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January 25, 2008

ALJ Eleanor Stein
ALJ Rudy Stegemoeller
NYS Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Re: Case 07-M-0548 - Energy Efficiency Portfolio Standard -
STAFF RESPONSE TO EPS ADMINISTRATION CONSENSUS
RECOMMENDATION AND STAFF END-STATE VISION

Dear Judges Stein and Stegemoeller:

Department of Public Service Staff (DPS Staff) welcomes this opportunity to comment on the "EPS Administration Consensus Recommendation" filed on January 11, 2008. We believe that the Consensus Recommendation is fatally flawed because its adoption would lead to splintered accountability, no common look and feel to programs, a severe loss of efficiency compared to the current energy efficiency program administrative and delivery situation, and lack of clarity regarding which programs the Commission would be approving. Furthermore, for programs other than Staff's 2008 and 2009 interim (fast track) proposal, the proposed administrative process would

probably not allow new programs or programs with substantially reconfigured administration frameworks to hit the street until late 2009 at the earliest, more than two and one-half years after the beginning of this proceeding. This is unacceptable, especially given the release of the Executive Budget, which designates as the top 2008 priority of the Department delivering programs that actually begin the drive towards the 15 by 15 goal.

For the reasons discussed below, Staff believes that there is a compelling need for quick approval and implementation of Staff's interim program for an 18-month period while the appropriate involvement of potential program administrators for the long-term, permanent energy efficiency program is sorted out.

It is important to remember that the proposed interim program, while critically important, by itself can achieve only a modest percentage of the 15 by 15 goal. Interim program measures still in place by 2015 would result in approximately 1,500 GWH savings on an annual basis. This is less than six percent of the 23,820 GWh sales reduction goal (based on Option 2 presented by Working Group 3, which assumes that only measures installed after January 1, 2007 count toward the goal) for 2015. Therefore, the Commission could adopt Staff's proposal without preempting the adoption of evolution of a longer term EPS governance framework and achieve meaningful energy savings in the near term. The price impacts associated with Staff's proposal for 2008 and 2008 are manageable.

Attachment 1 illustrates the potential rate impacts associated with Staff's proposal for an interim program.

Staff firmly believes that the utilities should play a key role in the delivery of energy efficiency programs as part of the long-term, permanent EPS Program, but the Consensus Recommendation is not an effective method for reaching that outcome. In this regard, Staff offers, as Attachment 2, an end-state vision of a governance process and decision-making framework that would allow greater involvement of the utilities in the interim period and an alternative vision of the relationship in the permanent program between and among the utilities, the New York State Energy Research and Development Authority (NYSERDA) and third-party administrators.

INTRODUCTION

The May 16, 2007 Order initiating this proceeding referenced an assessment prepared by DPS Staff and NYSERDA of the likelihood of achieving a 15% reduction in electricity usage over projected levels by 2015, as well as the resources that would be required.¹ Central to that analysis are the critical assumptions that new and ramped up programs would be on the street in 2008 and that those

¹ Case 07-M-0548, *supra*, Order Instituting Proceeding (issued May 16, 2007) (May 2007 Order), at 10-11. "Staff's analysis assumed that an enhanced energy efficiency program would be *initiated in 2008* and would be ramped up over time to achieve the 15% reduction in energy usage by 2015..." Emphasis added. This analysis is dated June 1, 2007 and is posted on the proceeding's section of the DPS Website.

programs would have benefit/cost ratios equal to or better than current System Benefit Charge (SBC) programs.

The May 2007 Order discussed the threat posed by climate change, the need to reduce energy bills, especially for low income customers, and the importance of developing the economy, among other concerns, and conveyed a sense of urgency, using such terms as "threshold imperatives" that must be worked on immediately. The May 2007 Order further stated: "Staff is directed immediately to prepare its energy efficiency program and design proposals, including benefit and cost analysis, to focus the proceeding and move it forward expeditiously."² This sense of urgency continued in Judge Stein's Ruling on Scope and Schedule, which was issued on June 15, 2007. On page two, the Ruling stated:

As several of the parties noted at the procedural conference, the breadth of the scope of the Staff plan is of concern, in particular in light of the expedited schedule contemplated in this proceeding. Staff is urged to focus initially on measures to be considered for ready adoption. In particular, a focus on the design of end-user energy efficiency measures should be the first task, and implementation and delivery proposals for end-user energy efficiency programs are likely to be of the greatest immediate value.

Staff submitted its first program proposal for quick implementation of enhancements to certain proven on-going energy efficiency programs on August 28, 2007.³ After

² *Id.* at 14, 16.

³ Staff Preliminary Proposal for Energy Efficiency Program Design and Delivery.

reviewing parties' comments, which uniformly supported the importance of implementing some programs on a fast track basis, and conducting further research, which included additional discussions with current program administrators to confirm their respective "ramp up" capabilities, Staff submitted a revised proposal in two installments on November 26, 2007 and December 3, 2007.⁴ The revised proposal urged prompt approval as an interim measure of an additional customer surcharge to fund expansion of proven programs in place now that have produced desirable benefits - seven SBC programs administered by NYSERDA, the Weatherization Assistance Program (WAP) administered by the New York State Division of Housing and Community Renewal (DHCR), and a new program to meet identified needs in the New York City market, as well as two programs that Staff believed could be implemented quickly by the utilities, the costs for which they would be made whole. These programs would benefit electric and gas consumers and include programs designed for all customer classes.

In addition, the Revised Proposal urged the ALJs to take prompt action on several related matters. For instance, we noted that success of the overall EPS effort requires establishing an adequate workforce of trained energy efficiency practitioners to serve all parts of the State. This large undertaking, Staff explained, will require lead time to develop curriculum, arrange for

⁴ Revised Proposal for Energy Efficiency Design And Delivery And Reply Comments Of The Staff Of The Department Of Public Service; Supplemental Filing.

training, develop capabilities within colleges to deliver training programs, and arrange for staffing to offer training. We stated (at 7): "To meet these ambitious goals, planning for enhanced training capability needs to start now. Staff recommends that collaborative discussions among partners in this effort (e.g., Staff, NYSERDA, colleges, trade associations, utilities, ESCOs, etc.) should begin within 30 days of a Commission decision on the fast track programs."

The Revised Proposal also remarked that studying the cost effectiveness of reducing losses on the transmission and distribution systems, which run in the 6-8 percent range, is another activity that can occur immediately.⁵ We noted that the electric utilities are to be commended for already beginning the process of developing a common approach to the study protocols.

Assuming the Commission approved this interim proposal at its April 2008 session,⁶ Staff expected that by July the new surcharges would start providing funding and New York would begin accelerating its progress in achieving

⁵ The Commission directed the ALJ and the parties to "[c]onsider and prioritize...generation, distribution and transmission efficiencies." Case 07-M-0548, supra (issued May 16, 2007), p. 7.

⁶ The State Environmental Quality Review Act process is nearing completion; DPS Staff has finished its analysis of comments on the Draft Generic Environmental Impact Statement (DGEIS) and the Final GEIS should be considered by the Commission at its April session.

the highly ambitious 15 by 15 objective.⁷ Staff envisioned the interim program to last through 2009, when it would be replaced by the longer-term, permanent EPS program.

DISCUSSION

The Consensus Parties present a different approach. Their proposal calls for creation of an unspecified number of regional partnerships (Partnerships) that would act independently to develop plans and programs that ultimately would be submitted to the Commission for approval. This contrasts sharply with Staff's proposed approach in which program design and planning would be developed on a statewide basis with standing committees to examine the special needs of various regions of the state, as appropriate. Staff chose this coordinated action approach because our research into practices of states recognized as having the best energy efficiency programs consistently emphasized the importance of having a common look and feel to programs throughout a state or, even better, on a regional basis. This coordinated approach helps avoid customer confusion, can greatly leverage resources, and can significantly enhance the ability of vendors and retailer to participate in energy efficiency

⁷ Execution of Memoranda of Understanding (MOUs) between NYSERDA and each utility addressing the transmittal of money collected through the EPS surcharge to NYSERDA will be modeled on MOUs used for SBC as well as for the Renewable Portfolio Standard (RPS) surcharge, and, therefore, can be executed quickly. In any event, implementation of the proposed utility programs could begin immediately.

programs. The statewide/regional approach also allows establishment on long-term relationships within the state's boundaries and with national organization. Building these relationships is critical in reaching as ambitious a goal as that which the Commission has established in the EPS proceeding.

Staff has numerous concerns about the Consensus Parties' proposal. First, in the course of Working Group 1 discussions, the utilities criticized as overly bureaucratic several of the proposed long-term EPS governance models. These models included Staff's proposal in which one committee consisting of program administrators and other stakeholders would be tasked with the functions of analyzing and developing consistent, coherent best practices programs and evaluation protocols appropriate for statewide application but flexible enough to accommodate regional needs. The Consensus Parties' proposal involves at least four groups, each acting independently, whose actions would have to be coordinated after the fact.

The proposed multiple regional committee structure appears cumbersome and highly inefficient to Staff. Balkanization of governance is likely to impede efficient resource acquisition, reduce consistency, and increase ratepayer costs. Stakeholders with statewide interests such as NYSERDA may have difficulty participating in the work of multiple governance groups. Furthermore, there is no guarantee that a good idea one group identifies would become known by the other groups or that good concepts from other states would be successfully migrated to New York.

Second, the suggested composition of the Partnerships appears inefficient. Important stakeholders and current program administrators such as DHCR, the Dormitory Authority of the State of New York (DASNY) and the New York Department of State (DOS) are not included.

The DPS role appears to be confined to reviewing the several regional Partnership filings and the subsequent multiple program administrator implementation plan filings for each region. In our opinion, by not having taken part in the discussions of the Partnerships, Staff would have to spend extra time understanding the filings and comparing them to our understanding of best practices and other Partnership and utility programs. This approach would likely result in a review process that would take significantly longer than the review process under Staff's proposed statewide governance model.

Third, the Consensus Parties would prohibit NYSERDA from having direct contact with end-use customers and, instead, have the utilities take over these functions. This proposal raises a number of issues.

- The Consensus Parties assert that the utilities would be more effective at delivering programs to their customers than NYSERDA. Yet the Consensus Parties provide no benefit/cost or any other information to support this claim and, in fact, give no indication of the types of programs they plan to deliver.
- Many of NYSERDA's programs are nationally recognized as best practice programs. Rather than dismantling proven programs with a national reputation and replacing them

with untested new ones, Staff recommends building on the State's current, well-regarded program platform, enhancing what is in place and developing new programs with input from interested stakeholders. The goal that the Commission established in the EPS proceeding is so aggressive that it will require a concerted effort by all affected parties to make it a reality. Attachment 3 presents an example of what Staff envisions as a superior model for the long term program.

- NYSERDA has routinely partnered with the New York Power Authority (NYPA), one of the Consensus Parties, providing valuable energy efficiency services to public buildings and not-for profit buildings such as schools, hospitals, and government buildings. The Consensus Parties provide no explanation of why NYPA would like to end that partnership.
- The Consensus Parties state that the utilities would only provide the services now provided by NYSERDA if they received sufficient financial reward. The payments that utilities would require to help New York address climate change and lower energy bills are not specified nor are the utilities' administrative costs presented. Again, benefit/cost data has not been provided. The Commission's experience with Demand Side Management (DSM) programs in the 1980s and 1990s and utility positions in recent rate cases suggest that utility administrative costs may be considerably higher than NYSERDA's. Financial incentives on top of those costs may have a large negative impact on benefit/cost

ratios and lead to much higher overall costs to meet the 15 by 15 target than necessary.

- In Case 93-G-0804, the Commission severely restricted gas utility appliance repair activities because of perceived unfair competition with independent contractors.⁸ The Consensus Parties do not explain how the programs they would offer in lieu of NYSERDA would be designed to avoid this concern.
- The Consensus Parties offer no discussion or analysis regarding how long it would take the utilities to hire and train staff to design and implement energy efficiency programs. Energy efficiency programs are expanding nationwide and there is a high demand for experienced staff. Finding employees with the required qualifications could be a difficult, time-consuming endeavor.

Fourth, it is disappointing that the Consensus Recommendation does not include any reference to an entity such as the Statewide Evaluation Task Force proposed by Working Group III. There was general agreement in that working group that the Task Force should play a key role in establishing statewide evaluation and reporting protocols and, in some cases, coordinate research of statewide value (e.g., baseline studies, best approach to free rider measurement). While there was a lack of consensus on the

⁸ Case 93-G-0804, *Proceeding on Motion of the Commission to Examine Guidelines for Gas Utility Marketing/Appliance Service Programs*, Order Concerning Gas Appliance and Repair Service (issued April 4, 1997).

details regarding the responsibilities and organization of the Task Force (e.g., membership, funding level, decision-making authority), even the utilities among the Consensus Parties endorsed the basic concept.

Multiple evaluation protocols and reporting formats would present a serious barrier to the Commission's ability to accurately report progress towards the 15 by 15 goal and compare performance among the various programs. These barriers could result in serious questions about the credibility of the data and, ultimately, about the value of the 15 by 15 program itself.

Fifth, adoption of the Consensus Parties' proposal may jeopardize the likelihood of achieving the 15 by 15 goal. By urging elimination of NYSERDA's end-use customer programs, the Consensus Parties are implicitly rejecting Staff's interim program and the 2008 start date for delivering programs to place New York on a path to achieve the 15 by 15 target. It could take well into 2009 before the utilities would be able to implement programs, even from the most optimistic viewpoint. Start dates in 2010 are a realistic possibility as shown in Attachment 3.

- Let us assume, for argument's sake, that Your Honors recommended to the Commission the proposal of the Consensus Parties for adoption, and the Commission did so at its April session. The Partnerships would then form and meet and prepare work products. Thinking optimistically, perhaps by July several of the "integrated and overarching"

Strategic Plans would be filed with the Commission for its approval. Staff teams would then be assigned to analyze and compare the Strategic Plan filings and, perhaps, an ALJ would be assigned to each filing to handle such due process matters as discovery and cross examination. In any event, with a July filing, State Administration Procedures Act Notice and Comment requirements would not allow a Commission decision until its October 2008 session.

- After Commission approval of the Strategic Plans, the utilities and other program administrators in each region would then complete their respective Implementation Plans and file them no earlier than November. Staff teams would then be assigned to analyze and compare the Implementation Plan filings and, perhaps, an ALJ would be assigned to each filing to handle such due process matters as discovery and cross examination. With a November filing, State Administration Procedures Act Notice and Comment requirements would not allow a Commission decision until its February 2009 session at the earliest.
- Utilities would then be able to begin hiring and training staff and prepare compliance filings. Past experience with DSM as well as with the start up of SBC suggests that it may

be as much as a year after Commission approval of a utility plan for a program to hit the street. Remaining optimistic, shortening that period by one-third puts us in the fall 2009 timeframe before anything real happens. If there are any delays, then program implementation could easily slip to 2010. A timetable showing an optimistic and more realistic schedule for implementing the Consensus Proposal is attached.

Finally, in this period of high energy prices and concerns about the environment, the public is poised to listen and react to messages about what individuals can do to reduce energy consumption. This is an opportune time to seriously enhance educational efforts while expanding existing programs and introducing new ones. In Staff's view, it would be unconscionable to let this opportunity slip away with no action to enlist New York consumers to participate during this historic opportunity.

CONCLUSION

The Consensus Parties' proposal is not a meaningful substitute for Staff's interim programs. Adopting the Consensus Parties' proposal in lieu of Staff's interim programs would very likely require higher annual costs to achieve a 15 percent reduction by 2015 or, alternatively, extend the 15 percent achievement date by two years, to 2017 (or increase inefficiencies in resource acquisition by dramatically increasing the level of

resource procurement in 2014 and 2015 to meet the policy goal), in order to maintain program costs at a reasonable level. The Consensus Proposal also ignores the need to begin training programs for installers of energy efficiency measures and address transmission and delivery inefficiencies promptly. Attachment 2 is, we believe, a more proactive and effective approach to the relationship of the utilities and NYSERDA regarding the delivery of energy efficiency programs.

Respectfully Submitted

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