

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on September 13, 2012

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman  
Patricia L. Acampora  
Maureen F. Harris, dissenting  
James L. Larocca, abstaining  
Gregg C. Sayre

CASE 10-M-0457 - In the Matter of the System Benefits Charge IV.

ORDER AUTHORIZING THE REALLOCATION OF UNCOMMITTED SYSTEM  
BENEFITS CHARGE III FUNDS

(Issued and Effective September 13, 2012)

In our October 24, 2011, order in this proceeding, we established a process for determining the appropriate disposition of any funds authorized to be expended for System Benefits Charge III (SBC III) programs administered by the New York State Energy Research and Development Authority (NYSERDA) that might remain uncommitted as of the December 31, 2011, termination of the SBC III period.<sup>1</sup> We directed NYSERDA to submit a full accounting of such uncommitted funds by March 31, 2012, and invited it to include with that submission a proposal for the allocation of those funds, as well as any additional SBC III funds that might become uncommitted in the future. NYSERDA provided the required accounting in a report filed on March 9, 2012, showing a total of \$27,509,008 in uncommitted SBC III funds, and it indicated that a request for authorization to use

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<sup>1</sup> Order Continuing the System Benefits Charge and Approving an Operating Plan for a Technology and Market Development Portfolio of System Benefits Charge Funded Programs, issued and effective October 24, 2011 (T&MD Order).

those funds would be forthcoming. That request came on March 30, 2012, in the form of a "Petition for Allocation of Uncommitted System Benefits Charge III Funds for Strategic Initiatives" (Petition).

In its Petition, NYSERDA proposes to utilize the uncommitted SBC III funds for three new initiatives:

(a) \$10 million to develop and implement programs to reduce the balance-of-system (BOS) costs for solar photovoltaic (PV) installations and to support priority PV technology development;

(b) \$10 million to support a proposal by the Brookhaven National Laboratory (BNL) to secure U. S. Department of Energy (DOE) funding for a New York Energy Storage Innovation Hub, of which \$2.5 million would go towards support of the New York Battery and Energy Storage Technology Consortium ("NY-BEST") Testing and Commercialization Center; and

(c) \$5,760,672 to expand the Advanced Buildings Program within the Technology and Market Development Portfolio (T&MD Portfolio) including \$3 million for the Advanced Buildings Consortium and \$2,760,672 for a deep energy savings initiative in commercial buildings.

NYSERDA also requests that it be authorized to apply the \$1,748,336 balance of uncommitted funds to cover New York State Cost Recovery Fee assessments allocable to SBC III programs that were in excess of the amount included for this charge in Commission-approved budgets.

In addition to the specific funding requests, NYSERDA seeks authorization to reallocate SBC III funds that become uncommitted after December 31, 2011. Funds would be applied first to SBC III projects that were committed as of December 31, 2011, and next to the most closely aligned NYSERDA T&MD Portfolio or Energy Efficiency Portfolio Standard (EEPS) program.

By this Order, we approve the requested funding authorizations with two modifications, one concerning the process to be followed for reallocation of funds if the BNL application is unsuccessful, and one concerning the use of interest on SBC III and Energy Efficiency Portfolio Standard (EEPS) funds to cover New York State Cost Recovery Fee assessments. We decline to authorize the reallocation of future uncommitted SBC III funds without prior review by the Commission.

SUMMARY OF THE PETITION AND COMMENTS RECEIVED

The Solar PV Initiative

NYSERDA proposes the allocation of \$10 million in uncommitted SBC III funds to the Advanced Clean Power Program within the T&MD portfolio for the purpose of developing and implementing programs to reduce the "balance of system" (BOS) costs of solar PV installations. BOS costs, NYSERDA says, constitute approximately half the total cost of an installation and include labor, design, permitting and interconnection, and the cost of the inverter. Based on its experience in administering PV programs, NYSERDA says it believes that balance of system costs can be reduced by at least 10% below current levels.<sup>2</sup> It notes that the NY-Sun initiative announced by Governor Cuomo aims to significantly increase solar PV installations in New York while protecting ratepayers by keeping costs under control. Addressing BOS costs was identified by NYSERDA in its own study of solar PV as one way of achieving such cost containment.<sup>3</sup>

If the Commission approves this proposal, NYSERDA says it will initiate a dialogue including workshops and exchanges of

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<sup>2</sup> Petition, p. 3.

<sup>3</sup> Petition, p. 4.

written material to develop a thorough understanding of the PV project development process from the perspective of all stakeholders. Based on that process, it will initiate efforts with the potential to reduce balance of system costs, including, but not limited to:

- The development of training programs and materials to educate local government planners, code officials, fire department personnel, home owner associations, and other local stakeholders;
- The promotion of statewide standardization of the procedural requirements for permitting and interconnection;
- Programs and materials to address electrical requirements, safety practices, and the requirements of the National Electric Code and State law;
- The development of best practices for incorporating PV into new buildings and making buildings "PV-friendly" for easy PV retrofit at a later time, and educating architects and developers on these practices;
- The demonstration of new and under-used technologies that have the potential to reduce the installed cost of PV systems; and
- A series of strategic pilot demonstration projects that optimize the full value of all BOS cost reductions when implemented as a fully-integrated PV system.<sup>4</sup>

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<sup>4</sup> Petition, pp. 3-4.

In jointly filed comments, a number of the State's electric utilities strongly endorse the proposed PV initiative.<sup>5</sup> They say that reported decreases in PV installation costs are likely the result of imports of low-cost panels and a worldwide glut of manufacturing capacity. Balance of system costs, by contrast, have actually increased according to NYSERDA reports for 2010 and 2011. If solar PV is to be a technology that can stand on its own without requiring subsidies into the indefinite future from electric customers, the utilities argue, then the costs related to installing solar PV need to be reduced.<sup>6</sup>

Solar One, a provider of green workforce training and testing, comments that the proposed program will support continued development of the solar PV industry in the State.<sup>7</sup> The Northeast Clean Heat and Power Initiative (NECHPI) also expresses itself "strongly supportive" of measures to reduce balance of system costs, but adds that the Commission should direct NYSERDA to extend those efforts to all forms of distributed generation, not just solar PV.<sup>8</sup>

No commenting party specifically opposes the solar PV funding request.

#### Energy Storage Initiatives

NYSERDA requests the reallocation of \$10 million in uncommitted SBC III funds to the Smart Grid program within the

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<sup>5</sup> Joint Comments Regarding NYSERDA Administered SBC IV Programs, July 13, 2012, p. 33 (Joint Utilities). The Joint Utilities consist of Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., Niagara Mohawk Power Corporation d/b/a National Grid, The Brooklyn Union Gas Company d/b/a National Grid NY, KeySpan Gas East Corporation d/b/a National Grid, and Central Hudson Gas and Electric Corporation.

<sup>6</sup> Joint Utilities, p. 33.

<sup>7</sup> Comments of Solar One, July 12, 2012.

<sup>8</sup> Comments of NECHPI, August 2, 2012, p. 5.

T&MD portfolio to support what it describes as a "highly leveraged opportunity for the establishment of an energy storage or smart grid 'hub' and commercialization center in New York State."<sup>9</sup> It says that on February 1, 2012, the DOE issued a \$120 million solicitation for an Energy Innovation Hub for advanced research on batteries and energy storage. The requested \$10 million reallocation would be used by NYSERDA to provide cost-sharing support for a proposal being developed by BNL to establish the hub in New York. It says numerous academic institutions and businesses across the State are expected to participate in the hub.

Of the \$10 million, \$2.5 million would be used to support the New York Battery and Energy Storage Technology Consortium (NY-BEST) Testing and Commercialization Center. NY-BEST was created in 2009 and is dedicated to fostering collaboration to accelerate innovation in energy storage technology and to develop energy storage manufacturing facilities within New York. NYSERDA says the Consortium has grown to over 100 members and will ensure that critical and unique New York State storage issues are addressed in a manner that provides additional State benefits.

NYSERDA contends that a New York hub would advance New York's commitment to becoming a national leader in the battery and energy storage technology sector, allow the State to capitalize on its academic, industrial, and governmental resources in the energy storage and smart grid sectors, and potentially attract new technology and suppliers as the energy storage manufacturing sector grows. It points out that energy storage advancements support Governor Cuomo's plan for an "Energy Highway" and that, ultimately, the energy storage hub

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<sup>9</sup> Petition, p. 4.

could serve as a feeder to the Renewable Portfolio Standard or future renewable initiatives.<sup>10</sup>

If the New York hub proposal is not selected for an award, NYSERDA proposes that it be authorized to apply the reallocated funds to a subsequent DOE solicitation for an energy innovation hub, or similar initiative, which it says is provided for in the fiscal year 2013-2014 federal Executive Budget. If neither of the hub proposals is successful, NYSERDA requests that it be permitted to continue the \$2.5 million commitment to NY-BEST, and to return to the Commission with a proposal for use of the remaining \$7.5 million.

The Joint Utilities support NYSERDA's proposed use of SBC funding as seed money for a New York State energy storage technology hub. They express the view that energy storage, once costs and durability have been improved, will play a leading role in demand response solutions, which can help avoid or defer the need for capital investment in their electric systems. The electric power industry's need for cost-effective energy storage is growing, and Brookhaven National Laboratory's focus on addressing fundamental materials science issues, the Joint Utilities argue, is just what is needed to dramatically enhance battery lifetimes.

#### Advanced Buildings Programs

NYSERDA asks that \$5.76 million in uncommitted SBC III funds be reallocated to the Advanced Buildings Program within the T&MD Portfolio. Of this amount, \$3.0 million would be allocated to an Advanced Buildings Consortium (ABC). The ABC, NYSERDA says, was described in the T&MD Operating Plan approved by the Commission in October 2011. Its purpose would be to conduct targeted and high priority technology development and demonstration projects and to help accelerate the introduction

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<sup>10</sup> Petition, p. 5.

of emerging technology into New York markets. The ABC would have broad representation from technology developers, designers, builders, building supply industries, operators and owners, and would improve the coordination between end-users and developers of building technologies, ultimately leading to achievement of higher energy and environmental performance in the New York building stock.<sup>11</sup>

The remaining \$2.76 million would be used to fund a Deep Energy Savings Initiative under the Emerging Technology/Accelerated Commercialization - Buildings component of the Advanced Buildings Program. The purpose of the initiative would be to demonstrate the feasibility and replicability of efforts to achieve 25-40% or more energy efficiency savings in existing buildings and 40% or more energy savings in new construction in New York State. NYSERDA says that research studies elsewhere have indicated that savings in this range are feasible, but that the approaches taken have not yet been proven in New York with its unique building stock. The Deep Energy Savings Initiative would aggressively monitor pre- and post-installation energy consumption, construction costs and energy bill savings for three or four pilot projects in order to produce a series of reference case studies for the cost-effectiveness of deep savings approaches. Ultimately, this effort could make deep energy savings the standard for future energy efficiency improvements.<sup>12</sup>

The Joint Utilities generally support the Advanced Buildings initiative proposed by NYSERDA, but suggest that NYSERDA be required to work with the utilities on the planning of the program so that utilities and their customers can share in the benefits when utilities propose their own advanced

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<sup>11</sup> Petition, pp. 6-7.

<sup>12</sup> Petition, p. 7.

buildings programs.<sup>13</sup> PACE Energy and Climate Center, Natural Resources Defense Council, Northeast Energy Efficiency Partnerships and Sierra Club, in joint comments, express support for all of the Advanced Clean Power and Advanced Building initiatives, saying that they appear to be reasonable, appropriate and well-considered uses of ratepayer funds that will help meet the State's efficiency and clean energy targets. The organizations particularly applaud the proposed stronger emphasis on deep energy savings pilots. They say that research, pilots and freedom for trial and error are necessary to determine the most effective procedures and technologies to lower the cost of deep energy savings, and that such work is "the essence of NYSERDA's market transformation charge." Therefore, they support the proposed initiative to target such deeper and more innovative energy savings projects.<sup>14</sup>

New York State Cost Recovery Fee

The initiatives described above would consume all but approximately \$1.75 million of the uncommitted SBC III funds. NYSERDA requests that it be authorized to apply that balance, which it says is attributable to accumulated SBC III interest earnings, to cover a shortfall in funding for New York State Cost Recovery Fee assessments to NYSERDA that were allocable to SBC III programs. It says that for the period ended December 31, 2011, the Commission approved total funding of approximately \$16.94 million for the Cost Recovery Fee. The actual fee assessments that were allocable to SBC programs were approximately \$18.69 million for the same period. The shortfall, NYSERDA says, was due to increases in the annual Cost

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<sup>13</sup> Joint Utilities, pp. 32-33.

<sup>14</sup> Comments of PACE Energy and Climate Center, Natural Resources Defense Council, Northeast Energy Efficiency Partnerships and Sierra Club, July 13, 2012, p. 7 (Joint Environmental Organizations).

Recovery Fee assessments imposed on NYSERDA and the amount allocated to the SBC programs based on the program's proportionate share of NYSERDA's total expenditures.<sup>15</sup>

NYSERDA notes that future State Cost Recovery Fee assessments will continue to be allocated to the SBC III programs after December 31, 2011 upon expenditure of the remaining unspent funds. Consequently, it asks for authorization to apply future interest earnings on SBC III and EEPS funds, to the extent available, to pay future Cost Recovery Fee assessments related to the remaining SBC III funds. It estimates those costs at \$5.4 million, and says they should be able to be funded by the interest earnings. Approval of this request, NYSERDA states, would be consistent with past Commission practice, would avoid any decrease in program funding, and would not require the use of ratepayer collections.<sup>16</sup>

#### Opposition to the Petition

Multiple Intervenors (MI), an association representing 55 large industrial, commercial and institutional energy consumers with manufacturing and other facilities in New York, expresses general opposition to NYSERDA's reallocation of uncommitted SBC III funds. High energy costs and the lingering effects of the recent severe recession have made this a sensitive time for energy-intensive businesses. The 2009 State Energy Plan acknowledges high energy costs as a barrier to the growth of existing businesses and the location of new businesses in the State. For those reasons, MI says, the Commission should look at the availability of uncommitted SBC III funds as an opportunity to provide some relief to ratepayers by returning funds and/or reducing future SBC collection levels.<sup>17</sup>

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<sup>15</sup> Petition, p. 8.

<sup>16</sup> Petition, p. 9.

<sup>17</sup> Comments of Multiple Intervenors, June 25, 2012, pp. 14-16.

DISCUSSION

We fully share MI's desire to constrain the cost of electricity and natural gas in New York, in the interest not only of business and industry, but of all ratepayers. To that end, in our most recent orders concerning the System Benefits Charge, we have declined to increase the level of collections from customers and have postponed previously authorized collections, where possible, to ensure that funds are not collected until they are needed.

Ultimately, however, the goal of ensuring a reliable supply of energy for New York at the lowest possible cost requires investment. We must continue to find ways both to reduce the demands we make on our electric and natural gas grids and to enhance the ability of that infrastructure to handle the loads that remain in an optimal fashion. The programs funded through the SBC address those twin imperatives head on.

When we considered funding for SBC III, we established a budget that we believed constituted a reasonable level of investment in research and development, technological innovation and market transformation. The fact that all funds were not committed within the SBC III period does not change that conclusion. Returning the uncommitted funds to ratepayers would provide a very small short-term benefit and would do nothing to relieve long-term concerns about energy costs. Those concerns are best addressed by continuing to apply those funds to the types of innovative programs for which they were originally intended.

Solar PV

NYSERDA's proposal concerning the balance of system costs for photovoltaic installations is an integral part of the NY-Sun initiative to expand solar development in New York that

was announced by Governor Cuomo in April of this year.<sup>18</sup> It is supported in comments by both the Joint Environmental Organizations and the Joint Utilities, with the latter noting that reducing installation costs is critical to the viability of solar PV in the State. NYSERDA's proposal has the potential to do just that, and we will approve the reallocation of \$10 million as requested.<sup>19</sup>

Energy Storage

In our December 30, 2010, order in this case, we suggested that an important criterion for selecting programs to be funded through the SBC from among the myriad of worthwhile proposals put forward by stakeholders should be the extent to which the funds expended could be leveraged by other public and private investment.<sup>20</sup> NYSERDA's proposal to use uncommitted SBC III funds to provide cost-sharing support for BNL's pursuit of U.S. DOE funding for a New York Energy Storage Innovation Hub, and to continue support for NY-BEST, is exactly what we had in mind. The potential benefit to the State, not only from the initial federal funding, but also from the attraction of entities developing and ultimately supplying energy storage solutions, is very large and could contribute greatly to realizing the goals of the Governor's "Energy Highway" for New York.

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<sup>18</sup> See "Governor Cuomo Announces Comprehensive NY-Sun Initiative to Expand Solar Development in New York," press release dated April 19, 2012, published at <http://www.governor.ny.gov/press/04192012-sun-initiative>.

<sup>19</sup> We agree with NECHPI that reducing the balance of system costs for other types of distributed generation is a worthwhile objective, but we have no specific program proposal before us.

<sup>20</sup> Order Continuing System Benefits Charge Funded Programs, issued December 30, 2010, p. 13.

We will, therefore, approve the reallocation of uncommitted SBC III funds as it pertains to NY-BEST and to support the BNL effort. As to any further reallocation of the funds if the BNL proposal is not accepted for funding, while we recognize that it may be desirable for NYSERDA to have the ability to act quickly to take advantage of a subsequent DOE solicitation, we are not willing to provide a blanket authorization in advance. Accordingly, we will direct NYSERDA to file any proposal for response to a new solicitation with the Secretary for our review and approval, after appropriate public notice and comment. We will expedite that review as necessary to ensure that our approval, if given, will be timely.

Advanced Buildings

The thrust of the proposed enhancements to the Advanced Buildings Program is to mobilize expertise from diverse fields in an effort to explore and demonstrate the potential for squeezing significant additional, or "deep," energy savings from new and existing buildings. As the Joint Environmental Organizations suggest, this is precisely the type of fundamental research, development and demonstration effort that NYSERDA's T&MD Portfolio is intended to promote. We will, therefore, approve the requested reallocations of uncommitted SBC III funds.

With respect to the Joint Utilities' suggestion that we require NYSERDA to work with them on the planning of the program, we agree that such coordination could be beneficial. We will not mandate what form that will take, however. We have consistently insisted on thorough stakeholder involvement in the planning of SBC-funded NYSERDA programs, and NYSERDA has responded positively with extensive outreach and collaboration. We expect that will be the case with these Advanced Building programs as well.

New York State Cost Recovery Fee

The New York State Cost Recovery Fee is mandated by law for all public authorities. It is an unavoidable cost of operations that NYSERDA incurs in carrying out its role as the administrator of SBC programs. Had we been able to predict exactly what the fee assessments would amount to during the term of SBC III, we would have provided for them fully in the SBC III budget. It is, therefore, entirely appropriate that we authorize the fees incurred in excess of the budgeted amount to be recovered from remaining, uncommitted SBC III funds.

Similarly, future fee assessments allocated to SBC III should be recoverable, and we agree that using interest earned on SBC III funds is an appropriate way to accomplish that. We decline, however, to authorize the use of interest on EEPS funds. We do so both because it is not now clear the extent to which interest on SBC III funds will be inadequate to cover this expense, and also because it is fundamentally our view that the costs of SBC III programs should be paid for with SBC III funds. Accordingly, we will authorize NYSERDA to reallocate funds from other SBC III programs, as necessary to pay Cost Recovery Fee assessments not covered by SBC III interest earnings.

Administration and Evaluation Expenses

NYSERDA states that all expenses of administration and evaluation associated with the program initiatives proposed in its Petition will be covered by funds previously authorized for administration and evaluation of programs included within the T&MD Portfolio. We approve the authorizations subject to that commitment.

Future Uncommitted SBC III Funds

We decline to approve NYSERDA's request for authorization in advance to reallocate SBC III funds that have or may become uncommitted after December 31, 2011. As we stated

in our T&MD Order, we have a continuing obligation to ratepayers to determine whether unused funds should be reallocated to other programs or returned to the customers who provided them.

Consequently, except to the limited extent that we have provided for the use of these funds for Cost Recovery Fee assessments incurred by NYSERDA, we will require that any proposals for the reallocation of future uncommitted SBC III funds to be submitted for Commission review and approval.

#### CONCLUSION

With the limited exceptions discussed above, the funding reallocation requests described in NYSERDA's Petition for Allocation of Uncommitted System Benefits Charge III Funds for Strategic Initiatives are approved.

#### The Commission orders:

1. The New York State Energy Research and Development Authority (NYSERDA) is authorized to allocate and expend System Benefit Charge III (SBC III) funds in its possession that were not committed for expenditure as of December 31, 2011, for the following purposes: (1) \$10 million for a new initiative within the Advanced Clean Power Program of the Technology and Market Development Portfolio (T&MD Portfolio) focused on reducing the balance-of-system costs for solar photovoltaic installations and the development of priority photovoltaic technology; (2) \$10 million for an energy storage initiative within the Smart Grid Program of the T&MD Portfolio, \$7.5 million of which shall be made available to provide cost-sharing support for an application for U. S. Department of Energy funding to establish an Energy Storage Innovation Hub within New York, and \$2.5 million of which shall be used to support the New York Battery and Energy Storage consortium's Commercialization and Testing Laboratory; (3) \$3.0 million for an Advanced Buildings Consortium within the Technology Development component of the

Advanced Buildings program of the T&MD Portfolio; and (4) \$2,760,672 for a deep energy savings in commercial buildings initiative to be established within the Emerging Technology/Accelerated Commercialization - Buildings component of the Advanced Buildings Program of the T&MD Portfolio. These funds shall be used exclusively for program costs.

Administration and evaluation expenses associated with the authorized initiatives shall be funded from amounts previously authorized for the administration and evaluation of programs within the T&MD Portfolio.

2. Within 60 days following the issuance of this order, NYSERDA shall submit a supplemental revision to its T&MD Operating Plan incorporating the initiatives funded by this order.

3. Within seven days after learning that the New York proposal for an Energy Storage Innovation Hub supported by funds reallocated by this order was not, or will not be, approved for funding by the U. S. Department of Energy, NYSERDA shall notify the Director, Office of Energy Efficiency and Environment. Within 60 days after providing such notice, NYSERDA shall file a petition with the Secretary for our consideration proposing an alternative use for the \$7.5 million allocated for support of the hub application.

4. NYSERDA is authorized to retain \$1,748,336 of SBC III interest earnings accumulated through December 31, 2011, as reimbursement for New York State Cost Recovery Fee assessments in excess of budgeted amounts that were allocable to SBC III programs through December 31, 2011. NYSERDA is further authorized to retain SBC III interest earnings accumulated after December 31, 2011, to the extent necessary to reimburse it for New York State Cost Recovery Fee assessments in excess of budgeted amounts that are allocable to SBC III programs after

December 31, 2011. If interest earnings are inadequate, NYSERDA is authorized to reallocate SBC III program funds to cover the additional cost of such fees, first using any previously committed funds that may become uncommitted after December 31, 2011.

5. NYSERDA shall incorporate reports on the programs authorized by this order into the SBC periodic program and evaluation reports, annual program reports and evaluations, and monthly scorecard reports. The reports shall include the types of information currently required for reports on T&MD Portfolio programs. Annual reports shall specifically show the amounts of SBC III interest earned and SBC III program funds applied to cover the cost of the New York State Cost Recovery Fee.

6. Any funds previously authorized for SBC III programs that have, or may subsequently, become uncommitted after December 31, 2011, shall be held by NYSERDA for subsequent disposition by the Commission.

7. The Secretary, at her sole discretion, may extend the deadlines set forth herein.

8. These proceedings are continued.

By the Commission,

(SIGNED)

JACLYN A. BRILLING  
Secretary

Maureen F. Harris, Commissioner, dissenting:

For reasons articulated in the minutes of the session, I dissent.