewide.

In light of these developments, Staff proposes to submit a recommendation based on Optimal Energy's findings regarding a natural gas usage reduction target. Staff's recommendation, to be filed by mid-May, would also include how the target should be allocated among the state's LDCs and resulting program budgets. Parties could then file comments by a schedule established by the ALJs.

Portfolio Design for 2010 and Beyond

Once a governance structure, similar that described in Attachment 1, is implemented, it should become the place where proposals for new programs can be discussed collaboratively for consideration of including them in the Energy Efficiency Portfolio. Emphasis should be on coordination of efforts and leveraging existing resources.

CONCLUSION

For all of the reasons discussed above and in previous submissions by Staff, the bridging programs and related activities recommended by Staff should be approved expeditiously so that meaningful energy efficiency can occur this summer in New York City and the rest of the State.

Respectfully submitted,

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Albany, New York

ATTACHMENT 1***Department of Public Service Governance Model***

- Multi-Year Planning Process - Staff proposes an ongoing multi-year collaborative EEPS energy efficiency planning process whose objective would be to provide recommendations to the Commission regarding: the EEPS portfolio's content, program design elements and objectives, program administration, program budgets and goals, program administration reports and related policies on a two- or three-year cycle (with the flexibility for modest mid-cycle adjustments). This collaborative process would be administrated through an EEPS Advisory Council facilitated by DPS Staff. The EEPS Advisory Council would process and develop recommendations by creating and guiding as necessary the work effort of standing and ad-hoc committees focused on specific tasks and issues. It would also discuss and incorporate monitoring and evaluation analyses into the EEPS planning process. This multi-year planning process for energy efficiency would be an element of any overall statewide energy planning effort and be informed by the planned actions and initiatives by entities beyond those under the Commission's direct jurisdiction.
- Principal Representation on the Advisory Council and its committees would be subject to the Commission's approval and would likely include: the lead EEPS program administrators (NYSERDA, DHCR, the utilities subject to the Commission's jurisdiction, and any other authorized third-party EEPS program administrators), as well as representatives of other major EEPS stakeholders and constituencies such as: the NYISO, consumer groups, environmental groups, industry trade associations (including those representing competitive energy commodity providers), and regional representation including New York City and the North Country, etc). It would be highly desirable to also have participation and representation from other state entities (DOS, LIPA, NYPA, and DASNY) on the Advisory Council. Participation by these other agencies would provide an important mechanism to gather the information needed to accurately incorporate their plans and initiatives into the achievement of the 15x15 goal for electric usage and for a similar gas statewide efficiency goal. That information would be a necessary and valuable input in determining the extent of the effort required by utilities and other resources under the Commission's jurisdiction to achieve the State's EEPS goals. The voluntary participation by the NYISO would be critical in ensuring that the technical aspects of the Advisory Council's planning activities are sufficiently coordinated with the reliability and other planning processes of the NYISO.
- EEPS service providers which are under contract to deliver energy efficiency services to ultimate customers or which seek such contracts would not be sitting members of the Advisory Council or its committees; however, those interests could submit

recommendations, offer proposals and make presentations directly to the Council or its committees.

- Standing Committees could include: Planning and Analysis; Monitoring and Evaluation, EEPS Programs; Research & Development, Customer Outreach and Education, etc. There could be multiple EEPS program committees focused on specific programs, regional issues or market sectors, e.g., New Construction; Metropolitan NYC Issues, North Country Issues, Gas Programs, etc.
- Recommendations emanating from the Advisory Council and its committees, whether representing a consensus decision or majority or minority views, would be filed with the Commission, which would follow its normal procedures in processing the filing. These include public notice pursuant to SAPA and preparation of a session item by Staff or assignment of an ALJ, who may issue a Recommended Decision (RD), and, ultimately, the Commission may issue a decision. No party would be bound by the positions taken in the Advisory Council's filings and any party would be able to prepare an independent position. Participants in the Advisory Council's process would also be free to negotiate settlements with other parties related to the Advisory Council's recommendations to the Commission.
- Program administrators would implement EEPS programs under the direct oversight of DPS Staff and be held accountable by the Commission regarding the utilization of program budgets and maintaining vigilance as to the cost effectiveness of programs as well as meeting their allocated share of the EEPS goals.
- EEPS Program monitoring and evaluation activities focused on programs funded by rates and tariffs under the Commission's jurisdiction would be informed by a Monitoring & Evaluation Collaborative Task Force subject to the Commission's jurisdiction. The required studies, analyses and reports would be conducted by entities that are independent of the EEPS program administrators and provider contractors they are evaluating.