STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

INITIAL BRIEF OF THE NEW YORK STATE CONSUMER PROTECION BOARD

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The Public Service Commission ("PSC" or "Commission") commenced this proceeding on May 16, 2007 to develop and implement an Energy Efficiency Portfolio Standard ("EEPS") to help reduce New York's electricity usage 15% from expected levels by 2015.[1] On February 11, 2008, the Administrative Law Judges ("ALJs") presented a "Straw Proposal" addressing major design issues for the EEPS. On March 25, 2008, Staff of the Department of Public Service ("DPS Staff") submitted a revised proposal regarding "fast track" or interim energy efficiency programs that could be implemented quickly to serve as a bridge to the fully developed, long-term EEPS programs ("DPS Staff March 2008 Proposal"). The ALJs invited comment on that proposal as well as several key policy issues relating to the long-term program.[2] The Consumer Protection Board ("CPB") submits these comments in response to that invitation.

The CPB has participated actively in all phases of this case, including working groups, technical conferences and by submitting written materials. Many

1 Case 07-M-0548, Order Instituting Proceeding, May 16, 2007, p. 2.

2 Case 07-M-0548, Ruling on Staff Motion for Reconsideration and Revising Schedule, March 20, 2008.

of our recommendations have been reflected in the DPS Staff March 2008 Proposal. We urge the Commission to:

- adopt the DPS Staff March 2008 Proposal, modified to establish clear procedures for managing the transition from interim programs to longer-term EEPS initiatives and to ensure that energy efficiency programs administered by NYSERDA are evaluated by DPS Staff;

- provide utilities the opportunity to play a significant role in achieving the State's energy efficiency goals and encourage them to submit proposals that might be superior to current NYSERDA initiatives;

- consider the reasons why the costs of achieving the goals of the Renewable Portfolio Standard were apparently understated, before approving estimates of program costs and bill impacts in this proceeding;

- assess no less frequently than every three years, whether the energy efficiency portfolio is on track to meet the State's goals and whether the cost estimates are accurate or require revision;

- ensure that programs comprising the EEPS portfolio are the best programs available from either NYSERDA or utilities, instead of requiring each entity to administer a pre-established portion of such initiatives; and,

- take action as soon as practical.

After approximately a full year of study and analysis of these issues, it is time for the Commission to act on the key policy issues identified herein, so that further work to achieve the State's energy efficiency goals in the most cost efficient manner can commence.

I. DPS STAFF'S MARCH 2008 PROPOSAL

DPS Staff's March 2008 Proposal is based on the premise that the State's energy efficiency goals can best be achieved by expanding the current successful initiatives offered by the New York State Energy Research and Development Authority ("NYSERDA") and relying upon them as interim or bridging programs until superior long-term initiatives are ready for implementation. The CPB agrees with that approach. Over the past decade, the Authority has gained enormous expertise and experience in developing and implementing very successful energy efficiency programs. It has won numerous awards and many of its programs are nationally recognized. NYSERDA has developed a trained and knowledgeable staff that has built valuable contacts and an excellent working relationship with energy efficiency professionals throughout the country. The portfolio of interim energy efficiency projects should be based upon these tested and successful programs.

Notwithstanding, there is also an important role for utilities to assume in the proposed interim portfolio. Specifically, DPS Staff proposes that utilities administer two programs: Residential Energy Star ® HVAC and Efficient Gas Equipment – a rebate program similar to what is currently run by the Long Island Power Authority, and the Small Business Direct Installation Program – similar to a successful program operated by National Grid. The CPB also supports including these limited utility-run programs in the interim energy efficiency portfolio to take advantage of utilities' ability to make substantial contributions to the State's energy efficiency objectives. Utilities have unique access to customer information and to the customers themselves, thereby facilitating effective marketing and delivery of energy efficiency programs. Moreover, as discussed below, relying upon utilities for a portion of the interim program is consistent with the CPB's recommended approach for the long-term EEPS program, in which the responsibility for administering energy-efficiency programs should be shared between NYSERDA and utilities. It also ensures the engagement of utilities from the beginning of the process, and helps facilitate a more expanded role later.

A larger role for utilities at this time is not recommended because, in general, it will take several years for utilities to be ready to provide energy efficiency services on a larger scale. As the CPB explained in a previous submission in this proceeding,[3] since the role of utilities in providing energy efficiency services was phased out more than a decade ago, utilities' involvement in this market has been minimal. For utilities to launch full scale energy efficiency programs will take time. Experience in other states indicates that it may take two years or more for utilities to enhance their staff.[4] Moreover, utilities do not have much experience in coordinating their energy efficiency efforts with each other and with NYSERDA. By phasing-in utilities' responsibility, overlap of programs and customer confusion can be minimized. For these reasons, utilities should be provided an opportunity to start gaining experience in planning and implementing energy efficiency programs by administering a limited number of such efforts, as recommended in the DPS Staff March 2008 Proposal, before charging them with responsibility for administering a substantial portion of the State's energy efficiency initiatives.

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[3] Comments of the Consumer Protection Board Regarding the Consensus Recommendation, January 25, 2008.

[4] Case 07-M-0548, The National Association of Energy Service Companies' Suggestions for Program Governance to Working Group 1, dated October 10, 2007.

Transition from Interim to EEPS Programs

In response to questions raised at the March 5, 2008 Technical Conference regarding changes in energy efficiency programs after the interim proposals have been approved, DPS Staff proposes procedures to implement new programs as soon as a compelling case is made that a new initiative fits the overall portfolio framework and will enhance the statewide energy efficiency effort. It recommends creation of a body to examine proposals for new programs as well as the need for changes in allocation of funding among current programs. We support this proposal, although we are concerned that there is no specific recommendation as to how and when this body will be created and who will form its membership.

The CPB believes that it is imperative that the Commission establish as soon as possible, procedures to ensure a smooth transition from the interim period to the long-term EEPS programs, accommodate new programs that will be needed to achieve the goals of energy efficiency at reasonable cost, and ensure that resources assigned to the Fast Track initiatives are reassigned rapidly in response to unanticipated events. The CPB recommends that the Commission vest authority for such decisions, within limits established by the PSC, with a group comprised of active participants in the EEPS proceeding and chaired by DPS Staff. Major changes in the allocation of funding should be made only by the PSC, after an opportunity for review and comment by interested parties.

Program Evaluation

To help ensure that the State's energy efficiency goals are achieved in a prudent manner with minimal impacts on customer bills, the CPB has consistently advocated for strong oversight procedures to measure and evaluate program effectiveness. The DPS Staff Fast Track Program Proposal recommends that oversight of measurement and analysis contractors for utility-administered energy efficiency programs be conducted by DPS Staff. This is based on the principle that the group performing the evaluation should not be the group installing the energy efficiency measure to allow for internal control.[5] The CPB fully supports this recommendation.

Regarding measurement and evaluation of the expanded NYSERDA programs, DPS Staff recommends that existing mechanisms continue, except that expenditures for program evaluation should be increased from two percent to five percent of funding. We do not object to the proposal to increase funding for evaluation and reporting at this time, given the need to ensure that significantly expanded energy efficiency programs serve the interests of ratepayers. However, we recommend that the principle of separating administration and evaluation functions that would apply to utilities under the DPS Staff Proposal, also apply to NYSERDA. The Authority should not be overseeing the work of measurement and analysis contractors, since it is responsible for implementing many energy efficiency measures. We recommend

[5] This important principle was a key recommendation of Working Group 3, earlier in this proceeding.

that DPS Staff also oversee the measurement and analysis contractors evaluating NYSERDA's energy efficiency programs.

Program Funding Allocation

The DPS Staff March 2008 Proposal would allocate program funding in 2009 as follows: 38% to commercial and industrial programs administered by NYSERDA, 20% for NYSERDA's residential programs, 13% for low-income programs administered by NYSERDA and the remainder for utility-administered programs, gas programs, and overheads. Although energy efficiency programs targeted to low-income consumers generally have a lower benefit-cost ratio than programs for other customer groups, a defined allocation to low-income programs is important to advance public policy objectives. Energy costs represent a much higher portion of income for low-income customers than for other customer classifications. Although energy efficiency programs provide an opportunity for low-income households to permanently reduce their energy bills, these consumers are unlikely to incur significant up-front costs associated with energy efficiency projects unless substantial financial assistance is available. Accordingly, the CPB supports a defined allocation of energy efficiency program spending for low-income programs.

The DPS Staff proposal also anticipates that a significant portion of energy savings necessary to achieve the State's goals, will derive from building codes and appliance standards. Due to the critical importance of these codes and standards, and the long lead time required for their approval and implementation, this effort must commence as soon as possible. Accordingly, the CPB supports the use of $2.5 million of ratepayer funds for new State equipment efficiency standards and code enhancements, to be split between NYSERDA and the Department of State.

II. RATIONALE FOR AUTHORIZING UTILITY ADMINISTRATION OF ENERGY EFFICIENCY PROGRAMS

The ALJs proposed a hybrid model in their Straw Proposal under which utilities and NYSERDA would share responsibility for administering energy efficiency programs. The CPB has consistently advocated this approach throughout this proceeding. Since 1998, when the PSC established the System Benefit Charge ("SBC"), NYSERDA has been the primary source of energy efficiency programs in New York State. However, now that the State is launching one of the most ambitious energy efficiency programs in the nation, all entities that can help achieve that goal in a cost effective manner should be enlisted. Utilities by virtue of their central role in providing electric service and their close contact with customers, could play a very important part in achieving the State's energy efficiency goals. However, that role should be carefully structured, avoiding mistakes of the past when utilities provided energy efficiency services before the introduction of the SBC.

There are several important reasons why utilities should be charged with responsibility of achieving a portion of the State's energy efficiency goals, as identified in the ALJ's Straw Proposal.[6] First, it would help utilities integrate energy efficiency into their long-term resource planning efforts. This is especially important since the Commission has begun a long-range electricity infrastructure planning process, to "help guide the overall development of electricity infrastructure."[7]

Utilities are also ideally situated to develop programs to achieve the State's energy efficiency objectives that do not require funding from general body of ratepayers, such as on-bill financing. Through this approach, customers can install measures to help them reduce energy usage by essentially funding the upfront costs of acquiring equipment and materials to help reduce energy consumption, with future savings on their energy bills. If properly structured, such measures can be extremely helpful in overcoming customers' inability and unwillingness to make relatively large upfront expenditures. The CPB continues to urge the PSC to facilitate such opportunities, since they are likely to significantly increase private sector investment in energy efficiency infrastructure while not increasing costs for the general body of ratepayers.

Utilities also have unparalleled access to customers and customer-related information, which can be extremely helpful in designing energy efficiency programs that meet customer needs. Similarly, utilities are in a unique position to disseminate information on the availability of these programs through monthly

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6 It is noteworthy that the historic disincentive for utilities to promote energy efficiency is being removed on a utility-by-utility basis in individual rate cases through a revenue decoupling mechanism.

7 Case 07-E-1507, Proceeding on Motion of the Commission to Establish a Long-Range Electric Resource Plan and Infrastructure Planning Process, Order Initiating Electricity Reliability and Infrastructure Planning, issued December 24, 2007.

billing and their interaction with customers. It bears repeating, however, that the confidentiality of customer-specific information must be maintained.

Finally, permitting utilities to also administer energy efficiency programs will provide the benefit of additional competition and innovation in the design and delivery of these efforts. Over the past decade, NYSERDA has been the primary source of energy efficiency programs in the State and has done a very good job at administrating these programs. Increasing the involvement of utilities would engender a healthy competition that could only improve the quality of the programs and serve the public interest.

Overall, the CPB recommends that the State's long-term energy efficiency goals can be best achieved by permitting both utilities and NYSERDA to design and administer energy efficiency programs that take advantage of their inherent strengths and expertise. Careful coordination among program providers will be required to avoid program overlap and customer confusion.

III. PROGRAM COST AND BILL IMPACTS OF THE STRAW PROPOSAL

According to the Straw Proposal, PSC approval of energy efficiency programs to achieve the State's long-term goals would change monthly bills for residential customers by a range of negative 0.31% for Consolidated Edison Company of New York, Inc.[8] to an increase of 2.94% for Central Hudson Gas & Electric Corporation in 2015, the last year of the 15 by 15 program. Similarly, monthly bill impacts for commercial customers would range from a decrease of

[8] Projections of bill decreases reflect the impact of reduced energy demand on market prices of electricity.

0.27% to an increase of 3.46%, and for industrial customers, from a decrease of 0.33% to an increase of 3.67%. The CPB believes that these bill impacts are larger than necessary because of the way funding and energy reduction responsibility would be allocated among NYSERDA and the utilities under the Straw Proposal.

That Proposal would first allocate funding and energy efficiency responsibility between NYSERDA and the utilities. Although these entities would, most likely, select the most effective energy efficiency programs in their respective portfolios, their combined portfolios would not be optimized since each has its own energy efficiency targets and funding. In other words, NYSERDA might have energy efficiency programs for which it does not have funding, that have higher benefit/cost ratios than initiatives being implemented by utilities. Since the combined energy efficiency portfolios of NYSERDA and the utilities would not be optimized, the Straw Proposal would result in higher customer impacts than necessary to achieve the State's energy efficiency goals.

As discussed further in the following section, the CPB recommends that energy efficiency programs be selected based on their contribution to the State's energy efficiency goals. Through this approach, energy efficiency programs with the highest benefit/cost ratios would be selected,[9] thereby minimizing bill impacts. The allocation of funding and energy reduction responsibility between NYSERDA and the utilities would be a residual outcome of that process.

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[9] Subject to constraints on the allocation of funding among types of customers.

Additionally, the CPB urges the Commission to carefully consider the estimated bill impacts of the Straw Proposal, especially in view of the financial pressures felt by many consumers in today's challenging economic circumstances. We are concerned about the accuracy of these estimates, especially since projected bill impacts associated with a related initiative, the Renewable Portfolio Standard ("RPS"), were apparently substantially understated. As explained in a recently issued report by then Lieutenant Governor Paterson's Renewable Energy Task Force, the PSC had found that the State's RPS goals could be met by collecting approximately $741.3 million from ratepayers through 2013.[10] However, the Task Force concluded that the funding originally approved by the PSC will not be sufficient to meet New York's 2013 RPS goal. The Report stated that the PSC is currently conducting a study to determine the additional costs that would be required to achieve the State's RPS goals. The Task Force concluded that the primary reason for the increased cost of achieving the RPS goal is that the costs of wind turbines and raw materials have increased. A similar phenomenon may occur with the EEPS, as a result of worldwide increase in the demand for energy efficiency products and services.

Several other parties have also expressed a concern that the estimated cost of the EEPS program may be understated. At the March 5, 2008 Technical Conference, a number of parties expressed concern that the 25% "escalation factor" used to measure the increase in costs over the eight-year life of the

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[10] Clean, Secure Energy and Economic Growth: A Commitment to Renewable Energy and Enhanced Energy Independence, The First Report of the Renewable Energy Task Force to Lieutenant Governor David A. Paterson, February 2008, p. 3.

program is substantially understated, and a higher escalation factor may be more realistic.

For these reasons, the CPB recommends that before approving the cost estimates for the EEPS program, the PSC consider the result of its study of the estimated cost of achieving RPS goals. The Commission should also ensure that the factors which led it to substantially understate costs of the RPS program, have been identified and forecasting methodologies have been corrected, so that ratepayers can have confidence in the cost estimates approved in this proceeding. We also recommend that the PSC assess, no less frequently than every three years, whether the cost estimates of achieving the State's energy efficiency goals are accurate or require revision.

IV. ADVANCE ALLOCATION OF ENERGY EFFICIENCY TARGETS AND FUNDING BETWEEN NYSERDA AND THE UTILITIES

The Straw Proposal would allocate load reduction responsibility and funding between NYSERDA and the utilities at the beginning of the process. It assumes that 50 percent of the difference between the 15 percent target and expected energy efficiency savings from other sources including existing programs; the third round of programs funded through the SBC; improvements in codes and standards; and efficiencies in electricity generation, transmission and distribution systems, will come from incremental SBC programs conducted by NYSERDA. Similarly, it assumes that 43.75% of the difference between the 15 by 15 goal and energy efficiency gains from other sources will come from incremental programs conducted by the utilities and 6.25% from on-bill financing programs. Since the utilities and NYSERDA will each have their own specific energy efficiency target, they will develop their own programs to meet their assigned goals. It appears that the Straw Proposal has not used any criteria in allocating the funding and the energy efficiency targets between NYSERDA and the utilities other than giving them roughly equal responsibility.

As explained above, the CPB believes that allocating funding and energy efficiency responsibility in the manner proposed in the Straw Proposal is not the most efficient approach. Although we support the hybrid model recommended in the Straw Proposal that would provide for NYSERDA and the utilities to share the energy efficiency administrator role, we recommend an approach that allocates funding and energy efficiency responsibility based on the merit of the specific energy efficiency programs proposed. The program selection criteria should be similar to the one used by NYSERDA for its SBC programs, where in addition to benefit/cost analysis, parity between different customer classes and the different utility service territories is maintained. However, programs should not be selected to divide funding and energy efficiency equally between NYSERDA and the utilities.

In conclusion, the interim programs identified in the DPS Staff March 2008 Proposal should serve as the starting point for the 15 by 15 target. Additional programs administered by utilities and/or NYSERDA should be added to this portfolio if it can be demonstrated that they will enhance the statewide energy efficiency effort. The transition from the interim programs to the longer-term EEPS programs should be seamless. The PSC should assess the energy efficiency portfolio no less often than every three years, to identify changes that may be necessary, including providing for new programs and the phase-out of existing initiatives.

CONCLUSION

The Consumer Protection Board urges the Public Service Commission to adopt the recommendations identified herein, as soon as practical.

Respectfully submitted,

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