STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

REPLY BRIEF

of the

NEW YORK STATE ENERGY
RESEARCH AND DEVELOPMENT AUTHORITY

April 18, 2008

INTRODUCTION

In response to the Ruling issued on April 3, 2008[1] in the above-referenced proceeding, the New York State Energy Research and Development Authority ("NYSERDA") submits this Reply Brief, with respect to the following issues raised by various parties in their Initial Briefs.

Interregional Equity

In their Initial Brief, Con Edison and Orange and Rockland question whether the NYSERDA programs included in the Staff Report are in fact fully-subscribed within their service territories, and assert that no additional funding should be approved until it can be demonstrated that the customers within their service territories are "obtaining their fair share of the current funding levels." The Companies base their claims on the ratio between System Benefits Charge (SBC) program collections and expenditures within their service territories, and on NYSERDA's performance in administering the System-Wide Program ("SWP"). Specifically, the Companies claim that "NYSERDA is supposed to seek to achieve regional parity in its allocation of SBC funds, and it should have been able to do so if programs were oversubscribed in Con Edison's service territory," [2] and that "if programs were oversubscribed in Con Edison's service territory, NYSERDA would have been able to spend all of the $112 million for programs that it was allocated" under the SWP.

The Companies' position appears to be based on the presumption that the objectives of the SBC, SWP and EEPS programs are identical, though the Commission's statements on the objectives of the three programs suggest otherwise. For instance, in its Order instituting the EEPS proceeding, the Commission stated the goals of the EEPS program as allowing the State to meet the goal of reducing New York's electricity usage 15%

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[1] Case 07-M-0548, Proceeding on Motion of the Commission Regarding and Energy Efficiency Portfolio Standard ("EEPS"), "Ruling Extending Briefing Schedule and Revising Filing Requirement," issued April 3, 2008.

[2] Initial Brief of Consolidated Edison Company of New York, Inc., and Orange and Rockland Utilities (Con Edison/O&R Initial Brief), pp. 17-18.

from expected levels by 2015.[3] The SWP was adopted for the purpose of procuring MW of demand reduction.[4] The SBC program, by contrast, was created for the broader purpose of preserving a variety of public benefit initiatives, including energy efficiency, research and development, environmental protection and low-income" programs.[5]

The policy directives established by the Commission with respect to NYSERDA's administration of the System Benefits Charge (SBC) program, make clear that the broad public policy objectives of the program are statewide in nature, and those policy objectives were not meant to yield to the pursuit of mathematical parity among service territories. In renewing the SBC program, the Commission stated that:

> While we recognize the need for overall balance**,** the multiple variate needs addressed by the SBC program are not limited to any particular geographic section of the State, and in any event, when it comes to public benefit programs, each individual customer is not guaranteed an exact and direct one-for one return on any monies paid. The basic commonality of how our society functions allows us to pool our resources in the SBC program. By doing so, we have successfully reduced electric usage and demand, saved more money than we have spent, leveraged additional investment, reduced air pollution and climate-altering emissions, and created jobs. All of our society benefits because of these things . . . [r]equiring a "one-for-one" arrangement would inherently jeopardize the effectiveness of the SBC program by directing funding towards lesser programs simply for the sake of mathematical parity. [6]

Within the flexibility provided by the Order, NYSERDA continues to make every effort to achieve regional parity in program delivery. NYSERDA uses local contractors, who know their customers, to deliver services within markets, and adjusts incentives within markets to meet regional needs as warranted. NYSERDA also tailors outreach,

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[3] Case 07-M-0548 Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio Proceeding, "Order Instituting Proceeding," issued and effective May 16, 2007, at p. 2.

[4] Case 04-E-0572 Proceeding on Motion of the Commission at to the Rates, Charges, Rules and Regulations of the Consolidated Edison Company of New York, Inc. for Electric Service, (Order Adopting Three-Year Rate Plan," issued and effective March 24, 2005 (Joint Proposal at p. 61).

[5] Case 94-E-0952, In the Matter of Competitive Opportunities Regarding Electric Service, Opinion No. 98-3, "Opinion and Order Concerning System Benefits Charge Issues," issued and effective January 30, 1998, at p. 1.

[6] Case 05-M-0090, In the Matter of the System Benefits Charge III, "Order Continuing the System Benefits Charge (SBC) and the SBC-Funded Public Benefit Programs," issued and effective December 21, 2005, at pp. 8-9.

education and marketing to the region, and makes program adjustments in response to changing market conditions. In recognition of the challenges faced in its attempt at regional parity and in order to better serve and educate downstate energy customers, NYSERDA has undertaken a New York City-focused study to research ways to increase participation in NYSERDA's programs in New York City and Westchester County. A final report is expected to be completed in Fall 2008. NYSERDA notes that Con Edison has also undertaken its own market research using "significant resources" in developing its energy efficiency business plan, despite continuing claims that it knows its customers and market territory best.[7]

While the SBC portfolio of programs has been designed to address the needs of energy consumers in all service territories, the expenditure of SBC funds depends, in the final analysis, on the response rate of customers. It has been NYSERDA's experience that the response rate has been highest in those regions where the utilities have entered cooperative marketing and outreach arrangements with NYSERDA – particularly for low-income programs – and where the utility has supplemented NYSERDA's marketing efforts. For example, the EmPower New York^{SM} low-income program has been most successful in regions where the utility refers payment-troubled customers to NYSERDA. Con Edison has thus far declined to provide such referrals, which has delayed the provision of these services to Con Edison's customers. Now that NYSERDA has identified alternative referral mechanisms, NYSERDA anticipates that the Empower New York^{SM} program participation rate in Con Edison's service territory will increase, and more Con Edison customers will be able to receive the intended services.

With regard to the SWP, NYSERDA was allocated a target goal of 150 MW of demand management, with a not-to-exceed budget of $112 million, or $746 per kW. As of January 15, 2008, NYSERDA has acquired 171 MW in resources at a cost of $61 million, or $357/kW. The program is thus oversubscribed with respect to the goal, which was to achieve 150 MW of reductions. NYSERDA does not view the goal of the program to spend every ratepayer dollar in the budget.

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[7] Con Edison/O&R Initial Brief, at p.4.

While participation in individual programs varies among the utility service territories, the NYSERDA programs included in the Staff Report continue to be fully subscribed, on a Statewide basis. Consistent with the policy directives of the SBC program, NYSERDA does not turn away customers from one service territory because of slower participation rates in another.

NYSERDA will, of course, comply with whatever directives the Commission may establish under the EEPS regarding the relationship of collections and expenditures to regions and ratepayers.

Inter and Intra-Class Equity

In its Initial Brief, with respect to issues of inter and intra-class equity, Multiple Intervenors urges the adoption of rules that would require the cost of EEPS programs to be allocated only to the classes of customers who may participate in or directly benefit from those programs.[8] As we stated in our Initial Brief, we do not disagree that ratepayers should be treated equitably with regard to funding. However, all ratepayers benefit from energy efficiency because it benefits the environment, dampens commodity prices, and allows for the avoidance or delay of infrastructure investments. We also continue to have concern regarding the practical implications that might result from an overly prescriptive approach. Any rules that may be considered for adoption in this regard should be developed with due consideration to actual implementation, beginning with the collections process and continuing through to the process of evaluation and reporting.

Integrating Gas and Electric Programs

NYSERDA supports Staff's recommendation that the Commission establish a gas efficiency funding stream.[9] As NYSERDA asserted in its Initial Brief, integrated electric and gas funding would improve program delivery, increase the penetration of

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[8] Initial Brief of Multiple Intervenors, at p. 30.
[9] Initial Brief of the Staff of the Department of Public Service on Bridging Programs and Issues, at p. 6-7.

both electric and gas energy efficiency, and reduce costs and the customer confusion created by splintered programs.[10] In order to effectuate the benefits of integration, gas efficiency funding should be made available to the administrators of the electric efficiency programs, at a level that is commensurate with the amount of potential gas savings that are achievable under the individual programs.

The Overall EEPS Program

The Initial Briefs filed by some utilities object to the Staff Report as "predetermining" how the State will seek to achieve 15 x 15 goal, through the adoption of "long-term default programs" that would, in effect, foreclose the opportunity for other program administrators to participate in the EEPS effort.[11] NYSERDA disagrees with this characterization of the Staff Report, which clearly anticipates and encourages new proposals, and provides a process through which any prospective program administrator may propose programs for approval.[12] Should that process be adopted, NYSERDA supports the recommendations offered by NAESCO in its Initial Brief regarding the content of proposals, the review process, and the incremental approach to the funding of new programs.[13]

Implementation v. Installation

Central Hudson challenges whether the selection of existing NYSERDA-administered programs is consistent with Staff's claim that those programs can be "implemented

[10] Initial Brief of New York State Energy Research and Development Authority, at pp. 4-6.
[11] Con Edison and O&R Initial Brief, at p. 20 and Central Hudson Initial Brief, at p. 4.
[12] The Staff Report states that "...we fully expect that market players will come up with even better ideas that will obtain more energy savings with higher benefit/cost ratios than the programs we have identified. Staff encourages interested parties to work collaboratively to develop strategies to ensure smooth operation of the long term implementation effort;" and that Staff "uses 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." (Staff Report at p.3).
[13] Initial Brief of the National Association of Energy Service Companies Initial Brief, at p. 5-7.

quickly," because of a "three year NYSERDA lag in implementation.[14] Central Hudson bases its challenge on information provided to Central Hudson, at its request, with respect to NYSERDA's November 1, 2007 Letter Report.

The "three year lag," Central Hudson points to, however, was not a program implementation lag, but rather a project installation or completion lag, which is a simplified way of accounting for the longer installation time requirement for larger, more complex commercial, industrial and multi-family energy efficiency projects. In other words, some projects yield savings in year one, while others are not installed and do not produce measurable, verifiable savings until years two or three. The "20-40-40" assumption[15] included in the information provided to Central Hudson reflects the anticipated timeline for actual energy savings to accrue, not the timeline for implementing the program, which NYSERDA is prepared to do at least as quickly as the timeframes anticipated by the Staff Report.

Finally, it must be noted that this "project completion lag" is not a NYSERDA inefficiency or self-imposed limitation, as claimed in Central Hudson's Initial Brief.[16] It is simply a realistic reflection of the amount of time it takes to complete construction projects. If Central Hudson, or any other entity, were to administer an energy efficiency program supporting the installation of energy efficiency measures in large long-duration projects, the experience of a lag in realized savings would be the same. No program administrator can install a measure before the building into which it is to be installed is constructed.

<u>The CFL Expansion Programs</u>

Central Hudson claims that, over the past eight years, NYSERDA has achieved savings of 30 GWh/year through its ENERGY STAR® market transformation lighting

[14] Brief on Behalf of Central Hudson Gas & Electric Corporation on Four Specified Subjects at p. 8, 10-13; Staff Report at p. 3.
[15] This phased installation schedule does not apply to most residential programs.
[16] Central Hudson Initial Brief, at p. 29.

products program, and that, therefore, Staff's projections of 318 GWh/year for the recommended CFL expansion bridging programs are unreasonable. Central Hudson also questions the need for a market transformation program to drive sales of CFLs given the new federal requirements, which begin to phase in 2012.[17]

In fact, lighting has been a significant focus of NYSERDA's market transformation ENERGY STAR Products program for only the last three years, and as was reported in the May 2007 SBC Quarterly Report, NYSERDA achieved savings of 358 GWh for lighting alone in the two-year, 2005-2006 timeframe.[18] Savings by the program in 2006, including lighting and appliances, exceed 220 GWh, not the 30 GWh as stated by Central Hudson. Given the increased funding for the CFL expansion programs recommended by the Staff Report, the projected savings are realistic.

In the earlier years of the Program, CFLs suffered from poor performance. NYSERDA, in concert with several other program administrators nationally, worked with the ENERGY STAR program to enact improved standards, and also to participate in a testing program to verify that manufacturers claiming to have met those standards were doing so. NYSERDA began to aggressively promote ENERGY STAR CFLs only after improved ENERGY STAR standards drove significant improvement in performance – and broader acceptance of those products by consumers was expected.

Non-ENERGY STAR CFLs, which meet the federal standards on a wattage basis, continue to have performance issues, particularly due to the use of low-cost components, and consumers continue to need education on the value and benefit of ENERGY STAR CFLs, as well as how to select "the right bulb for the application." Further, while manufacturers are currently developing new incandescent products that may meet the new federal requirements, but still use more energy than ENERGY STAR CFLs, the NYSERDA program is specifically limited to ENERGY STAR products. Driving up

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[17] Central Hudson Initial Brief, at 19-20.
[18] **New York Energy Smart[SM]** Program Quarterly Evaluation and Status Report, Final Report (May 2007), pp. 5-11,12.

sales of ENERGY STAR CFLs prior to 2012 will result in incremental savings, and will ensure that New York State has an adequate supply of high-quality ENERGY STAR CFLs, which in turn will also help drive down prices of those products.

RGGI Funding

The recommendation by some parties that the EEPS program rely on the use of funding derived from the Regional Greenhouse Gas Initiative is, at this point, premature. First, the "RGGI Rules"[19] have not been adopted by either NYSERDA or the Department of Environmental Conservation ("DEC"). Second, assuming the rules are eventually adopted, the materialization of any funds will await the completion of an allowance auction, which may be scheduled to occur months later. Despite the projections of some parties, the amount of funds that will be generated, in the first auction as well as succeeding auctions, is inherently unpredictable. In addition, if the rules are adopted and funds are realized, the use of those funds will be governed by the terms of the RGGI program, which may have program elements that differ from those of the EEPS.[20] The rules provide that a stakeholder group will be convened to assist in the preparation of a program plan to guide the use of the funds.

The reliance on the materialization of RGGI funds, in any amount, in the bridging program timeframe is therefore inadvisable, given the uncertainty surrounding the RGGI program and the immediate need to begin pursuit of the 15 x 15 goal. NYSERDA recommends that the matter be "tabled" until such time as RGGI funds become available for purposes that will support the EEPS goals.

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[19] See proposed Part 242 to Title 6, NYCRR, the CO_2 Budget Trading Program, and proposed Part 507 to Title 21, NYCRR, the CO_2 Allowance Auction Program. The express terms of each rule, as well as additional regulatory documents and information, are available on the websites of the respective agencies.

[20] Section 507.4(e) of the proposed CO_2 Allowance Auction Program provides that "the proceeds of the auctions will be used to promote and implement programs for energy efficiency, renewable or non-carbon emitting technologies, and innovative carbon emissions abatement technologies with significant carbon reduction potential."

CONCLUSION

We appreciate the opportunity to provide our views on these issues, and look forward to working with the Judges and parties in the continuing EEPS effort.

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Respectfully submitted,

/s/

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