

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

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

**Comments by the City of New York on
Staff Revised Fast Track Proposal of March 25, 2008, and on the Straw Proposal
of February 13, 2008 Concerning Fast-Track Programs**

April 10, 2008

The City of New York (“City”) hereby responds to the Rulings issued in this proceeding on March 20, and April 3, 2008, and offers its views concerning the revised “fast-track” energy efficiency programs that were suggested in this proceeding in the March 2008 DPS Staff Report on Recommendations for the EEPS Proceeding submitted by Department of Public Service Staff on March 25, 2007. In addition, the City comments on associated issues raised by the need to begin early implementation of sharply enhanced efficiency measures in New York.

I. Initial Comments on Staff Proposal

In order to achieve the goals of the City’s PlaNYC and the Governor’s “15 by 15” target, efficiency opportunities must be pursued diligently – and rapidly. And while accelerated deployment of efficiency programs is critical, equally important are the program features and the administration of the programs.

The City believes, as it has expressed previously in this proceeding, that the New York City Partnership concept advanced on January 11, 2008, and as modified in the Straw Proposal, offers a workable approach to helping to meet the needs of the parties that we propose for the lead in efficiency program administration: NYSERDA and Con Edison for electricity, and NYSERDA with both Con Edison and National Grid for natural gas. As further explained herein, there should be significant efficiency roles for each of these three entities, even in an accelerated or fast track program. And as noted in our response to the question concerning the “policy rationale” for utility inclusion, there are myriad reasons why there needs to be a prominent role for utilities in both short and long term efficiency efforts.

The City understands the logic supported by the Administrative Law Judges governing this proceeding to attempt to limit Fast Track proposals to “already existing, cost-effective energy efficiency programs that were oversubscribed, or for which there were waiting lists, that were capable of scaling up once additional funding was made available.”¹ This approach makes sense for entities like NYSERDA, which have a portfolio of existing programs from which to choose the most appropriate programs to quickly increase. However, we believe that this does not make sense for entities like most of the investor owned utilities, which do not currently have significant on-going energy efficiency programs.

The City understands that some investor owned utilities will be submitting specific programs for consideration during the Fast Track period on April 10, 2008. Stakeholders in this proceeding should review these proposals in detail. As these programs will by definition be new, the utilities will not be able to demonstrate that these programs were oversubscribed, or have a waiting list. Instead, the utilities’ programs should be judged on: the clarity of the program design; whether the programs play to the utilities’ strengths as the point of interface with the consumer and their expertise with consumer related issues; whether the programs can be implemented quickly; whether the programs are cost effective from a total resource perspective; and whether the plans proposed by the utility for rapidly implementing programs are reasonable and feasible in the anticipated timeframe. Utility programs that meet the above criteria should also be included in the portfolio of initiatives proposed for the Fast Track time period.

¹ Ruling on Staff Motion for Reconsideration and Revising Schedule, March 20, 2008, p. 7.

II. Comments on the Updated Staff Fast Track Programs

The City generally supports the Staff's updated portfolio of fast-track programs listed in the Staff Report. This is a significant improvement from the prior Staff proposal and reflects the Staff's consideration of stakeholder input. Staff has compiled a reasonable list of programs that can be quickly ramped up and that will contribute to increasing energy efficiency in New York State.

Note, however, that the City does not believe that extending the Fast Track proposals alone will meet the 15 x15 target, especially given what the City views as Staff's overly optimistic forecasts regarding the contribution that can be expected from codes and standard revision, which represent approximately 50% in 2015 as shown in the graphic on page 2 of Attachment 1 of the Staff Report. The analysis should only include changes to the codes and standards that are already underway, likely to occur during the relevant period, and under New York State's control in the baseline. Efficiency improvements from codes and standards that may or may not come into existence should not be used as a catchall "wedge" in meeting the 15 x 15 target.

The City has three main critiques of the Staff's program approach, as discussed in the subsections below.

1. Modification of Financial Incentives for Tier III C&I programs

The City stands by its original recommendation presented to the EEPS collaborative in Working Group II that utilities are probably in the best position to administer retrofit programs for their existing C&I customers. In New York City, the balance of relative strengths tips in Con Edison's favor for ultimately taking the lead on program

administration, working in partnership with the City, NYSERDA, and numerous other parties. Consequently, over time the City envisions Con Edison assuming principal responsibility for C&I retrofit programs, including those serving larger customers. Nevertheless, the City does not oppose Staff's current fast-track proposal to continue with the current NYSERDA C&I programs serving larger customers. However, the City does recommend that the design of financial incentives for Tier III programs be changed.

The design of financial incentives in Tier III is problematic because paying a fixed price per kWh saved encourages so-called "cream-skimming." As currently designed, there is a fixed performance payment per kWh to the program administrator for the Tier III program. This fixed price incentive structure creates an incentive for the program administrator to focus on identifying the proverbial lowest hanging fruit first. If avoided costs are 10 cents/kWh, for example, and the fixed performance payment per kWh is 5 cents, then the customer or the energy service company has no incentive to invest in additional measures or higher efficiency measures with a lifetime cost of more than 5 cents/kWh but less than 10 cents/kWh. Such opportunities may be lost if not pursued as part of a customized investment and financial incentive plan, ideally synchronized with the customer's individual capital budgeting process. The problem is made more acute the lower the fixed price that is offered for savings.

This is why the City stands by its original recommendation that the fast-track program for large and medium C&I customer retrofits customize financial incentives that "buy down" the customer's contribution to perhaps one and a half years. This approach tailors financial incentives for cost-effective projects under the Total Resource Cost test to the customer's likely barriers to efficiency investment.

Also, missing from Staff's fast-track proposal for C&I customers are prescriptive incentives for purchased equipment. As the City previously recommended, standardized incentives should be available throughout the State for a range of sizes and types of motors, lighting fixtures, and other equipment purchased routinely by C&I customers during the normal course of equipment replacement and additions.

Despite the current lack of a statewide program targeting this market, one could be started quickly by synchronizing incentives (including minimum efficiency requirements) with other Northeastern states, and participating in joint marketing of the initiative. Some of the same parties employed under contract by other program administrators could be used to develop and maintain business relationships on the ground with both vendors and wholesalers. Emulating experience in other states with the CFL market, New York program administrators could also work with other program administrators in the region to negotiate cooperative pricing agreements with manufacturers, distributors, and vendors at the point of equipment sale. Regardless of which entity administers it, this program approach should be incorporated into, or coordinated with, the new construction program, as both markets are served by suppliers, wholesalers, and manufacturers. This program has the added benefit that it could serve as an initial gateway to C&I customers, who might then participate in other C&I programs.

2. Increase budget for market development and workforce development

The City also recommends that funding for NYSERDA's workforce development and market development programs be significantly increased for the Fast Track period from the level recommended in the Staff Report. Both of these efforts are crucial in terms of developing the capacity for a large scale ramp-up of energy efficiency efforts across New

York State. The market development program is instrumental in the development of benchmarking and auditing tools that can be used to closely monitor the progress of energy efficiency achievements in large buildings, a major policy focus in New York City. The workforce development program is of equal importance as New York City moves forward in requiring extensive auditing and retrofits in all large buildings, which will necessitate the development of a large group of qualified and certified contractors in New York City.

3. Potential understatement of costs of saved electricity

The City also reiterates its concern that Staff is underestimating the costs required to achieve the electricity savings projected from some of the fast-track programs, probably by 20% to 30%, based on experience in other jurisdictions. As we stated at the March 5, 2008 plenary meeting, the City is concerned that simply scaling program budgets and savings based on past NYSERDA experience ignores the economic law of diminishing marginal returns that is likely to apply. Increasing investment in conservation at the levels required to meet New York State's 15 x 15 target will mean offering higher incentives to increase market penetration, and achieving greater comprehensiveness by pursuing higher-cost efficiency measures. Based on much empirical experience in other jurisdictions, such manifestations of diminishing marginal returns tend to materially increase the average incurred cost of saving electricity once lower cost initial measures such as lighting retrofits are completed.

NYSERDA's costs for annual energy savings are already relatively low compared to other programs in the Northeast. In 2007, NYSERDA's costs per annual kWh saved were \$0.17/kWh, compared with \$0.27 for Massachusetts (59% higher) and \$0.22 for Vermont (29% higher). NYSERDA's historical costs of saved electricity are on par with the

California investor owned utilities, which in 2007 has costs of savings ranging from \$0.16/kWh-year to \$0.23/kWh-year. While we laud NYSERDA for its relative cost effectiveness in those programs it has undertaken , we are concerned that NYSERDA's historical experience in terms of cost effectiveness may not be sustainable or relevant within the context of the major increase in programs currently being planned.

Staff is currently anticipating a cost of \$0.233/kWh-year for 2009 Fast Track programs, as provided in its corrected submission of March 28, 2008, which is essentially the same anticipated cost of savings as NYSERDA's existing (i.e., pre-ramp up) 2009 plans. This estimate thus does not take into consideration the increasing marginal cost of accelerated market penetration, and the full implications of pursuing higher cost efficiency measures.

The City has analyzed experience in other jurisdictions to estimate the increase in costs of energy savings in the context of major increases in energy conservation efforts. From 2005 to 2006, a period when the California utilities were dramatically increasing the size of their energy efficiency programs, San Diego Gas & Electric (SDG&E) saw its average spending per annual kWh increase from \$0.18/kWh-year to \$0.25/kWh-year (a 39% increase) while Pacific Gas & Electric (PG&E) experienced an energy efficiency spending increase from \$0.15/kWh-year to \$0.32/kWh-year (more than a 100% increase). Similarly, Efficiency Vermont is facing a similar increase in expenses; costs of saved electricity in 2008 (\$0.28/kWh-year) are expected to rise by some 27% over 2007 results (\$0.22/kWh-year). These results suggest that New York State should not rely on its own past performance to project the true future costs associated with materially enhanced efficiency programs.

Further, the reservoir of low-cost, principally residential, savings from the widespread introduction of CFLs, for example, is beginning to disappear and is expected to be significantly more expensive to achieve after 2009. This is due to two interrelated developments: new federal energy legislation that will prohibit the manufacture or importation of today's incandescent bulbs; and the rapidly growing market share of CFLs throughout the country, including places without a multi-year history of DSM programs, as in the Northeast and West. The "net to gross" ratio will plummet from CFL products program sales; the amount of savings from specialty lamps and fixtures will be much smaller; and the costs of newer high-efficiency technology will be higher.

The future implications of these developments obviously extend well beyond the period of Staff's Fast Track programs. Nevertheless, it is highly likely given the accelerating pace of residential lighting market changes, that we will see rapidly diminishing net savings from incentive programs for CFL lighting products programs as early as 2009, and certainly beyond that year.

This review of program administrator experience and plans strongly indicates that Staff should increase the amount budgeted for C&I programs, and modify its savings expectations for residential products. Moreover, Fast Track programs in 2008 should include market assessment research to appropriately set program goals, designs, and budgets for the post 2009 period.

III. Comments on the Policy Rationale for Utility Program Administration

As was reflected in the Straw Proposal, there are a number of comparative advantages enjoyed by the utilities, including their unmatched access to, and knowledge of, their customers. This is of particular value in New York City, a market that is widely

recognized to be distinct from that in other parts of the State, and therefore in need of a sharply different approach – one that takes into account the realities of the City energy market, and the forms of residential and commercial organization prevalent in the City that are infrequently encountered elsewhere.

Utilities' familiarity with their customers is difficult if not impossible to replicate, and this is particularly the case with the largest customers – those which in some respects offer the greatest early potential yield in efficiency. In addition, utility account executives have in many cases developed long-standing relationships with their customers, and are in a position to readily provide efficiency program information, to influence decisions concerning the implementation of efficiency measures, and to provide a readily accessible feedback mechanism for those efforts undertaken.

Moreover, the sheer size of the utility workforce means that personnel can be mobilized in large numbers. This latter point stands in sharp contrast to the very few NYSERDA personnel permanently located in New York City. While there may have been any number of reasons for the statewide allocation of personnel made by NYSERDA, it is undeniable that its physical presence is to say the least very limited in a City where electricity consumers provide some 44% of the \$175,000,000 in annual System Benefit Charge revenue to NYSERDA.² And while physical presence is not necessarily needed to advance certain NYSERDA programs, the lack of any appreciable number of NYSERDA employees in the City to date does not suggest a genuine commitment to a truly accelerated efficiency effort. We believe that if there is to be an effective accelerated fast track program in the State's largest and most diverse energy market, NYSERDA needs to dramatically

² Approximately 50% of SBC funding is derived from the Con Edison service territory, and the City represents some 88% of the overall service territory.

increase the size of its New York City office from its existing size of about eight to ten people (out of a total of more than 275 employees). Further, the City recommends that NYSERDA appoint an official Director of the New York City office who would report to the Vice President of Programs to provide senior level leadership for NYSERDA in the New York City region.

In its original order mandating the use of revenue decoupling mechanisms,³ the Commission implicitly recognized that the involvement of investor owned utilities is critical to the promotion of certain desirable policy goals, notably including efficiency: “These proceedings were instituted to examine potential delivery rate disincentives against the utilities’ promotion of energy efficiency, renewable technologies and distributed generation.” In addition, the [then-current] “design of utility delivery rates... could influence utility behavior by providing disincentives that impede their promotion of these initiatives.”⁴ There will undoubtedly be an important role for utilities and NYSERDA (as well as others) in the promotion of energy efficiency, even in the early stages of the EEPS programs. In fact, the very scale of the effort contemplated by the State’s 15 by 15 program virtually mandates such concerted efforts by both NYSERDA and the utilities as the principal actors in promoting and disseminating enhanced efficiency measures.

The two principal utilities in the New York City region provide services that are integral to the functioning of the City, and can bring to bear resources that are not

³ Order Requiring Proposals for Revenue Decoupling Mechanisms in Case 03-E-0640, Proceeding on Motion of the Commission to Investigate Potential Electric Delivery Rate Disincentives Against the Promotion of Energy Efficiency, Renewable Technologies and Distributed Generation, and the parallel gas proceeding, 06-G-0746 (Issued and effective April 20, 2007)

⁴ April 20, 2007 Decoupling Order, at pp. 2, 15

practicable for delivery by others. For example, the direct installation efficiency programs that have been successfully promoted by National Grid and other utilities in New England and elsewhere are best adapted to provision both by that company and by Con Edison in the City. In addition, overarching considerations such as demand awareness and knowledge of load, price elasticity, and other electric and gas customer considerations argue for a critical role for the utilities that cannot effectively be accomplished by others who lack a sustained and comprehensive relationship with energy consumers.

The City urges that serious consideration in the fast track programs be given to utility-based programs that can be demonstrated to be candidates for early adoption. The City recognizes the need to rely to a great degree on programs that are already in existence in any short-term plan. However, as noted above, the City is informed that there are now under development at the utilities efficiency program proposals that will be designed to be put into place rapidly. We urge serious consideration in this proceeding of any such initiatives that may be forthcoming.

If existing State efficiency programs were adequate to meet our needs, there would be little necessity to augment them with efforts by the utilities. However, the very impetus for the Commission's EEPS proceeding was the recognized need to do far more than has been accomplished to date, and in the City's view that heightened effort must be made by all concerned parties, including the utilities.

IV. Comments on the Projected Program Cost and Bill Effects

Bill Effects

The estimates of rate and bill effects of the EEPS that have been made available in this proceeding have not been fully explained, and appear to have been characterized and

estimated without sufficient consideration of all the relevant factors, as explained below. In the view of the City, the increases in customer bills in the early years are likely overstated, and the reductions in customer bills in later years are probably understated.

Straw Proposal “Bill Impacts”

On March 2, 2008, a spreadsheet (EEPS SP Bill Impacts 3-2-08.xls) and explanatory notes (Explanation of Bill Impacts Spreadsheet.doc), both created by Paul Agresta of DPS and dated March 3 and February 25, respectively, were circulated. The “Bill Impacts” spreadsheet relied on estimates of market energy price changes from the Wholesale Changes sheet of the “Straw Proposal Workpapers” spreadsheet. Mr. Agresta circulated revisions to these files on April 4. Despite their descriptions, the “Bill Impacts” spreadsheets do not in the City’s view fully compute the actual bill impacts.

The Bill Impacts spreadsheets compute the estimated costs of Straw Proposal electric EEPS programs for each utility in cents per kWh, and subtract an estimate of the reduction in LMPs due to the Straw Proposal programs.⁵ This computation understates the reduction in customer bills, as it omits consideration of a number of benefits that can be expected from implementation of EEPS:

- reduction in energy use

⁵ It is not entirely clear how the LMP effect was estimated, such as how the load reductions were shaped over the day and year, and how Staff changed the schedule of additions and retirements to reflect different levels of load growth between the Baseline and 15×15 Cases. Nor is it clear whether the computation is consistent with the limitation of this effect in screening to only a few years after the installation of a DSM measure. For Central Hudson and Orange & Rockland, the estimated rate effect falls over time, and for LIPA it varies only slightly, but for the other five utilities it is almost proportional to the number of elapsed program years, suggesting that Staff may have allowed the effects of the load reductions to accumulate over time, without reducing resource additions. It is possible that the upward trend is due to changes in the generation mix and fuel prices, rather than assuming that price effects accumulate without a market response.

- reduction in capacity price
- reduction in required capacity acquisition
- reduction in line losses
- reduction in T&D investment

The spreadsheet results are summarized as the ratio of the partial difference (EEPS cost minus change in LMP) to the total current bill for various monthly usage levels, such as 500 kWh/month. This analysis includes the costs of the EEPS charges, but not the savings from reduced consumption. The average customer using 500 kWh/month without the EEPS will use less than 500 kWh: about 487 kWh in 2009, 456 kWh in 2012, and 425 kWh in 2015. Most of the delivery costs are fixed in the short term, and will be recovered through revenue decoupling, but the lower usage will also reduce the generation bill for that customer by the average generation rate, and for the ratepayers as a whole by effects on energy and capacity prices in the market. The Straw Proposal analysis omits these expected savings.

Even within its own terms, the Straw Proposal bill analysis may understate the effect of reduced LMPs on retail bills. The analysis reduces the LMP effect by the percentage of each utility's power supply that is served from long-term fixed-price contracts; this does not appear to reflect the load that is served by third-party suppliers, whose rates are likely to reset to market prices on a regular basis.⁶

⁶ The spreadsheet lists as sources for the percentages served by contracts "RPS 2009" and "RPS 2013," presumably referring to the Renewable Portfolio Standard proceeding, without specifying any documents or sources.

The Straw Proposal analysis does not reflect any gas or other customer savings associated with the electric programs. In short, the Straw Proposal bill analysis does not appear to provide complete information about the effect of DSM on electric bills.

Table NYC-1 repeats the Straw Proposal computations, but is a true, if limited, bill-effect analysis, since it reflects the reduction in market energy quantity, as well as price. Reductions in T&D costs, and in line losses, capacity purchases and market capacity prices would further increase these bill reductions.

Adding the estimates of avoided distribution and generation capacity from the Staff's Fast Track proposal, the range of the Straw Proposal's bill effects across customer classes and sizes (and upstate, across utilities) can be approximately estimated as:

	2009	2012	2015
Con Edison	-0.3% – 0.1%	-5.5% – -3.4%	-11.6% – -7.2%
Upstate	0.1% – 2.0%	-5.0% – -1.2%	-12.2% – -4.1%

Table NYC-1: EEPS Straw Proposal Corrected Bill Impacts

Range of Monthly Bill Impacts

	Central Hudson G&E	Consolidated Edison	NYSEG	Niagara Mohawk	Orange & Rockland	Rochester G&E
Residential Bills						
2009	0.59% - 0.90%	0.00% - 0.01%	0.73% - 1.02%	0.80% - 1.18%	0.38% - 0.58%	1.15% - 2.02%
	-1.31% - -	-1.96% - -	-1.22% - -	-1.06% - -		-0.32% - -
2012	2.01%	2.98%	1.72%	1.57%	-1.09% - -1.67%	0.56%
	-3.66% - -	-6.90% - -	-3.43% - -	-3.09% - -		-1.83% - -
2015	5.63%	4.54%	4.83%	4.57%	-3.05% - -4.66%	3.22%
Commercial Bills						
2009	0.82% - 1.03%	-0.02% - -	0.76% - 1.01%	0.84% - 1.03%	0.40% - 0.57%	1.21% - 1.84%
	-1.93% - -	-1.98% - -	-1.38% - -	-1.20% - -		
2012	2.40%	2.59%	1.84%	1.47%	-1.22% - -1.74%	-0.39% - -0.59%
	-5.35% - -	-5.96% - -	-3.80% - -	-3.42% - -		
2015	6.67%	4.56%	5.07%	4.18%	-3.38% - -4.79%	-2.02% - -3.07%
Industrial Bills						
2009	0.77% - 1.09%	-0.03% - -	1.21% - 1.41%	1.01% - 1.60%	0.50% - 0.84%	1.82% - 2.61%
	-1.81% - -	-2.57% - -	-2.19% - -	-1.44% - -		-0.58% - -
2012	2.55%	3.16%	2.56%	2.28%	-1.54% - -2.57%	0.84%
	-5.03% - -	-7.27% - -	-6.05% - -	-4.10% - -		-3.05% - -
2015	7.07%	5.90%	7.06%	6.50%	-4.24% - -7.10%	4.38%

Staff “Rate Impacts”

The March 2008 “DPS Staff Report On Recommendations for The EEPS Proceeding” (March 26, 2008) includes as Attachment 3 a “Rate Impacts” analysis, consisting of summary tables and some text. Staff has provided much less documentation for this analysis than for the Straw Proposal. Therefore, a reasonable analysis of these estimates is not possible.⁷

Staff computed what it terms “Increase in Delivery Rate Due to EEPS” as the sum of estimated EEPS costs and estimated lost revenues. Attachment 3 focuses entirely on rates and ignores the effects of DSM on bills, including reduced energy usage, capacity requirements and line losses. Even within the rate computation, Staff ignores all DSM effects that reduce rates, including reduced LMPs, reduced market capacity prices, and avoided T&D investments.

Attachment 3 states that “Prices were adjusted for the lost delivery revenue associated with EEPS kWh savings, which the utilities will recover through Revenue Decoupling Mechanisms. The total reduction in kWh is multiplied by the volumetric delivery charge. The volumetric delivery charge is calculated using ‘Typical Bill’ data, including customer service charges and total delivery charges.” This explanation appears to assume that fixed monthly customer charges are reduced by DSM; that assumption is incorrect, and overstates lost revenues.

Regardless of how Attachment 3 estimated lost revenues, it should be recognized that a dollar of lost revenues is a dollar of benefit to the customer whose bill is reduced. Staff also computed what it refers to as “Gas Bill Impact.” This analysis is less documented than Staff’s electric analysis; the numerical results are limited to a reported percentage “Change in Gas Bill”

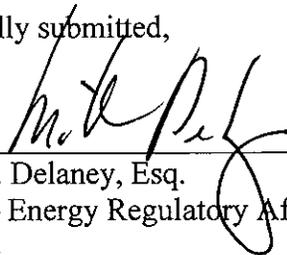
⁷ The City also asked a number of questions on Attachment 2: “Benefit/Cost Analysis: Key Assumptions and Methodology,” which to date have not been answered. To the extent more information is made available, a more comprehensive analysis would be facilitated.

for residential customers only. The accompanying text suggests that the reported bill increase is the difference between EPS costs minus gas cost savings, divided by 2006 residential revenues, suggesting that Staff attempted to estimate bill effects for gas, rather than the rate effects it estimated for electricity. There is no way to determine how Staff defined the avoided gas costs. Again, Staff appears to have omitted the effect of gas and electric conservation on market gas prices, as well as the accompanying effect of reduced natural gas market prices on electric rates.

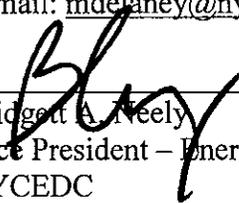
Based on the above considerations, the City believes that the program cost and bill impact figures presented in the Technical Appendix to the Straw Proposal do not represent a reasonable or complete estimate of the impact these programs will have on ratepayer bills. The City would encourage Staff to revisit its analyses in light of the City's (and potentially other stakeholders') comments.

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Respectfully submitted,



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