

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

**Case No. 07-M-0548 – Proceeding on Motion of the Commission  
Regarding an Energy Efficiency Portfolio Standard**

**Reply Comments by the City of New York**

**April 18, 2008**

The City of New York (“City”) hereby responds to briefs and comments submitted in this proceeding on April 10, 2008 by various parties as further identified and discussed below.

### **I. Timing and Structure of Accelerated Program Proposals**

Despite the unsupported claim of the NAESCO representative, the City of New York does not see so-called Fast Track programs as “a threat to preclude [its] longer-term program administration proposals ...and plans.” (NAESCO at p. 3)<sup>1</sup> Inaccurately ascribing alleged motivations to parties does nothing to advance the mutual process in which we are all engaged.<sup>2</sup> The City is motivated solely by a desire to see the implementation of an optimal and comprehensive energy efficiency plan for the State of New York – and not incidentally, in New York City as the State’s most critical and most constrained energy market.

Also of concern is the view expressed in some quarters that the bridging or interim EEPS programs should be put into place for a period of two and one half years, or even longer (NYSERDA at pp. 3-4). The City disagrees with this view. While presented under the mantra of program continuity, the practical effect of such an extension would in fact be to institutionalize such interim programs over the long term. Despite references to the importance of the regulated utilities in the EEPS process visualized by DPS Staff, the utilities

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<sup>1</sup> Unless otherwise noted herein, all references to party briefs or comments filed herein refer to those submitted on April 10, 2008.

<sup>2</sup> NAESCO also advances a classic straw man argument by referring to the alleged dangers of Commission “funding allocations” for the New York City Partnership proposed in this case (NAESCO at p. 7). No such funding was referenced in the January 11, 2008 Consensus Proposal, and none has been sought. Hence, any purported lessons cited by NAESCO from California concerning such arrangements are entirely irrelevant to this proceeding.

are assigned only a relatively minor role in the bridging programs.<sup>3</sup> The combination of these two positions would in practice lead to the exclusion of the utilities from significant efficiency efforts – an outcome that the City views as both undesirable, and highly unlikely to advance the stated energy goals of the City and State. There must be a broad, coordinated, and expedited effort involving all parties capable of delivering large-scale efficiency programs – and that inevitably will mean significant utility participation, as experience in numerous other jurisdictions from New England to California has shown.

Staff contends that NYSERDA is ideally positioned by reason of its SBC funded program incumbency position to rapidly develop enhanced offerings, in some cases by the simple expedient of providing significant additional funding for existing measures. While this position has merit, there is no basis on which to extend the bridging programs beyond a maximum period of 12 to 18 months. Any implementation beyond that period as suggested by NYSERDA would belie the very purpose of “interim” or “bridging” efforts, and could well be damaging given the likelihood that it would tend to fix in place programs that are intended by their own terms to be only temporary (including some that have to date had only limited success, as Staff recognizes), and that also may prove to be ineffective or suboptimal once all interested parties have had a chance to experience them in practice.

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<sup>3</sup> The attachment provided with the submission of NRDC and associated parties illustrates this point in graphic fashion (NRDC *et al.*, Attachment 1). Moreover, some parties apparently see the appropriate utility role as primarily providing customer data information to other providers such as NYSERDA and its own contractors (TRC at pp. 4-5). Customer data access issues ultimately will need to be addressed by the Commission, as was discussed by a number of parties at the December 14, 2007 plenary session in this proceeding. But to suggest that this function, along with marketing efforts, constitutes the sole or even primary efficiency program role for utilities is to take an unduly narrow and circumscribed view of their capabilities.

In addition, as was observed by Central Hudson (“CH”) at p. 5, it would risk converting what were formerly fast track proposals into “presumptively permanent default programs.” This concern voiced by CH is only heightened by the DPS Staff contention that the bridging proposals, were they to be extended through 2015, would themselves suffice to meet the State’s 15 by 15 goals for Commission jurisdictional entities (Staff at p. 3).

A bridging period of approximately a year would allow ample time to fairly and rationally allocate program responsibility between NYSERDA and the utilities, and other potential efficiency program providers. If any longer period for bridging programs is contemplated in this proceeding, it will be necessary to involve the regulated utilities in a far more central role than that consigned to them in the March 25, 2008 Staff Report.

## **II. Efficiency Programs Proposed by Utilities**

A number of parties in this proceeding – and also certain Commissioners speaking in recent open Public Service Commission sessions – have suggested that the utilities need to come forward with detailed efficiency program initiatives. That has now occurred, as can be seen in the April 10<sup>th</sup> filings by Central Hudson (referencing its earlier detailed submission under Case 07-M-1139), Con Edison, and National Grid. While the April 14, 2008 Ruling Concerning Reply Briefs and Utility Energy Efficiency Plans in this matter stated that the current briefing process is not the forum for consideration of newly submitted efficiency plans, the City urges that these proposals nevertheless be given prompt consideration in this proceeding. In light of the ruling, the City will not discuss them at length here.

We note, however, that an early review of the proposals, even if necessarily undertaken outside of this briefing round, will likely reveal plans that can be readily adopted, even over the course of a relatively short-term plan. Moreover, the detailed submissions

received to date (and those that may follow) will in large part meet the requests of a number of parties that the utilities provide particularized information concerning their efficiency program plans and projections (*e.g.*, NRDC/Pace Energy & Climate Center/AEA at pp. 5-7; Joint Supporters at p.11; City of New York at p. 3).

More generally, concerning the value of competing programs, the City agrees with the view expressed by Central Hudson that in the absence of significant ESCO efficiency programs, the primary program providers across the State will be NYSERDA and the distribution utilities (CH at p. 26). Efficiency program development will only be enhanced by the use of competing efforts by these entities in order to ascertain which programs are in fact the most effective (CH at pp. 24-27 *passim*). This stands in contrast to the view that competing program efforts will only engender customer confusion (*e.g.*, NYSERDA at p. 9), suggesting that the use of diverse efficiency providers and programs should not be encouraged, no matter how ambitious the 15 by 15 goals may be. And as Central Hudson points out, the Commission has encouraged competitive rivalry in a number of other regulatory contexts (CH, *Ibid.*).

For the City, there is no necessary conflict between the goals of ensuring clarity for energy customers, and the recognized value of program competition, and the innovation and increased customer choice it will almost certainly engender. Accordingly, the City urges the use of multiple programs and program providers, particularly during the early stages of the EEPS program expansion, when there will undoubtedly be numerous lessons learned by all parties concerning relative program effectiveness and associated costs.

### **III. Concerns Related to Staff's Recommended Program Details**

Certain parties expressed concerns over Staff's rate and bill impact calculations (National Grid at pp. 15-17; NRDC *et al.* at p.10-11), and urged the need to: 1) look beyond easily achieved early measures such as incandescent lighting replacement, and 2) revise upward expenditure expectations to more plausible levels based on the experience gained in other states, as cited by National Grid and others. The City agrees, and in fact made a very similar point in its initial brief herein (City at pp. 9-10). Similarly, NRDC *et al.* observed that the computation of bill impacts must fully reflect the expected benefits from greater efficiency, including reduced consumption bills for consumers, and lower stress placed on the T&D network (NRDC *et al.* at pp. 10-11).

The NRDC parties noted the importance of efficiency-related reductions at times of peak demand (NRDC *et al.* at p. 11), a point also made by the Joint Supporters in their recognition that issues of peak demand savings must be addressed: "there is virtually nothing on the EEPS record that speaks to peak demand savings" (Joint Supporters at p. 8). The City is largely in agreement with these observations, and suggests that any final outcome of this proceeding include an element that takes fully into account such issues as targeted demand response and hourly pricing, which will be facilitated by the expected wide dissemination of advanced interval meters,<sup>4</sup> and the expansion of mandatory hourly pricing ("MHP").<sup>5</sup>

Certain parties also raised the issue of undue reliance on codes and standards in the Staff proposal or overestimation of the benefits likely to be derived from them (Joint

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<sup>4</sup> See Commission Order Requiring Filing of (Con Edison) Supplemental Plan in Cases 94-E-0952, 00-E-0165, and 02-M-0514, conditionally authorizing the installation of approximately 400,000 advanced interval meters in the counties of Westchester and Queens (Issued and effective December 19, 2007)

<sup>5</sup> See, *e.g.*, Commission Order Establishing Rates for Electric Service, Case No. 07-E-0523 at pp. 63-68, authorizing the expansion of the future MHP tariffs for Con Edison (Issued and effective March 25, 2008)

Supporters at p.10; NRDC *et al.* at p.13) – a risk that the City also cited in its initial brief, given that it is a somewhat elastic category that offers a seemingly facile solution to any potential shortfall in projected achievement of efficiency targets. The City concurs that codes and standards are potentially among the most cost effective approach to achieving energy efficiency in the long term. In practice, however, extensive code modifications may prove to be laborious and lengthy. Updating such codes and standards is inherently complicated, and typically occurs on a lagged basis.

For example, New York State is currently working on amending the New York State Energy Conservation Construction Code (“ECCC”), which is due to take effect in 2009. However, this code revision will apparently reference only American Society of Heating, Refrigerating and Air-Conditioning Engineers (“ASHRAE”) 2004 standards, as compared to the current best practices standard of ASHRAE 2007. Further, the level of implementation and compliance reportedly is uncertain, due to both limited funding and language in Article 11 of the current Energy Law, which limits the applicability of the ECCC due to broad exclusions for modifications to existing buildings. Thus, while the 2009 ECCC would bring New York State up to a national standard, it will not reflect the latest ASHRAE requirements needed to fully support New York’s efforts to achieve 15 by 15. That said, we must note that there are extensive code revision efforts now ongoing in the City – some of which have already borne fruit,<sup>6</sup> and integration with those programs in any State code and standard

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<sup>6</sup> City Introductory Number 578-A, signed into law on July 3, 2007, comprehensively addressed a new City Code for the first time since 1968, including a new Building, Mechanical and Fuel Gas Code, as well as revised provisions for their administration and enforcement; the City also recently promulgated a new rule permitting microturbine systems to be installed in residential and commercial buildings on roofs, at grade level, and in appropriately designed interior mechanical rooms (Rule issued December 3, 2007).

alterations will clearly be advisable. This has already begun, as City Mayoral office representatives have been participating in the State code revision process.

Moreover, as one commenting party pointed out (Joint Supporters at p.10), existing building stock and associated energy related equipment is likely to be replaced rather slowly, thus limiting the effects of code and standard improvements. Code alterations in particular offer the prospect of both eliminating existing barriers to efficiency, and creating affirmative mandates in such areas as new construction that can have a transformative effect on broad market sectors. But as parties such as NRDC and the Joint Supporters have observed, we must take a realistic view of the likely pace and impact of those changes against the 2015 deadline established by the State. In contrast, the City's PlaNYC timeline runs to 2030, which allows significantly greater lead time to benefit from the cumulative effect of comprehensive code and standard revisions.

#### **IV. Continuing Issues Concerning Program Administration**

Con Edison points out what it views as the failings of NYSERDA in the New York City market (Con Edison at pp. 18-20). The City and other parties have made observations concerning the need for NYSERDA to exert greater efforts in the City (City at pp.10-11). Certain other parties have staked out contrary positions, suggesting that NYSERDA, acting largely alone, is best positioned to achieve major efficiency gains. For example, TRC – a major NYSERDA contractor – urges a course that would reduce the utilities to a largely subsidiary role (TRC at pp. 5-6), and argues against the very reasonable and well supported Staff recommendation for a post-Order collaborative to fully address multifamily residential issues (TRC at p. 2). It is not enough to simply laud NYSERDA programs and to imply that

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no further collective wisdom from the parties is needed to fully address the needs of what has been an underserved market, as Staff, Con Edison and others have rightly observed.<sup>7</sup>

NYSERDA's current Multifamily Performance Program ("MPP") does show great promise in New York City, and represents a signal improvement over previous residential programs offered by the Authority, which as Staff has recognized, achieved relatively few results outside the low income sector. Multifamily Performance has attracted numerous contractors across the City as Partners, and they in turn offer the prospect of greater efficiency oriented involvement in the multifamily market sector by a wide range of buildings. Moreover, the City shares the view (TRC at p. 2) that there is a clear need for greater board latitude in adopting efficiency programs to be permitted by the Commission, and welcomes the opportunity to work with NYSERDA and its MPP Partners to advance such goals.

Commendably, NYSERDA has also recently recognized the need for greater and more equitable programmatic efforts in the City,<sup>8</sup> which we also welcome. There is a genuine prospect for a mutually beneficial relationship with the City, the regulated utilities, and other parties – one that could materially advance our respective efficiency and carbon

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<sup>7</sup> TRC identifies what it characterizes as "exemplary" NYSERDA programs, and cites the fact that a national energy efficiency organization, ACEEE, recently recognized NYSERDA's Multifamily Performance Program ("MPP") with an award (TRC at p.1). NYSERDA is a major sponsor of ACEEE. As the Multifamily Performance program was initiated less than a year ago, and understandably has to date demonstrated no measurable efficiency achievement results, the actual significance of this award is somewhat unclear.

<sup>8</sup> "Recent and ongoing growth of the service delivery infrastructure in the Con Edison service territory is expected to correct [an SBC funding] imbalance over the next year or two. In future reports, NYSERDA will report on progress made toward achieving a better balance between service territory collections and spending." NYSERDA New York Energy Smart Program Evaluation and Status Report, Year Ending December 31, 2007, Report to the System Benefits Charge Advisory Group, at p. 2-5 (issued March 2008)

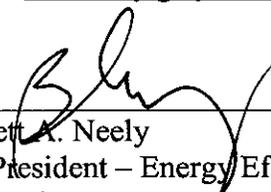
reduction goals. Doing so, however, will of necessity mean full involvement by all parties that can demonstrate the capabilities necessary to provide effective efficiency programs.

In the very near term, that will likely mean greater NYSERDA involvement as advocated in the March 2008 Staff Report. Importantly, however, over time there must be a full coordinated role for other parties, most notably the regulated utilities, in any 15 by 15 implementation plan that offers the prospect of success.

Dated: April 18, 2008

Respectfully submitted,

  
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Michael J. Delaney, Esq.  
Director – Energy Regulatory Affairs  
NYCEDC  
110 William Street, 4<sup>th</sup> Floor  
New York, New York 10038  
Phone: (212) 312-3787  
E-mail: [mdelaney@nycedc.com](mailto:mdelaney@nycedc.com)

  
\_\_\_\_\_  
Bridgett A. Neely  
Vice President – Energy Efficiency  
NYCEDC  
110 William Street, 4<sup>th</sup> Floor  
New York, New York 10038  
Phone: (212) 312-3938  
E-mail: [bneely@nycedc.com](mailto:bneely@nycedc.com)