STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio Standard.	:	Case 07-M-0548

Brief on Behalf of
Central Hudson Gas & Electric Corporation
On Four Specified Subjects

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Preliminary Statement

This brief is submitted on behalf of Central Hudson Gas & Electric Corporation ("Central Hudson") to address the four issues on which briefing has now been permitted.[1] The four issues were set forth at 10-11 of the ALJs' March 20, 2008 Ruling on Staff Motion and Revising Schedule ("March 20 Ruling").

The State's 15x15 policy will require program expenditure funding from ratepayers approaching $4 billion over the next seven and a half years. But it will require more to succeed.

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1 As stressed by the ALJs in their March 20, 2008 Ruling on Staff Motion and Revising Schedule (March 20 Ruling at 11), "this round of proposals and briefs only applies to the four issues proposed above for early Commission action."

It will require affirmative decisions by millions of New Yorkers to purchase energy efficiency goods and services from providers they know and trust, and it will require retail marketing programs at once innovative and committed, that are based on deep knowledge of customers' desires and preferences in the local markets.

We are in a period of consumer caution. Green may be "in," but with the *causa belli* of the housing market bust having begun to unmask the broad financial risks of the unregulated "shadow" banking system, and the potential for significant damage to New York's economy in particular given our strong dependence on Wall Street, together with the impending RGGI-driven increases to commodity prices, and the on-going need to repair the damage to New York's energy infrastructure caused by financial limitations over the last decade, energy efficiency is just one of the many demands competing for the consumer's dollar. No matter how desirable energy efficiency may be thought to be from a "policy" perspective, consumers have a different perspective guided strongly by their pocketbooks and their own perceptions of the providers of energy efficiency products and services.

Getting energy efficiency right in these conditions requires much more than high-level program design. Program design is relatively easy; it has been done for years and the state of the art program parameters are well known. Success requires more; it requires the credibility with consumers and accountability that Central Hudson has. It requires bottom-up marketing, innovative sales campaigns that New Yorkers actually hear and relate to, sales contacts and follow-up, prompt performance and after-sales servicing that Central Hudson does and has done in many areas, energy efficiency included.

I.
Issue 1:
Fast Track/Bridging Proposals

This issue permits parties to address:

> the updated Staff Fast Track suite of programs to be filed March 25, 2008, as well as the Staff presentation at the March 5, 2008 Technical Conference, the NYSERDA Fast Track proposal, and any other Fast Track proposals that have previously been submitted....[2]

[2] March 20 Ruling at 10.

A. Staff's Attempt at Changing From "Fast Track" to Default Programs

Staff's latest proposals seek to change the "fast track" or "bridging" concept.[3] Rather than the interim programs that fast track proposals were understood universally to represent previously, Staff now proposes something quite different: a group of long-term "default" programs that would not just continue but expand the role of NYSERDA as the governmental incumbent monopoly supplier of energy efficiency products supported by ratepayer-funding and simultaneously minimize the role of distribution utilities.[4]

This position is an about-face from Staff's position as presented in Staff's February 21, 2008 Reconsideration Motion, which stated (at 9) that Staff had previously "provided data through 2015 only to provide a frame of

[3] The latest Staff proposal is an 81 page document titled "MARCH 2008 DPS STAFF REPORT ON RECOMMENDATIONS FOR THE EEPS PROCEEDING," dated March 25, 2008, that contains attachments and summaries of calculations, as well as an additional Technical Appendix.

[4] See, Staff's March 25 Proposals at 6: "New programs should be compared with the fast track proposals and be able to demonstrate that they possess clear advantages." Given that statement, the suggestion (March 25 Proposals at 5) that "[u]tilities should be encouraged to develop programs that meet these criteria and that can be successfully integrated with existing programs" should be viewed with some skepticism, particularly when it is recalled that Staff had not reviewed Central Hudson's programs despite the fact that they were available for Staff's review for six months.

reference, not as a proposed approach."[5] While Staff was permitted in the March 20 Ruling to update its December 2007 fast track submission, there was no authorization for a change in position of the nature described above. In fact, it is doubtful that the ALJs would have permitted Staff to update its position had Staff disclosed an intention to change the nature of the "fast track" programs into presumptively permanent default programs, because the ALJs had previously stated that the "fast track" should not prejudice the Commission's policy decisions.[6] Staff's new position, however, would produce just that result.

[5] In fact, the assertion that the ALJs misunderstood Staff's prior position was presented by Staff as a basis for justifying allowing Staff to present an updated "fast track."

[6] In their January 24, 2008 Ruling on Status of the Record and on Schedule, the ALJs (at 6-7) stated: "The Fast Track proposals would expedite a range of programs, both pre-existing and new, prior to policy determinations that will define the EEPS in the long term. These proposals would represent a strategic commitment of a large portion of resources available to the EEPS, which would be unwise absent a framework to ensure that the investments are consistent with the overall structure of the EEPS. The Fast Track proposals assume that there would be a significant period of time between Fast Track approval and a Commission decision on the EEPS program as a whole. Given the requirements of SEQRA and the steps necessary to secure funding for NYSERDA, a Fast Track, regardless of when it had been proposed, would not result in actual spending until late in 2008. Based on the schedule established in this ruling, the time period between a Fast Track approval and a more comprehensive Commission order is not substantial enough to warrant committing funds before broad policy determinations are made." (Footnote omitted.)

As a result of the latest Staff position, there are now four basic proposals addressing the 15x15 goals as shown in the Appendix.

B. Staff's General Approach: Attempting to Justify Reliance on NYSERDA Programs to the Substantial Exclusion of Utilities in Reliance on Staff's Cost-Effectiveness Calculations

Staff offers a series of cost-effectiveness calculations, and the implicit view that utility-administered energy efficiency programs will not be as cost-effective as the predominantly NYSERDA-administered "fast track" programs proposed by Staff, to support its position that future ratepayer-provided energy efficiency funding be channeled preferentially and predominantly to NYSERDA.

The reliability of Staff's justification for labeling its programs as "fast track" programs depends critically upon Staff's assumptions that NYSERDA can both implement the Staff-designed programs virtually immediately and achieve the Staff-calculated cost-effectiveness values, and that utilities generally (and Central Hudson specifically in the context of this brief) cannot implement their own proposed programs as quickly or as cost-effectively.

The word "assumptions" is employed advisedly here, inasmuch as Staff neither presented, nor, insofar as the record to date reveals, conducted any documented analysis of either NYSERDA's or Central Hudson's actual capabilities, much less a comparison. Instead, again insofar as the record to date reveals, Staff equated the condition of having an existing energy efficiency operation as being equivalent to immediate implementation of the newly specified Staff programs and the absence of an existing energy efficiency operation as being equivalent to unacceptable implementation delays, thus confusing status with capability.

Prior to fixing its March 25 set of programs, however, insofar as the record reveals, Staff did not substantiate its assumption relative to NYSERDA's supposed capability, just as it made the choice not to conduct an analysis of Central Hudson's capabilities to implement its own energy efficiency programs just as quickly (or quicker) as NYSERDA might implement the newly "enhanced" Staff programs.[7] Furthermore, by failing to perform any documented analyses of the Central Hudson programs prior to finalizing its own

[7] No reasonable excuse for the failure to review Central Hudson's Programs prior to the preparation of Staff's March 25 Proposals can be provided because Staff had stated at the Technical Conference on March 5, 2008 that it had already reviewed the Central Hudson Programs.

"fast track" programs, much less any analyses that sought to compare the Staff and Central Hudson programs on the basis of consistent assumptions, Staff rendered its cost-effectiveness calculations for its "enhanced" NYSERDA-administered energy efficiency programs useless for the purpose of showing whether the Staff proposed programs are superior to those proposed by Central Hudson.

C. Staff's Assumption that its NYSERDA "Fast Track" Programs Will Be "Implemented Quickly" is Contradicted by NYSERDA's Representations

In the opening sentences of its March 25, 2008 proposals, Staff identifies the objective of its efforts and the criteria it purportedly employed, saying:

> As part of the Energy Efficiency Portfolio Standard (EEPS) proceeding, the Administrative Law Judges (ALJs) asked Department of Public Service Staff (Staff) to identify end user energy efficiency programs that can be implemented quickly. In response to this charge, Staff researched best practice programs from around the world and identified a portfolio of programs that meet the following criteria:
>
> - Provide programs that are effective and useful to customers, easy for them to understand, and encourage their participation
> - Build on existing successful programs and fill existing gaps
> - Meet specific 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 a significant role for a variety of market players
- Build the needed infrastructure for expanded 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 approach (Emphasis added.)

Central Hudson agrees with Staff that these criteria are reasonable. However, the record does not show that Staff performed any analysis to demonstrate that its proposals satisfied each of the criteria in ways that would be superior to the other fast track programs that were known to Staff.

In addition, on page 3, Staff says that:

> "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 reaching the aggressive energy saving goals of the EEPS proceeding."

These statements indicate that the existence of NYSERDA's prior programs ("proven track records") was a key factor, and perhaps the only real factor, relied upon by Staff to support its conclusion that its "fast track" programs can be "put in place quickly." Indeed, as shown by the absence in Staff's supporting documentation of any actual analysis of NYSERDA's implementation capabilities, the entire Staff approach assumes that NYSERDA will virtually instantaneously implement the "enhanced" programs described in Staff's March 25th iteration.

Unfortunately, this key assumption is not correct. In the NYSERDA November 1, 2007 "Response to Administrative Law Judges' Letter Dated October 1, 2007," NYSERDA stated that it could operate several "fast track" programs. Subsequently, NYSERDA (and other authorities and agencies) submitted a November 30, 2008 "letter report" which similarly proposed "fast track" program efforts beyond current SBC funding. In response to Central Hudson discovery requests and a Ruling of the ALJs, NYSERDA later provided its "costs to achieve spreadsheet" (Attachment J) and the CECAA Electricity Savings Spreadsheet and Assumptions" (Attachment I) to Central Hudson and the other parties.

The NYSERDA information provided in these documents demonstrates that there will be a lag period of three years before NYSERDA would be able to fully implement new "fast track" programs.[8] Prior to the end of that three-year period after the introduction of "fast track" programs, NYSERDA's lag in implementation will prevent the achievement of the level of savings assumed by Staff and also drive up the cost to achieve per MWh of savings, as is demonstrated in the table set forth below.

Staff's March 25, 2008 proposals ignored this reality.[9] By presenting its March 25 Proposals as if NYSERDA would "flash cut" to immediate implementation of Staff's "fast track" programs without any lag, Staff did not present a reliable picture of the expected savings and cost-effectiveness that will be achieved, as is also demonstrated in the table set forth below. Furthermore, it must be recognized that at the same time Staff presented its proposals as if NYSERDA would flash cut to Staff's "fast track" programs, Staff made NYSERDA's job of implementing Staff's "fast track" more time consuming, difficult and costly by requiring significant programmatic

[8] As stated in the NYSERDA response at Attachment I - CECAA Electricity Savings Spreadsheet and Assumptions: "NYSERDA's proposed EPS Fast-Track proposal assumed an installation time lag of 20-40-40 (20% of the proposed MWh are achieved/installed in the first year after the contract is signed, 40% in the second year, and the remaining 40% are installed in the third year)."

[9] It appears that Staff may have been aware of the implementation lag, as the note in the table (at 8) of the March 25 Proposals admits that: "Several Phase-ins of costs are ignored."

changes to the pre-existing NYSERDA programs to conform to current "best practices" under the rubric of Staff "enhancements."[10]

	NYSERDA Fast Track			Staff Fast Track		
	NYSERDA Response (Feb. 4, 2008) Info from Attachment I & J			Staff (March 25, 2008 Update) Info from Attachment #4		
	GWh Annual Savings	Annual Costs ($ Million)	Calculated $/MWh Saved	GWh Annual Savings	Annual Costs ($ Million)	$/MWh Saved
2008	68	$99.3	$1,461	432.8	$107.5	$248
2009	273	$208.8	$765	1004.8	$207.5	$206
2010	579	$255.6	$441			
2011	785	$255.6	$326			
2012	854	$255.6	$299			
2013	853	$255.6	$300			
2014	853	$255.6	$300			
2015	854	$255.6	$299			

Since Staff failed to address the three-year NYSERDA lag in implementation, Staff's conclusion that NYSERDA can

[10] The "enhancements" are necessary, according to Staff, to turn the pre-existing NYSERDA programs into ones that, in Staff's words: "address the needs of market segments [and] has been used to develop highly successful energy efficiency programs (e.g. those used by California, Connecticut, Massachusetts, New York, and Vermont)."

"implement quickly" the "enhanced" Staff fast track programs at the cost-effectiveness levels calculated by Staff is clearly incorrect. The failure to address the NYSERDA lag in implementation has systemic consequences for Staff's position, showing the lack of a proper basis for constraining distribution utilities generally, and Central Hudson specifically.

D. It is Unreasonable for Staff to Have Excluded Central Hudson's Energy Efficiency Programs From Staff's Bridging Programs, and to Have Failed to Review Those Programs Because They Are Not Operational Already, When the Reason They Are Not Operational Already is Because They Have Not Been Reviewed

Central Hudson has developed a suite of electric, gas and low income energy efficiency programs that were filed in Cases 05-E-0934 and 05-G-0935 and later transferred to Case 07-M-1139. Those programs are based on existing "best practices" in this and other states. The programs are described in detail and supported by a complete TRC analysis of 53 pages that far surpasses Staff's Attachment 5 in specificity, detail and substantiation. They were relied upon in the development of Central Hudson's "Statewide Plan," which also incorporated some minor revisions to Central Hudson's Programs, and has been received into the record in this case.

While Central Hudson's comprehensive group of electric, gas and low income programs can "be implemented quickly," has been filed with the Commission and otherwise made known,[11] insofar as the record reveals Staff did not give substantial analytical consideration to Central Hudson's programs during the preparation of its March 25, 2008 Proposals. Staff states that it has "researched best practice programs from around the world" (March 25 Proposals, at 1), but it can hardly be accidental that Staff "has not been able to complete" (Id., at 12) a review of Central Hudson's programs, even though Staff concedes that Central Hudson believes its programs could be implemented quickly (Ibid.). This unsatisfactory state of affairs cannot be explained on the basis of a lack of resources, given Staff's claimed world-wide scope of inquiry.

A failure to thoroughly review an available alternative can be read to indicate analytical bias. Staff's preference for "enhanced" NYSERDA programs is not

[11] The supporting spreadsheets for the Statewide Plan were provided to Staff at its request, and the full program descriptions and TRC analyses have been available to Staff.

reliable because Staff did not review Central Hudson's programs, and because Staff has not shown that Central Hudson could not implement the programs it proposed at least as quickly as NYSERDA would implement the "enhanced" programs Staff includes in its March 25 Proposals.

Furthermore, it is unreasonable for Staff to refuse to review those programs and then claim that they must later be shown by Central Hudson to "possess clear advantages" over Staff's programs when Staff could have, and should have reviewed them prior to developing Staff's March 25 Proposals.[12]

E. Staff's March 25 Proposals Lack Detail, Lack Substantiation, and Employ Unrealistic Assumptions

For many years, NYSERDA has committed substantial ratepayer funds to a lighting program that relies upon the concept of "market transformation" as distinguished from "incentives." According to market transformation advocates, it can effectively produce long-lasting changes in energy efficiency. NYSERDA claims to have achieved 238 GWh in savings over the past eight years due to market

[12] Absent any documented analysis of the alternatives presented by Central Hudson, Staff lacks a basis for the assertion (at 4): "The most efficient way to proceed is to allow [the utilities] to implement the programs that Staff has identified."

transformation for all of its ENERGYSTAR programs, at a cost level that is somewhat elusive to identify, particularly on a fully loaded basis.

Staff relies on "enhancements" to NYSERDA's lighting programs to achieve over 80% of its residential electric savings, or 480 GWh out of the 590 GWh in 2008-2009 residential electric savings shown in Staff's schedules. Given Staff's failure to recognize NYSERDA's admitted lag in implementing "fast track" programs, as discussed above, these levels of performance will not be attained.

Moreover, the forecasted improvements are themselves based on assumptions that greatly exceed those made by Central Hudson based on authoritative references accepted in the industry.

	Staff "Fast Track"	Central Hudson Lighting Rebate Programs
CFL Assumed Savings	94.7 KWh/CFL	50.5 KWh/CFL
Source	NYSERDA contractor "deemed savings"	Efficiency Maine Residential Lighting Program
Fixture Assumed Savings	116 KWh/Fixture	73 KWh/Fixture
Source	NYSERDA contractor "deemed savings"	Efficiency Maine Residential Lighting Program

The differentials between the NYSERDA and Maine values indicate that Staff, NYSERDA and NYSERDA's contractors are claiming twice the level of savings allowed in Maine.

In addition, Staff assumes that the penetration of energy efficiency lighting will be increased from 1.7 per household to 2.0 per household in 2008, from 2.0 to 2.5 in 2009 and from 2.5 to 3.0 in 2010. These increases in household penetration levels are based on Staff's interpretation of utility rebate programs results in New England, not "market transformation" programs.

The assumptions made by Staff in the NYSERDA lighting program drive the Staff cost-effectiveness results, inasmuch as lighting is by far the largest proposed program. Those assumptions produce marked improvement in indicated cost-effectiveness.

To demonstrate this proposition, and to show that Central Hudson's energy efficiency programs are as cost-effective as those proposed by Staff, given consistent input assumptions, Central Hudson has "ramped-up" the programs it previously filed in Cases 05-E-0934 and 05-G-0935 (now before the Commission in Case 07-M-1139) and reflected in the Statewide Plan to "update" the Statewide Plan as follows: to match Staff's input assumptions by increasing the savings per CFL from 50.5 kWh/bulb to the

94.7 kWh/bulb presented by Staff in its Technical Appendix; to match the Staff penetration assumptions of an increase from 1.7 to 3.0 bulbs/household by 2010, and correspondingly increasing the administration, etc. costs, as well as the total incentives, due to the increased volume.[13] The effect of these changes is to improve the 2008-2010 Central Hudson program from an indicated $295/MWh to $192/MWh, for a 35% improvement. These changes also show that the Central Hudson programs remain equal to or superior to the Staff proposed "fast track" programs, given consistent assumptions.

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

Staff's March 25 Proposals claim half year 2008 savings of 130 GWh and 2009 savings of 347 GWh (477 cumulative in 2009) related exclusively to CFL lighting (not fixtures). NYSERDA has been running a broad

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[13] Central Hudson effectively doubled administration costs and quadrupled incentives costs. In contrast, Staff increased the volume of its lighting programs but decreased administrative costs from $750,000 to $400,000.

EnergyStar products market transformation program for 8 years that appears to have claimed savings cumulatively of 238 GWh over the 8 years, or an average of about 30 GWh/year. It is not reasonable for Staff to assume that NYSERDA could now achieve 477 GWh in a year and a half, or an average of 318 GWh/year, or more than ten times as much, from just the NYSERDA CFL market transformation program.

According to Staff's Attachment 5 (at 6), the funding proposed by Staff for NYSERDA's lighting-related "market transformation" programs "assumes that sales should be increased 67% over two years...." As recognized by Staff (Attachment 5 at 7), federal law now requires the phase-out of the sale of conventional incandescent lamps commencing in 2012. The federal requirement means that conventional incandescent lamps cannot be sold after 2014, but more efficient incandescent lamps and CFLs can be. The large increase proposed for this program has been justified on the ground (Staff Attachment 5 at 7) that "an important goal of this fast-track program is to better position CFLs to thrive in the market when the new standards take effect." However, no analysis of the benefits of any alternative was presented in the Staff submittal and Central Hudson questions whether any consideration was given to alternative approaches.

Given the federal law, manufacturers already have strong incentives to adjust their product lines and roll-out new promotions for highly efficient lighting products. This is not the time to ramp-up; but to ramp-down and transition away from the past emphasis on lighting market transformation that has characterized NYSERDA's efforts for many years. Also, payments made now to manufacturers will have exceedingly brief usefulness because the phase-out time period is already fixed. Utility rebate programs, such as that included in Central Hudson's suite of programs, should now be ramped-up instead of the continued expenditure of high levels of ratepayer funding for market transformation.

F. The Central Hudson Energy Efficiency Programs Should be Included in the Fast Track

The Staff March 25 proposals are a high-level set of positions that lack detail and the absence of detail necessitates the Staff call for compliance filings and the costs and delays they will inevitably entail. In contrast, Central Hudson's programs have been fully specified, including detailed program road maps, with specified incentives and rebates based on real world scenarios and "best practice" programs that have had extensive M&V.

Central Hudson's energy efficiency programs should be included in the "fast track" on grounds of their comprehensive scope, complete design, availability for immediate implementation, and superior cost-effectiveness when compared to Staff's proposals on a consistent basis.

In addition, under appropriate conditions, Central Hudson is prepared to work immediately with DASNY and Staff to develop and implement a TIP pilot program.

G. Staff's Many "Enhancements" Negate the Rationale for Relying Almost Exclusively on the Incumbent Because of NYSERDA's Experience

On one hand, Staff proposes to rely predominantly on delivery of energy efficiency programs through NYSERDA, the incumbent provider, essentially on the ground of NYSERDA's incumbency and experience. Yet, Staff also finds it necessary to impose significant changes to the programs that would be delivered by NYSERDA. These changes are required because, as Staff acknowledges, its

> "approach of building a portfolio from programs to address the needs of market segments has been used to develop highly successful energy efficiency programs (e.g. those used by California, Connecticut, Massachusetts, New York, and Vermont)."[14]

[14] Staff did not acknowledge that, in California, Connecticut, and Massachusetts, those "highly successful programs" were delivered through utilities.

The many changes to pre-existing NYSERDA programs that are necessary according to Staff negate the supposed advantages of relying excessively on the incumbent.[15]

II.
Issue (2):
Utility Administration

As identified by the ALJs, this issue is:

> the policy rationale for authorizing utility administration of energy efficiency programs in the broader context of the EEPS proceeding, including the reasons identified in the February 11, 2008 Straw Proposal: "Utilities can bring access to end-use customers, especially mass market customers, an ability to leverage outside funding through on-bill financing, and the potential to integrate energy efficiency with overall energy resource planning." Parties may also brief the advisability of the Commission establishing periodic energy efficiency targets for each utility [ALJs' footnote omitted].

Central Hudson does not believe that the ALJs' formulation is appropriate.[16] It presumes *a priori* an unduly limited role for utilities, whereas the Commission

[15] A description of changes from the existing NYSERDA programs and their significance is set forth in the appendix.

[16] By letter dated March 28, 2008, the Secretary rejected presenting to the Commission an Interlocutory Review Motion filed by Central Hudson. Central Hudson reserves its rights concerning that action.

has previously expressed, in central Hudson's view, a broad role for utilities. The issue as formulated also implies a lack of recognition of the nature of the activities that are actually necessary to achieve the 15x15 goals. Unlike apparently the ALJs (and Staff), Central Hudson believes that centrally-planned, top-down "program design" and "coordination" are not the key elements to success. Program design is well known. Detailed "coordination" is unnecessary in competitive markets, if not simply undesirable.[17] Marketing and retail sales expertise, customer trust, including post-sale servicing of accounts, are the key elements missing from the central planning perspective.

The preference for central planning and energy efficiency delivery through the incumbent monopoly provider appears to have led to the avoidance, throughout this case, of the most fundamental and important issue: whether it is better for the People of the State that energy efficiency be funneled through NYSERDA or some other approach, such as that advocated by Central Hudson.[18]

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[17] Any desirable high-level exchanges of information would be accomplished through the non-adversarial Efficiency College previously proposed by Central Hudson and others.

[18] To any who may be inclined to avoid or brush off this concern by criticizing Central Hudson's supposed motives or alleging that Central

A. Bringing Choice to Ratepayer-
Supported Energy Efficiency Markets

When, to attain functioning markets and customer choice, the Commission restructured vertically-integrated utilities who were delivering both supply-side and energy efficiency resources and forced the divestiture of billions of dollars in utility generating plant investments across the State, it established the Systems Benefits Charge ("SBC") as a temporary bridge towards delivery of energy efficiency through competitive providers and to provide customers similar choices for energy efficiency as for supply-side. The delivery of energy efficiency by NYSERDA was intended as merely an interim expedient pending

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Hudson has some sort of "anti-NYSERDA" bias, we say that the reality is just the opposite. If Central Hudson has a bias, it is in favor of disclosure and rational evaluation of NYSERDA's record of performance in a way that is comprehensive and comprehensible, that identifies all sources and uses of funds, that ties SBC receipts from utility ratepayers back to documented and validated accomplishments in the service territories that provided the revenues, that is based on audited information fully vetted by a qualified third-party auditor which is truly independent, and that results in an open and fair comparison of historical performance of both the utilities and NYSERDA, to provide a legitimate basis for establishment of an efficient and effective system for future ratepayer-supported energy efficiency.

To any who may be inclined to suggest that Central Hudson is motivated by a desire to gain profits or otherwise improve its financial situation, we say: Of course. But we also say more. Most fundamentally, we say that the idea that this case should not merely continue, but expand significantly, the role and ratepayer funding provided to NYSERDA as an incumbent monopolist is inconsistent with the premise of NYSERDA's involvement in ratepayer-funded energy efficiency and with the Commission's most fundamental policies.

developments in the competitive markets, but over time has become essentially a slightly-regulated governmental monopoly for hundreds of millions of dollars of ratepayer-funded energy efficiency. However, significant energy efficiency products and services never really materialized through ESCO providers, the Commission did little to encourage distribution utility energy efficiency programs, and energy efficiency languished as combined-cycle gas-fired generation became the *de facto* energy resource policy of the State.

The *de facto* State policy was rejected however in April 2007, with the issuance of the 15x15 policy. The new policy emphasizes energy efficiency. If it is to be successful, it requires an objective rethink of past practices. It requires the replacement of the anachronistic reliance upon a ratepayer-funded governmental incumbent monopoly energy efficiency supplier with a competitive structure, both to produce the benefits of competition and to be consistent with the Commission's intent and objectives in restructuring the energy industry. Just as the Commission's Competitive Opportunities Case established competition between the ratepayer-supported supply-side incumbents and new providers to facilitate customer choice, a necessary condition to the success of the new State Policy is establishing Commission-supervised competition between the ratepayer-supported energy efficiency incumbent and distribution utilities. Customers should have choices between energy efficiency suppliers. Inasmuch as the last decade convincingly proves that the market will not deliver energy efficiency products and services through ESCOs, this means ratepayer-supported competition between NYSERDA and distribution utilities.[19]

The reasons that the Commission already found insufficient to continue monopoly suppliers of supply-side resources - abrupt change, regulatory commitments ("regulatory compact"), settled expectations of firms and persons, creation of potential job losses, etc. - are equally insufficient as applied to the monopoly provider of energy efficiency products and services. Indeed, it can properly be suggested that reorienting and restructuring NYSERDA is several orders of magnitude less daunting, time-consuming and costly than the previously-mandated supply-side restructuring.

Likewise, the suggestion that customers will find it confusing to navigate competitive energy efficiency

[19] Not coincidentally, customers have clearly told Central Hudson they want to have Central Hudson deliver Central Hudson energy efficiency products and services.

offerings is an incorrect repudiation of the Commission's pro-choice policies and contrary to actual experience demonstrated by the success of the Commission's competitive opportunities-occasioned movement of many customers to competitive supply-side suppliers. Indeed, the frequent emphasis by some on "coordination" is really as a euphemism for control of energy efficiency products and services by a dominant incumbent NYSERDA under the guise of avoiding the supposed customer "confusion." However, the customers who will supposedly be "confused" by energy efficiency offerings are able without an apparent need for "coordination" to chose between competing gas stations located on opposite corners, decide between LCD and plasma TVs, pick a desirable telephone or cell phone plan, and make all of the myriads of choices called for in today's society.

Furthermore, the success of the 15x15 policy hinges not on designing top-down generalized "programs" and imposing "coordination" by remote administrators in Albany, but through locally-oriented, bottom-up, market-driven, insightful utility-administered programs addressing local needs and desires that are not deliberately limited and constrained, but facilitate utilities in having the broadest and deepest roles through providing meaningful and sustained commitments. There are only so many lighting, high-efficiency HVAC and other types of "programs," and the important criteria for successful programs were known years ago when New York utilities helped design and implement what were then the cutting edge ideas that have now become widespread. The key to success is attracting customers to believe in the provider of the products and services through programs oriented towards the realities of products and services in the many varying and diverse local markets that exist throughout the State.

B. Relative Efficiency and Cost-Effectiveness

Some apparently believe that NYSERDA will necessarily be a lower cost provider of energy efficiency products and services than the utilities because NYSERDA does not pay taxes or seek a profit.[20] While there can be no reasonable dispute that NYSERDA's tax exempt/non-profit status provides it with economic advantages simply unavailable to profit-making private enterprise, the proposition that such status differences necessarily produce the most cost-effective results or otherwise require the displacement of utilities by NYSERDA addresses too little and proves too

[20] It appears, however, that some portions of the receipts by NYSERDA are transferred to other parts of the State government.

much. The comparison ignores the relative efficiencies of the two different kinds of organizations and their respective abilities to be successful in the many differing energy efficiency markets across the State. Moreover, we do, after all, have a capitalist society premised on the foundational belief, which has been demonstrated over and over again, that profit-making businesses produce the best outcomes through their innovations, efficiencies and job creation.

One indicator of relative inefficiency was discussed previously: NYSERDA's admissions that it would require three years to fully implement the "fast track" programs it proposed for itself. Profit-driven entities would not limit themselves on such an *a priori* basis, but would be limited only by their assessments of the markets' abilities to absorb the incremental products and services, just as Central Hudson's energy efficiency program is based on its assessment of existing market saturation data and customer preference information developed by Central Hudson as market research data to inform the design focus and development of its efficiency programs.

Another indicator is the relative improvements in indicated cost-effectiveness illustrated by the comparisons of Central Hudson's energy efficiency programs and its Statewide Plan to the Staff "fast track" discussed above.

Furthermore, the Commission's Order Initiating Proceeding in this case provided additional data related to relative cost-effectiveness of NYSERDA in comparison to other authorities and utility providers. The information presented by the Commission is not comprehensive, but it is sufficient to challenge the apparent view of some that NYSERDA administration will necessarily produce the lowest cost path, and to raise questions about NYSERDA's efficiency in relation to both other authorities and utilities alike:[21]

	NYSERDA	NYPA	LIPA	Utilities[22]
Time Period	1998-2006	1987-2006	1995-2005	1990-1996
Reported Expenditures, $ millions	772	1,000	204	1,230
Claimed Savings, GWh[23]	2,362	9,046	5,744	5,744

[21] The expenditure and savings values presented are taken from pages 8-9 of the Order Initiating Proceeding; cost-effectiveness was calculated from those data.

[22] See also, Staff August 28, 2007 New York Department of Public Service Staff Preliminary Proposal For Energy Efficiency Program Design and Delivery at 21: "Total utility spending during the period of 1990-1996 exceeded $1.2 billion and achieved 5,744 GWh of energy savings."

[23] Presumably includes savings claimed from codes and standards.

Resulting Cost Effectiveness, $/MWh Saved	326.8	110.5	35.5	214.3

A further basis for concern about NYSERDA's cost-effectiveness was presented in the November 2007 "letter report" submitted by six state agencies and authorities (NYSERDA, NYPA, LIPA, DEC, DHCR and DASNY) currently administering energy efficiency programs. As was shown in Central Hudson's Statewide Plan,[24] the "letter report" proposes a resource acquisition program savings amount through 2015 of 12,120 GWh at a cost of $6.248 billion, for a cost-effective criterion of $515/MWh of first-year savings for the non-codes and standards portion of the agency/authority proposal.[25] The agencies and authorities also stated in their November 2007 "letter report" that continuation of current programs over the nine year period between 2007 and 2015 would produce an estimated annual electricity savings of 4,740 GWh in 2015, if funded at current 2007 levels through 2015. The total nine year costs associated with these savings were estimated to be

[24] See the "Summary of Results" table.

[25] Excluding the codes and standards portion is necessary to make a valid comparison to utility resource programs as utility programs would not address codes and standards.

$3,134 million, producing a cost-effectiveness of $611/MWh of savings.[26] In relation to costs and savings for new funding, the information presented by the agencies and authorities indicates that the cost-effectiveness would be $422/MWh.[27]

In comparison, Central Hudson's Statewide Plan showed that a comprehensive suite of utility-administered resource acquisition programs could be expected to achieve a cost-effectiveness level of about $300/MWh, exclusive of the "incentive" allowed the utility. In other words, utilities could be provided with "incentives" of about 50% of program costs (far in excess of any likely outcome) and still be more cost-effective than NYSERDA and the other entities admit their future performance (exclusive of codes and standards) is likely to be.

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[26] The six agencies and authorities thus forecast that their future efforts will be about 16% more cost effective than their past efforts.

[27] See November 30, 2007 agency/authority "letter report" at 5: "It is estimated that the four agencies can produce a cumulative annual electricity savings of 7,380 GWh in 2015. The assumed start date for the accumulation of the savings varies for each agency depending upon the date when new funding might be available. The total multi-year cost associated with these savings is estimated to be $3,114 million."

III.
Issue (3):
Reasonableness of Straw
Proposal Cost Estimates

The Straw Proposal applied a constant value of $305/MWh as its estimate of the cost of future NYSERDA and utility energy efficiency programs alike. This value was apparently derived from NYSERDA historical funding levels. It does not appear to have been escalated to current and future dollar equivalents. Moreover, since it is apparent that NYSERDA has not been serving many local markets throughout the State, it is not correct to presume that NYSERDA's past costs could represent future costs in relation to those markets. Accordingly, it is not appropriate to employ that single point value to represent unit costs for the entire 7 1/2 year program.

IV.
Issue (4):
Advisability of Straw Proposal
Targets and Funding Allocations

At a high level, the Straw Proposal reflects an approach to the establishment of "targets" that is similar to that reflected in Central Hudson's Statewide Plan, even though the Straw Proposal does not refer to Central Hudson's Plan. In both cases, the remainder over a base amount of wedges assumed to be produced by NYSERDA was split between NYSERDA and utility administration. In Central Hudson's Statewide Plan, the types of programs were identified explicitly, but in the Straw Proposal they were not. In Central Hudson's Statewide Plan, a simplifying assumption was made that utilities would deliver energy efficiency savings in proportion to their portion of overall energy use in the State, but in the Straw Proposal explicit "allocations" of annual energy savings "targets" were developed (apparently also on an energy ratio basis).

Subject to certain caveats, Central Hudson has no objection to the quantitative energy efficiency savings allocated to Central Hudson for the first three years. The caveats relate to the allocation of accountability in the Straw Proposal but the lack of assuredness as to a means of satisfying that accountability that is acceptable to Central Hudson. While Central Hudson has previously filed detailed programs and supporting information with the Commission, as discussed previously herein, those programs have not yet been reviewed. Moreover, the concepts of "coordination" and program approval articulated in the Staff March 25 Proposals raise significant question as to the extent to which a utility having an allocated responsibility to produce savings will be empowered to achieve that objective, the process and timing for any required regulatory approvals, the flexibility to be provided to the utility to adapt to the market conditions it faces, the extent of a realistic opportunity to profit at a level that fairly reflects the value to society of the goods and services the utility would be required to deliver to achieve its allocated savings "targets," and related matters.

Other aspects of the Straw proposal are not clear. Will, for example, both NYSERDA and utilities be subject to identical types of "targets"? Will the fashion in which divergences between actual and targets apply to both in the same fashion?

As to funding, Central Hudson believes that RGGI receipts by NYSERDA should be allocated to energy efficiency, that NYSERDA should provide budgets in advance and be accountable for results.

Conclusion

Central Hudson's energy efficiency programs should be included in the "fast track."

The March 25 Staff "fast track" programs do not meet the criteria articulated by the ALJs because they cannot be "implemented quickly," nor can the calculated Staff cost-effectiveness values be attained, both due to admitted three years NYSERDA lags in implementation. NYSERDA's existing programs do not reflect best current practices, according to Staff. Implementation of the Staff proposals by NYSERDA will also be complicated by the "enhancements" to existing NYSERDA programs that Staff would require to reflect best current practices.

The energy efficiency programs submitted by Central Hudson that have been transferred to Case 07-M-1139 already reflect best current practices, can be implemented more quickly, have equal or superior cost-effectiveness to Staff's proposals, and have been incorporated into the Central Hudson Statewide Plan.

Staff should have, but failed to evaluate the Central Hudson programs before committing to the NYSERDA programs that predominate in Staff's March 25 proposals because the Central Hudson programs are of equivalent or better benefit/cost ratios and can be implemented more quickly.

The apparently desirable cost-effectiveness of the Staff March 25 "fast track" programs is an artifact of aggressive lighting assumptions adopted by Staff; use of consistent assumptions in the Central Hudson energy efficiency programs produces a superior benefit/cost ratio to Staff's programs.

The premise of Issue (2) is inconsistent with the Commission's pro-competition policies. The anachronism of a governmental monopoly incumbent supplier of ratepayer-funded energy efficiency programs should be replaced with Commission-supervised competition between NYSERDA and the distribution utilities.

The $305/MWh unit cost presented in the Straw proposal has not been properly developed, nor does it appear to be properly applicable in the fashion used in the Straw Proposal.

Subject to caveats described above, Central Hudson does not object in principle to the targets proposed for it for the first three years in the Straw Proposal.

Dated: New York, New York
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APPENDIX

Comparison of Results
Part A. Overall Savings and Unit Costs

	Agency Authority Letter Report[28] (11/30/07)	Central Hudson Statewide Plan (1/18/08)	ALJs Straw Proposal[29] 2/11/08	Staff March 25 Proposals[30] (3/25/08)	Updated Central Hudson State-wide Plan[31] 4/10/08
Cost per MWh	$308	$269	$305	$275	$243
GWh Savings Targeted	20,370	27,500	18,700	27,501[32]	29,152
GWh Unmet Portion of 2015 Target (GWh)	7,130[33]	0	8,800[34]	0	1,652 (Over Target)

[28] Values calculated from the November 30, 2007 "New York State Agencies and Authorities Energy Efficiency Programs," sometimes called the "letter report." Addition of savings and costs for the Current State Agency and Authority Programs, Energy Codes & Appliance Standards, and Proposed State-Administered Fast Track Programs.

[29] Addition of savings from the April 3, 2008 update to the Straw Proposal Technical Appendix (Page 2 - 2015 column). Cost data from Page 19 of the Technical Appendix.

[30] Addition of savings and costs from the April 1, 2008 update to Attachment 4 of the Staff Fast Track proposal at page 2. Note: First two year values used only, since no cost data provided for ACEEE report data in Technical Appendix.

[31] Central Hudson Statewide Plan updated by incorporating the Staff Fast Track's kWh savings value for a CFL (i.e., 94.7 kWh) and ramping up CFL sales to match the 3.0 CFL per household penetration value that Staff forecasts can be achieved. Residential lighting budget more than doubled to reflect these changes. The specific programs incorporated into the Statewide Plan and Updated Plan are supported by the 53 page filing of supporting analyses and calculations filed by Central Hudson in Cases 05-E-0934 and 05-G-0935.

[32] Made up of 1,693 GWh of 2008-2009 period forecast savings and 25,808 GWh of forecast savings extrapolated by Staff through 2015.

[33] Assumed to be filled by utilities or others.

[34] The Straw proposal reduced the forecast 2015 energy use and adopted a corresponding reduction in the 15x15 "targets."

Part B. Relative Allocations of Savings

	Agency Authority Letter Report (11/30/07)	Central Hudson Statewide Plan (1/18/08)	ALJs Straw Proposal 2/11/08	Staff March 25 Proposals (3/25/08)	Updated Central Hudson State-wide Plan 4/10/08
Portion Assumed produced by Utilities	25%	32%	19%	15%	36%[35]
Portion Assumed Produced by NYSERDA	36%	32%	22%	85%	31%
Portion Assumed Produced by Others	39%	36%	57%	0	33%

[35] Utility portion appears higher due to the artifact that the application of the Staff assumptions to central Hudson's programs improved the cost-effectiveness sufficiently to produce an additional indicated 1,652 GWh in savings. Eliminating the excess would produce allocations more closely approximating 1/3, 1/3, 1/3.

Comparison – Current NYSERDA Programs & Staff Fast Track Programs

Program	Description of Current NYSERDA Program	Description of Fast Track Program	Timing/Comments
1. New Building Construction – Single and One to Four Unit Multi-family Housing *(electric and gas)*	Two current programs: 1.) New York ENERGY STAR® Labeled Homes (enhanced version of US EPA program) 2.) Multi-family New Construction (recently launched)	Expanding the ENERGY STAR® Labeled Homes program by expanding marketing to builders and home buyers through usage of utilities (e.g., customer referrals and promotion of HERS scoring system) and Department of State (e.g., builder and contractor training).	Marketing ramp up of <u>enhanced</u> program; Requires contractor training
2. Statewide Residential Point-of-Sale Lighting Program *(electric)*	NYSERDA has run a market transformation program for residential lighting from 1999-2007 partnering with retailers to increase stocking of CFLs, promote these products, and partner with fixture manufacturers to cost-share incentives paid to retailers.	Increased efforts to buy down the cost of energy efficient lighting products and increased marketing. **Potential** introduction of short-term (i.e., expire in a few months) in-store coupons provided to consumers in their electric bills. **Potential** development of lighting catalogs.	Marketing, retailer stocking, and **possible** coupon production ramp-ups
3. Residential ENERGY STAR® HVAC and Efficient Gas Equipment *(mostly gas, some electric)* ***<u>(To be administered by utilities)</u>***	Currently only a subset of New York gas utilities offer a point of sale program for residential gas appliances.	Statewide eligibility and incentive levels to be set the same for all gas utilities. Utilities to make incentives available directly to customers or upstream for the purchase of high-efficiency furnaces, boilers, central-air conditioners and water heaters. Increased and expanded NYSERDA marketing efforts.	Utility program implementation and NYSERDA marketing ramp ups
4. Home Performance with ENERGY STAR® *(electric and gas)*	Current residential home-audit program recommending comprehensive energy efficiency improvements. Contractor and customer incentives.	Increase budget of <u>enhanced</u> program. Also, increased promotion to look to double the size of the program in 2 years.	Increased budget for <u>enhanced</u> program; Requires workforce development
5. Low Income Residential Energy Efficiency and Weatherization *(electric and gas)*	DHCR administers the federally funded Weatherization Assistance Program (WAP). NYSERDA supplements this program through their EmPower New York program.	Expand funding for <u>enhanced</u> programs. Also, NYSERDA, DHCR, DPS Staff, and others to identify any **potential** changes to effectively leverage program funding.	Increased budget for <u>enhanced</u> program; Requires workforce development
6. Multifamily Building Home Performance with an Emphasis on New York City *(electric and gas)*	NYSERDA revamped its multifamily building program in May 2007. Most NYSERDA programs have previously dealt with townhouses and low-rise buildings.	NYSERDA to implement their recently redesigned program with New York City and utilities actively marketing the program.	Marketing ramp up of recently redesigned program

Comparison – Current NYSERDA Programs & Staff Fast Track Programs

Program	Description of Current NYSERDA Program	Description of Fast Track Program	Timing/Comments
7. New Commercial Buildings – Whole Building Design *(electric and gas)*	NYSERDA's High Performance New Buildings currently provides technical assistance and financial incentives on a performance-based scale. Incentives are determined by total electricity savings and are tiered to reward progressively better energy efficient new building designs.	Increased program marketing and outreach of <u>enhanced</u> program through utility involvement. Possibly increase incentives to match New England's levels. Increase Department of State involvement with administering training.	Marketing ramp up of <u>enhanced</u> program; No formalized plan created to administer training
8. Small Business Direct Installation Program *(electric and gas)* ***<u>(To be administered by utilities)</u>***	NYSERDA currently has a small business direct installation program serving only small businesses in Central New York and the Finger Lakes region.	Statewide plan to be developed based mainly on successful National Grid program in New England. Utility-administered program to initially target C&I customers with monthly peak demand under 100kW. A 70/30 cost split has been proposed in which 70% of the efficiency measure funding will be provided by the utility and 30% paid by the customer.	Utility program implementation ramp up
9. Existing Commercial Buildings *(electric)*	NYSERDA currently offers the C&I Performance Program and Peak Load Reduction program. Three tiers in the program provide pre-qualified incentives for equipment, kWh saved incentives, and performance-based financial incentives for contractors. Program focuses on commercial real estate, health care, lodging, education, and state building sectors.	Increased budget to permit many more buildings to be served and to increase marketing through utility involvement. Concentration on building sub-sectors and promotion of retro-commissioning are major goals to enhance the program.	Marketing ramp up of <u>enhanced</u> program; Requires workforce development
10. Flex Tech Including Industrial Process Improvements *(electric and gas)*	NYSERDA Flex Tech Technical Assistance program currently provides customized energy efficiency analysis. Customers are eligible for walk-through energy audits, with the cost share reimbursed upon implementation of recommendations.	Expansion of existing program with more funding.	Increased budget for <u>enhanced</u> program