STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

REPLY BRIEF OF THE
NEW YORK STATE CONSUMER PROTECION BOARD

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Albany, New York

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This proceeding was initiated by the Public Service Commission ("PSC" or "Commission") to develop and implement an Energy Efficiency Portfolio Standard ("EEPS") to help reduce New York's electricity usage 15% from expected levels by 2015. On April 10, 2008, the Consumer Protection Board ("CPB") submitted an Initial Brief ("IB") regarding several key policy issues identified by the Administrative Law Judges ("ALJs") as well as a proposal by Staff of the Department of Public Service ("DPS Staff") identifying energy efficiency programs that could be implemented quickly, in the interim period before the long-term EEPS programs are developed.

The CPB has received and reviewed filings on these matters from more than a dozen parties. While most parties have confined their presentation to the four topics listed by the ALJs, some have addressed issues that should be considered after the PSC has decided some of the critical threshold questions. In this reply brief, we respond to other parties' comments on only the four issues identified by the Judges, reserving the right to comment on other topics at a later date. Our reply brief is divided into four sections based on the subjects identified by the ALJs.

I. DPS STAFF'S "FAST TRACK PROPOSAL"

As explained in detail in our IB, the CPB supports the "fast track" or interim energy efficiency proposal put forth by DPS Staff for several reasons. First, approval of these initiatives would immediately start the process of achieving the State's very ambitious goal of reducing energy consumption by 15% by 2015. The alternative approach of waiting until a new suite of programs is developed, would waste precious time and make it more difficult to achieve this goal. Second, the interim programs are based on existing energy efficiency initiatives that have a record of cost effectiveness and are currently oversubscribed. This indicates that they can be readily expanded when additional funds become available. Third, in recognition of utilities' unique relationship with customers, the fast track proposal includes utility-administered programs, thereby ensuring that utilities are involved in delivering energy efficiency programs from the beginning and that they have the opportunity to build on that role. Fourth, the proposal contemplates that utilities, NYSERDA and others would propose energy efficiency initiatives for inclusion in the portfolio of programs, which would be evaluated using an open and transparent process.

While many parties, including some utilities, also support DPS Staff's proposal, Consolidated Edison Company of New York, Inc. ("Con Edison"), Orange and Rockland Utilities ("O&R") and Central Hudson Gas & Electric

Corporation ("Central Hudson") oppose almost all elements of that recommendation. Con Edison and O&R contend that the interim programs should not be authorized unless the Commission decides now, that utilities are to be given a more substantial role in the long-term EEPS programs. In their view, DPS Staff's proposal erred in not addressing the implementation of utility programs and the governance structure for each service territory.[1] Central Hudson also opposes the DPS Staff proposal, which it characterizes as an attempt to expand the role of a governmental incumbent monopoly energy efficiency supplier (NYSERDA) to minimize the role of distribution utilities.[2]

Consolidated Edison and O&R either misunderstand how the DPS Staff proposal would work or are simply not satisfied with the fact that they would not have a guaranteed role carved out at the beginning of the process. However, the proposal fully and unambiguously addresses the role of the utilities both in the short-run and the long-run. As we indicated in our initial brief, the DPS Staff proposal includes two utility programs, Residential Energy Star ® HVAC and Efficient Gas Equipment and the Small Business Direct Installation Program that would be allocated approximately $54 million in 2009, the second year of the program. This is an important and significant role for utilities, which based on the comments of several parties, may not be ready for a more substantial role.[3] The DPS Staff proposal also addresses the utilities' role over the longer term. Utilities can propose energy efficiency programs that will be assessed in an open and

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1 Con Edison and O&R IB, p. 2.

2 Central Hudson IB, p. 4.

3 National Association of Energy Service Companies ("NAESCO") IB, p. 4.

transparent process, and may be assimilated into the statewide portfolio upon a demonstration that they will result in energy efficiency at lower cost than existing programs.

Con Edison states that the Commission recently recognized the likelihood that the EEPS proceeding will result in the substantial involvement of utilities in delivering energy efficiency programs.[4] Consistent with the Commission's Order, Con Edison believes that utility involvement should begin sooner than later. The DPS Staff proposal would achieve that result, since the utilities' role would start immediately. In fact, if DPS Staff's proposal is rejected, the process of proposing and obtaining PSC approval for a new suite of energy efficiency programs would delay utilities' involvement in providing energy efficiency services.

Con Edison, O&R and Central Hudson prefer an approach where funds and energy reduction targets are allocated in advance. This approach seems to perpetuate a belief that utilities are some how entitled to be part of any energy efficiency program without any assessment of their readiness or capabilities. Although we recognize the utilities' unique relationship with customers and believe that they have the potential to make substantial contributions to the State's energy efficiency goals, they must demonstrate that their programs are more cost effective than the current programs in place.

Central Hudson's claim that DPS Staff's proposal is an attempt to expand the role of a governmental monopoly supplier of energy efficiency at the expense of distribution utilities is equally misplaced. As discussed above, although the

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[4] Case 07-E-0523, Order Establishing Rates For Electric Service, March 25, 2008 ("Electric Rate Order").

proposal relies mainly on NYSERDA-administered programs with a proven record of cost effectiveness, it also includes utility programs with successful track records. More importantly, in the long run, if utilities can develop more cost effective programs they can replace NYSERDA programs. From a public interest perspective, it is irrelevant as to which entity delivers energy efficiency. What is important is to achieve the State's energy efficiency goal in the most cost effective and expedient manner.

In summary, the CPB continues to support the DPS Staff proposal, with the modifications identified in our IB. We also urge the utilities to submit proposals that might be superior to current NYSERDA initiatives, and recommend that the PSC establish an open and transparent process to review those recommendations expeditiously.

II. INCLUDING UTILITIES IN THE ADMINISTRATION OF ENERGY EFFICIENCY PROGRAMS

Based on our review of the IBs of other parties, there appears to be no substantive opposition to having both utilities and NYSERDA administer energy efficiency programs. As explained in detail in our IB, the CPB supports this hybrid model. Given the State's ambitious energy efficiency target, it is important to rely on the inherent strengths of both NYSERDA and the utilities. Over the past decade, NYSERDA has been the major provider of energy efficiency programs in the State. However, now that the State is planning to increase energy efficiency programs many fold, it is important to enlist the help of the utilities to capitalize on their familiarity and close contact with customers.

In our IB, we also indicated that having both utilities and NYSERDA administer energy efficiency programs would have the additional advantage of engendering healthy competition that would enhance the quality of programs delivered to customers. To foster such competition, it is important that key parameters of the energy efficiency programs to be offered by utilities be readily comparable to those offered by NYSERDA. In this regard, we support the suggestion by National Association of Energy Service Companies ("NAESCO") that proposals put forward by utilities include the same level of detail regarding anticipated costs and energy savings, as current NYSERDA SBC III Energy $mart programs.[5] As NAESCO suggests, this would be the basis of assessing benefit/cost ratios of utility programs and comparing them with NYSERDA programs. In addition, we suggest that utilities include the cost of shareholder incentives in their proposals to facilitate a proper comparison of the cost of their initiatives and NYSERDA's.

III. PROGRAM COST AND BILL IMPACTS

In our IB, the CPB explained that the customer bill impacts of the Straw Proposal were larger than necessary because the allocation of funding and energy reduction responsibility between NYSERDA and the utilities was specified in advance. Since each of the energy administrators would have their own separate funding, the combined energy efficiency portfolios of NYSERDA and the utilities would not be optimized and hence would result in higher costs to achieve the State's energy efficiency goals. We also cautioned against underestimating

[5] NAESCO IB, p. 5-6.

the overall cost of achieving the EEPS goals in view of the finding of the State's Renewable Energy Task Force that the costs of the Renewable Portfolio Standard program have been substantially understated. Additionally, we expressed our concern that the 25% escalation factor used to measure the increase in cost of the energy efficiency program over its eight-year life may be understated and that a higher escalation factor may be more realistic.

Several parties also expressed concern regarding the cost estimates. Multiple Intervenors ("MI") points out that the Straw Proposal has provided bill analyses not rate analyses.[6] According to MI, bill impacts include commodity costs and can mask the increase to delivery rates. We recommend that the impact of potential PSC decisions regarding energy efficiency programs be presented both on the basis of delivery bills, since the PSC regulates only delivery rates, and on the basis of total energy bills including commodity. This will help ensure understanding of the impact of these proposals on consumers.

DPS Staff indicated that the bill impacts under the Straw Proposal are over-simplified and based on subjective assumptions.[7] National Grid contends that the funding levels proposed for the utilities to achieve the targeted results appear to be understated. Based on its experiences in Massachusetts, the utility states that the low-cost savings opportunities shown in the Straw Proposal would not be available and the resulting average energy efficiency portfolio cost would

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6 Multiple Intervenors IB, p. 43.

7 DPS Staff IB, p. 4.

be higher than suggested in the Straw Proposal.[8] We urge the Commission to carefully consider the parties' concerns and National Grid's experience in evaluating the accuracy of the cost estimates presented in this case.

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

It appears that a majority of parties oppose the Straw Proposal's recommendation that the allocation of funding and energy efficiency reductions between NYSERDA and the utilities be specified in advance. MI points out that the Straw Proposal would allocate funds between NYSERDA and the utilities without regard to their relative abilities to achieve the EEPS goal at least cost.[9] NAESCO recommends that each energy program administrator propose their own energy reduction targets and associated costs rather than having the regulator saddle them with savings targets and an imposed budget.[10] The Commission would then fund initiatives that it approves on an incremental basis as programs achieve milestones or targets. DPS Staff believes that the "Commission would fail in its obligation to ensure that rates are just and reasonable if it were to designate target and funding allocations for each potential administrator before approving an actual budget and administrator for each approved program." [11]

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8 Niagara Mohawk Power Corporation d/b/a National Grid IB, pp. 15-16.

9 Multiple Intervenors IB, p. 45.

10 NAESCO IB, p. 6.

11 DPS Staff IB, p. 5.

In our IB, the CPB explained that we oppose the Straw Proposal's advance allocation of funding and energy reduction targets for many of the reasons mentioned above. In view of the overwhelming concern articulated by the parties with this aspect of the Straw Proposal, we strongly urge the Commission to assign funds and energy efficiency targets to NYSERDA and the utilities based on the outcome of a review of individual programs instead of through an arbitrary upfront allocation as recommended in the Straw Proposal.

CONCLUSION

The Consumer Protection Board urges the Public Service Commission to adopt the recommendations identified herein and in our Initial Brief, as soon as practical.

Respectfully submitted,

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