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Comments

07-11-0548

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July 16, 2007

VIA HAND DELIVERY

Hon. Jaclyn Brilling
Secretary
New York State Public Service Commission
Three Empire State Plaza, 14th Floor
Albany, New York 12223-1350

Re: Case 07-E-0548 – Proceeding on Motion of the Commission Regarding an
Energy Efficiency Portfolio Standard

Dear Secretary Brilling:

Enclosed for filing in the above referenced proceeding are the original and five (5) copies of Initial Comments of Multiple Intervenors in Response to Staff's Questions ("Initial Comments"). The Initial Comments were circulated to Judge Stein and all parties to this proceeding electronically on July 11, 2007. Although it is not clear whether the filing hard copies of the Initial Comments with the Secretary's Office is necessary, Multiple Intervenors makes this filing in an exercise of prudence.

Please call me if you have any questions.

Respectfully submitted,

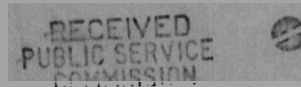
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EXECUTIVE ALBANY

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

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**Proceeding on Motion of the Commission
Regarding an Energy Efficiency Portfolio
Standard**

Case 07-M-0548

**INITIAL COMMENTS OF
MULTIPLE INTERVENORS
IN RESPONSE TO
STAFF'S QUESTIONS**

Dated: July 11, 2007

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PRELIMINARY STATEMENT

Multiple Intervenors, an unincorporated association of approximately 50 large industrial, commercial and institutional energy consumers with manufacturing and other facilities located throughout New York State, hereby submits its Initial Comments in Response to Staff's Questions in Case 07-M-0548, Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio Standard.

On May 16, 2007, the New York State Public Service Commission ("Commission") issued an Order Instituting Proceeding, commencing this proceeding to facilitate the design and the implementation of an energy efficiency portfolio standard ("EPS") in New York State.¹ In the EPS Order, the Commission concludes that "realizing the State's energy efficiency potential and reducing New York's electricity usage 15% from expected levels by 2015 are in the public interest."²

Following a procedural conference conducted on June 4, 2007, Administrative Law Judge ("ALJ") Eleanor Stein issued a Ruling on Scope and Schedule on June 15, 2007 ("June 15th Ruling").³ In her June 15th Ruling, ALJ Stein adopted an initial schedule for this proceeding based on, inter alia, an expectation that by the end of July, 2007, New York State Department of Public Service Staff ("Staff") will issue a "Straw Proposal" in furtherance of

¹ Case 07-M-0548, Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio Standard, Order Instituting Proceeding (issued May 16, 2007) (hereinafter, "EPS Order").

² Id. at 2. As addressed, infra, there is no evidentiary record supporting this conclusion, or justifying why this "15 by 15" goal for an EPS purportedly is preferable to possible alternative goals for an EPS.

³ Case 07-M-0548, supra, Ruling on Scope and Schedule (issued June 15, 2007).

an EPS that is reflective of input provided by interested parties in response to a series of questions posed by Staff.⁴

Consistent with the discussion at the June 4th procedural conference, on June 13, 2007, Staff circulated “Staff’s Questions to the Parties” (hereinafter, “Questions”) with a requested response date of July 11, 2007. Staff’s Questions total 25 in number, and are organized into the following categories: (a) Goals; (b) Program Elements; (c) Implementation; (d) Costs and Benefits Calculation; and (e) Funding. Importantly, Staff also requested that parties advise it if there are other matters – not raised by the Questions – that it should consider as it develops the Straw Proposal.

As detailed herein, Multiple Intervenors members are strong proponents of energy efficiency. Upon information and belief, the members of Multiple Intervenors are among the most energy-efficient utility customers in the State. For decades, Multiple Intervenors members have undertaken substantial investments in energy efficiency because such investments made sound business sense. Significantly, however, Multiple Intervenors members face intense competition and cost pressures in their respective industries, and are very concerned about the costs, and the rate impacts, of the Commission’s EPS initiative. They also are concerned about possible inequities inherent in the implementation of an EPS. Customers who have made substantial investments in energy efficiency on their own should not be called upon to subsidize efficiency projects for other customers, some of which may be their business competitors.

⁴ Id. at 2-3.

New York State has some of the highest electric rates in the nation, and while customers undertaking energy efficiency projects should benefit from their implementation, every effort must be made to minimize the detrimental rate impacts that may be caused by an EPS.⁵ Additionally, the costs of an EPS must be recovered in a manner that: (a) is consistent with existing economic development policies; (b) promotes interclass and intraclass equity; and (c) accounts for critical regional differences within the State.

Multiple Intervenors welcomes the opportunity to provide Staff with input on numerous EPS-related issues in furtherance of the development of a Straw Proposal. Importantly, the positions advanced herein constitute Multiple Intervenors' current positions, some of which may be refined or modified in response to information that is learned during the course of this proceeding.⁶

Because some of Multiple Intervenors' primary positions and concerns do not mesh neatly with Staff's Questions, these Initial Comments are organized into two sections. In Point I, Multiple Intervenors advances its general positions on issues related to the design and the implementation of an EPS in New York State. Multiple Intervenors hopes that by highlighting its issues and concerns now, these matters will be accorded the attention they

⁵ For instance, in a report entitled, "Preliminary Staff Analysis: Benefits and Costs and Bill Impacts of Energy Efficiency Program for 15 Percent Reduction in Electricity Usage by 2015" ("Preliminary Staff Analysis"), dated June 1, 2007, it is estimated that the Commission's EPS goals could be achieved by increasing annual System Benefits Charge ("SBC") spending from \$175 million to approximately \$865 million. Case 07-M-0548, supra, Preliminary Staff Analysis at 4. Such a potential increase in the SBC, if recovered from large industrial, commercial and institutional customers, would have a devastating impact on their businesses and would be extremely counterproductive to the State's efforts to promote much-needed economic development, particularly in Upstate New York.

⁶ To the extent Multiple Intervenors' positions are refined or modified, it shall so notify ALJ Stein, Staff and the other parties hereto.

deserve in the earliest stages of this proceeding. In Point II, Multiple Intervenors provides responses to some – but not all – of Staff's Questions.

POINT I

MULTIPLE INTERVENORS' GENERAL POSITIONS ON ISSUES RELATED TO THE DESIGN AND THE IMPLEMENTATION OF AN EPS IN NEW YORK STATE

The prospect of an EPS – particularly one as ambitious as that described in the Order – raises numerous issues for the Commission to consider. The resolution of these issues should be based on as complete a record as possible, and should not be expedited unnecessarily. Additionally, while temptation may exist to resolve certain issues on a piecemeal basis, the magnitude of this proceeding – including its likely impact on energy rates for many years to come – warrants a comprehensive, integrated resolution of the issues.

Although Multiple Intervenors members have been implementing energy efficiency projects for many years, and recognize the existence of untapped, cost-effective efficiency measures, the prospect of a statewide EPS relying on customer-funded efficiency programs raises a multitude of concerns that must be addressed in this proceeding. Those concerns include, but are not limited to, the following: (a) there is little to no analysis supporting the specific goal of the EPS (i.e., reducing New York's electricity usage 15% from expected levels by 2015) or assessing the impact of achieving the goal on other important State policies (e.g., economic development); (b) the rate impacts of an EPS must be minimized in light of New York State's noncompetitive electric rates; (c) New York should rely on national programs, modifications to standards and codes, and voluntary efforts as much as possible in the implementation of an EPS in order to minimize customer rate

impacts; (d) customers with New York Power Authority (“NYPA”) power allocations and individually-negotiated (i.e., “flex-rate”) contracts should be exempt from any EPS surcharge; (e) the recovery of EPS costs must be accomplished in a manner that promotes interclass and intraclass equity; (f) the design, implementation and funding of an EPS should reflect critical regional differences within the State; (g) energy efficiency programs targeted at large industrial, commercial and institutional customers should be as flexible as possible to encompass a wide scope of potential measures and business needs; (h) potential efficiency programs should be implemented only if they are demonstrably cost-effective (i.e., projected, quantifiable benefits exceed projected, quantifiable costs by a substantial amount), without reliance on non-quantifiable factors (e.g., externalities); and (i) all programs implemented should be evaluated rigorously on an annual basis by an independent entity.

A. There is No Record Basis to Support the Stated EPS Goal

As an initial matter, although the specific goal of the EPS – to reduce New York’s electricity usage by 15% from expected levels by 2015 – is laudable, there has been no analysis that this particular goal is more beneficial to possible alternate goals of an EPS. In the Preliminary Staff Analysis, Staff concluded that a 15% energy usage reduction target by 2015 “is an ambitious, but achievable goal.”⁷ Staff, however, failed to evaluate the costs and benefits of alternative EPS goals, e.g., a 10% reduction in ten years (i.e., 2017), a 15% reduction in 15 years (i.e., 2022). In short, there is no record to support the choice of the stated EPS goal. Accordingly, it is unclear at this time whether the benefits of an EPS could

⁷ See Preliminary Staff Analysis at 5.

be better achieved, with less costs (and lower rate impacts) to customers, by adopting a different goal.

Moreover, in the Preliminary Staff Analysis, Staff noted that “this is a preliminary conceptual analysis of a hypothetical program.”⁸ Thus, even for the stated EPS goal, Staff has yet to conduct a thorough examination of the projected costs and benefits. To Multiple Intervenors’ knowledge, no other party has conducted such an examination. In recognition of the total absence of any thorough analysis, the Commission should examine fully the likely costs and benefits of possible alternate goals in order to determine the approach that best achieves the overall goal of increased energy efficiency at the lowest cost, and rate impacts, to customers. Any EPS that is implemented in this proceeding must be reconciled with other important State goals, such as economic development. For instance, the prospect of increasing annual SBC funding from \$175 million to \$865 million (see Preliminary Staff Analysis at 4) could wreak havoc on efforts to promote the attraction and retention of energy-intensive, cost-conscious businesses (and employers).

Thus, while Multiple Intervenors does not challenge here the decision to pursue an EPS in some form for New York State, the Commission should retain maximum flexibility as to the specific goals of an EPS. Additional information, including the results of necessary cost/benefit analyses, is critical to the Commission’s ability to fashion an appropriate EPS.

B. The Rate Impacts of an EPS Must Be Minimized

⁸ Id. at 2.

Deregulation of the State's electricity markets primarily was intended to close the gap between electricity prices in New York and the rest of the country, in large part to enable the State's businesses to become more competitive. In Opinion No. 96-12, the Commission stated explicitly that its vision for the future of the electric industry included "reduced prices resulting in improved economic development for the State as a whole."⁹

Expanding on this vision, the Commission concluded that:

[C]ompetition should result in lower electric prices in New York State overall than currently. The large difference between New York's prices and the national average electric price should begin to shrink, rather than growing as it has under regulation. As a result of these lower prices, New York's competitive position will improve and economic development will be furthered, with the creation of additional jobs and increased opportunities for businesses and residents.¹⁰

Similarly, the most recent New York State Energy Plan, issued in June, 2002, concluded that "[p]olicies that promote a secure, competitive, and reasonably priced energy supply will help attract, retain, and expand business in New York," and that these policies "support reducing energy costs to consumers"¹¹ The State Energy Plan found that: "The increase in business profitability and consumer purchasing power that results from lower energy costs will further stimulate business investment, consumer spending, and employment

⁹ Case 94-E-0952, In the Matter of Competitive Opportunities Regarding Electric Service, Opinion No. 96-12, Opinion and Order Regarding Competitive Opportunities for Electric Service (issued May 20, 1996) at 25.

¹⁰ Id. at 26.

¹¹ New York State Energy Plan and Final Environmental Impact Statement (June 2002) (hereinafter, "State Energy Plan") at 2-15.

growth within the State.”¹² As detailed below, the present need to reduce electricity prices and rates, and stimulate economic growth, is as great as ever. The members of Multiple Intervenors, and all New York businesses, require lower-priced electric (and natural gas) rates if they are to be successful competitors within their own industries.¹³

1. Electricity Prices in New York State Are Well Above the National Average

The average price of electricity in New York State has been, and remains, well above the national average. According to the Edison Electric Institute, during the Summer of 2006 electricity prices paid by New York consumers not only exceeded the national average by a significant amount, they also exceeded prices paid in neighboring states.¹⁴ The electricity prices paid by high demand/high load factor customers (e.g., industrial customers) in New York State were 54% above the national average.¹⁵ In contrast, electricity prices paid by comparable customers in neighboring Pennsylvania were only 10% above the national average.¹⁶

¹² Id.

¹³ Although Multiple Intervenors’ Initial Comments focus primarily on the potential impacts of an EPS on electric rates, the positions espoused herein apply to the similarly-pressing need to minimize detrimental impacts on gas delivery rates.

¹⁴ See Edison Electric Institute, Typical Bills and Average Rates Report (Summer 2006) at 171, 172, 174.

¹⁵ Id. at 273, 299.

¹⁶ Id. at 275, 299. New York’s average large commercial and residential electricity prices also exceeded the national average by substantial amounts. New York’s average large commercial electricity bill of \$24,702.00 was 49% higher than the national average of \$16,556.00. Id. at 48, 80. New York’s average residential electricity bill of \$159.96 was 45% higher than the national average of \$109.83. Id. at 8, 39.

The price of electricity is a matter of particular importance to businesses. The State Energy Plan reports that:

In a national survey of businesses that primarily included manufacturers, 81% of the respondents considered energy cost and availability to be either an important or very important site-selection factor. Given the relative cost of energy in New York, manufacturers in the State regard energy costs as being even more significant than is indicated by the national survey.¹⁷

Moreover, the “average” industrial electricity price is just that – an average. It includes the effect of many economic development programs (e.g., NYPA allocations) that reduce the price of electricity for participating businesses and, thereby, reduce New York’s average electricity price for industrial customers. But, for businesses not eligible to participate in economic development programs, the electricity prices they pay generally are higher than the State’s non-competitive average price. The high price of electricity in New York continues to have an adverse impact on the State’s economy, especially on the manufacturing sector.¹⁸ In designing and implementing an EPS, the Commission must be cognizant of the danger of exacerbating the State’s competitive disadvantage in terms of electricity rates.¹⁹

¹⁷ State Energy Plan at 2-16 (footnote omitted).

¹⁸ See, e.g., *id.* at 1-22 (concluding that “[e]nergy prices need to be brought more in-line with other states to compete more effectively for economic opportunities”); *id.* at 2-16 (discussing the importance of energy prices to manufacturers).

¹⁹ For instance, a possible, substantial increase to the SBC, such as that referenced in the Preliminary Staff Analysis, would have a significant, detrimental impact on New York businesses.

2. New York State's Economic Climate Is Very Difficult for Manufacturers

The economic climate in New York is particularly difficult for the State's manufacturing sector. "Businesses in New York labor under heavier cost burdens than those in most competing states, from business taxes and workers' compensation to wages and energy costs."²⁰ For example, New York's business taxes are rated the worst in the country, and the cost of doing business in New York is the second-highest in the nation.²¹ The Beacon Hill Institute's State Competitiveness Index ranks New York 40th among all states.²² Moreover, for the period 1995 to 2005, the manufacturing employment in New York has decreased by 28.4%, with a 24.8% decrease in Upstate New York.²³ For that same period, New York ranked 48th for manufacturing employment growth, with an average 10-year growth of negative 17.5%.²⁴

²⁰ The Public Policy Institute of New York State, Inc., New 'Just the Facts' Shows New York Leads Most States in Business Costs (dated March 9, 2006) at 1.

²¹ Id.; The Public Policy Institute of New York State, Inc., Cost of Doing Business Index (2006).

²² The Public Policy Institute of New York State, Inc., State Competitiveness Index, 2006 (measuring factors including government fiscal policy, security, labor force, and technology, with higher scores indicating conditions that are likely to produce higher incomes and better standards of living).

²³ The Public Policy Institute of New York State, Inc., Manufacturing Employment Change, 1995-2005 (2006).

²⁴ Id.

High energy costs routinely are cited as one of the primary reasons for the decline in New York's manufacturing sector.²⁵ The State Energy Plan recognizes that "energy prices tend to be important factors in business location and expansion decisions, particularly for energy-intensive businesses."²⁶ The State Energy Plan also recognizes that "[r]educing energy costs ... can have a substantial effect on a business' profitability."²⁷

Policies that increase electricity rates can be very detrimental to the State's economy, and have a disproportionate impact on the Upstate economy, which is more reliant on the manufacturing sector than the Downstate economy. Accordingly, it is imperative that an EPS, if implemented, be designed in a manner that minimizes rate impacts.²⁸

C. An EPS Should Rely Heavily on National Programs, Modifications to Standards and Codes, and Voluntary Efforts

In order to minimize the rate impacts associated with implementation of an EPS, New York should rely, to the maximum extent possible, on national programs, modifications to standards and codes, and voluntary efforts. National programs that promote energy efficiency should be studied in this proceeding and relied upon to achieve the goals of an EPS. As detailed, supra, New York's very high electricity prices are not competitive with

²⁵ See, e.g., State Energy Plan at 2-16; Public Policy Institute of New York State, Inc., *The Key to the Upstate Economy? Manufacturing – Still* (September 2002) at 8; March 9, 2006 Article at 1.

²⁶ State Energy Plan at 2-16.

²⁷ Id.

²⁸ Implementation of an EPS would not be in the public interest if the goal of declining electricity consumption is satisfied by rising electricity rates, which in turn cause an exodus of manufacturers and other businesses from the State. The goals of an EPS must be reconciled with the State's pressing need to promote economic development.

the rest of the country. Thus, in implementing an EPS, the Commission should strive to avoid exacerbating the State's already non-competitive position. National programs – which do not rely on customer-funded or State-funded subsidies – should be utilized whenever possible.

Moreover, modifications to standards and codes (e.g., new construction building codes, appliance codes) also are preferable to customer-funded efficiency programs for several reasons. First, the modified standards and codes likely would have a larger reach, and impact, than any efficiency program. Second, modifications to standards and codes do not impact electricity rates and, therefore, would not exacerbate the State's non-competitive position in this area. Third, to the extent modified standards and codes have financial costs, such costs are borne by the beneficiaries (i.e., the entities realizing the efficiency improvements caused by the higher standards and codes).

Finally, in light of increasing public awareness of the benefits of energy efficiency (which are aided by very high energy costs), any EPS adopted by the Commission should rely, as much as practical, on voluntary efforts. Many energy efficiency projects that previously were not cost-effective, or involved unacceptably-long “paybacks,” are becoming increasingly cost-effective. Voluntary efforts are far more preferable to expensive efficiency programs that are subsidized by participants and non-participants alike.

In this regard, the Commission should follow the precedent it established in Case 03-E-0188, the Renewable Portfolio Standard (“RPS”) proceeding.²⁹ In that

²⁹ Case 03-E-0188, Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard.

proceeding, the Commission decided to rely on voluntary efforts to achieve a meaningful portion of the RPS, concluding that: “an important objective of the RPS program is to stimulate and complement voluntary/competitive renewable energy sales and purchases (or “green markets”) so that these competitive markets, not government mandates, sustain renewable activity after the RPS program ends.”³⁰ The same conclusion should be reached here. If energy efficiency projects truly are cost-effective, there should be a large percentage of customers willing to undertake such projects without financial subsidies. Moreover, unregulated purveyors of energy efficiency projects should be competing based on their costs and technological savvy, and not waiting for subsidies from New York energy consumers.

**D. The EPS Surcharge Should Not Be Imposed On
NYPA and Flex-Rate Contract Customers**

The purpose of NYPA allocations and flex-rate contracts is to reduce the cost of electricity for the participating customers, primarily for important economic development reasons (e.g., lower electric rates were needed to attract or retain the customer, and jobs, to the State). The State Energy Plan recognizes the importance of economic development programs that have been developed to attract and retain businesses, and cites specifically to NYPA programs and the Commission’s flex-rate contract program.³¹ As the State Energy Plan states, the cost of energy remains an obstacle to overcome in New York’s efforts to retain, expand and attract business.³² In fact, the State Energy Plan concludes that:

³⁰ Id., Order Regarding Retail Renewable Portfolio Standard (issued September 24, 2004) (hereinafter, “RPS Order”) at 4.

³¹ State Energy Plan at 2-17, 2-22.

³² Id. at 2-23.

New York's success in working with businesses that could relocate to other states frequently depends on the availability of discounted, low-cost energy and incentives offered through various State and local government and utility-sponsored programs [E]ffective energy-related economic development programs for businesses will continue to be necessary to help preserve and expand the State's economic base.³³

Previously, the Commission has exempted NYPA and flex-rate contract customers from the SBC and the RPS surcharge. It should do the same here. Imposing the costs of an EPS on NYPA and flex-rate contract customers would be contrary to the State's economic development goals. Accordingly, NYPA and flex-rate contract customers should be exempt from any EPS surcharge or related costs.

When the Commission first adopted the SBC in 1998, it exempted NYPA allocations from imposition of the SBC.³⁴ When the SBC was renewed in 2001, the Commission ruled expressly that: "By design, the current SBC is not applied to NYPA ... customers."³⁵ The Commission also ruled that those customers whose flex-rate contracts do not allow the utility to collect an SBC "cannot be forced to pay an SBC without abrogating

³³ Id. at 2-24.

³⁴ Case 94-E-0952, In the Matter of Competitive Opportunities Regarding Electric Service, Opinion No. 98-3, Opinion and Order Concerning System Benefits Charge Issues (issued January 30, 1998) at 6-7 (imposing the SBC only on investor-owned electric utilities, but encouraging NYPA to participate voluntarily in SBC program efforts). Although not explicit in this decision, as detailed, infra, the Commission also exempted from the SBC those customers with flex-rate contracts that did not permit its imposition.

³⁵ Case 94-E-0952, supra, Order Continuing and Expanding the System Benefits Charge for Public Benefit Programs (issued January 26, 2001) at 22; see also id. at 23 (holding that "[t]he parties that believed that the Staff Proposal [continuing and expanding the SBC] was intended to be applied to NYPA ... customers were mistaken").

the contracts.”³⁶ More recently, in extending the SBC yet again, the Commission rejected arguments that either would have expanded or reduced the applicability of the SBC, ruling that: “It was not our intention to reopen the settled issue of which customers must pay the SBC, and none of the arguments made are new or otherwise convince us that we should change our current policies in this regard.”³⁷

Importantly, in adopting an RPS, the Commission similarly exempted NYPA and flex-rate contract customers from imposition of the RPS surcharge. The Commission ruled that:

[W]hile all New York customers will benefit from the RPS program, we exempt from contribution those customers currently exempt from the System Benefits Charge (SBC) contributions. Such customers are generally provided electricity at reduced prices to achieve economic development objectives such as sustaining or creating jobs. The Commission recognizes that requiring such customers to pay for the objectives of the RPS would be counterproductive to these economic development goals.³⁸

Thus, with respect to the SBC and the RPS surcharge, the Commission has approved exemptions for NYPA customers and flex-rate contract customers in furtherance of critically-important economic development goals. The same conclusion should be reached in this proceeding in terms of funding an EPS.

³⁶ Id. at 23.

³⁷ Case 05-M-0090, In the Matter of the System Benefits Charge III, Order Continuing the System Benefits Charge (SBC) and the SBC-Funded Public Benefit Programs (issued December 21, 2005) at 29-30.

³⁸ RPS Order at 11; see also id. at 53-55.

With respect to NYPA customers, there are a number of additional reasons why they should be excluded from an EPS. Initially, NYPA customers typically have long-term contracts and, therefore, are unlikely to benefit from any market price reductions that may be caused by electricity consumption and/or peak declines caused by an EPS. Moreover, NYPA already implements extensive energy efficiency programs, the costs for which are recovered from their customers.³⁹ Finally, NYPA customers – who tend to be extremely price-sensitive – have made numerous, critical business decisions based upon the projected cost of their NYPA allocations. Under such circumstances, it would be extremely inequitable to impose on NYPA customers the costs of an EPS which, on a percentage basis, could have a devastating impact on their cost of electricity.

Similarly, there are compelling reasons to exempt flex-rate contract customers from the costs of an EPS. The State previously has recognized that “flex rate contracts remain a valuable tool for promoting economic development through the retention and attraction of business customers.”⁴⁰ The State Energy Plan concluded that the State’s “[l]ow-cost power programs have been successful to date in retaining and expanding employment opportunities in the state.”⁴¹ It also concluded that “[o]ffering electricity discounts as a means of retaining or attracting jobs is an important economic development tool.”⁴² Many flex-rate contract customers made business decisions, and commitments to their New York

³⁹ See, e.g., State Energy Plan at 3-22 – 3-23.

⁴⁰ Id. at 2-16.

⁴¹ Id. at 2-36.

⁴² Id. at 2-37.

operations, based upon electricity rates that were fixed in negotiations prior to the institution of this proceeding. Under such circumstances, it would be inequitable – not to mention, counterproductive – to impose the costs of an EPS on flex-rate contract customers.⁴³

E. The Recovery of EPS Costs Must Be Accomplished in a Manner That Promotes Interclass and Intraclass Equity

The costs of an EPS may be substantial, possibly totaling in the billions of dollars. Consequently, in addition to efforts to minimize the costs of an EPS to customers, and to ensure that any EPS is implemented in a manner consistent with existing economic development policies, the Commission should strive to recover EPS costs in a fair and equitable manner. EPS costs should be allocated and recovered in accordance with accepted principles of cost causation, and in a manner that promotes interclass and intraclass equity.

The principles of cost causation dictate that the cost of EPS programs should be allocated to those customers that benefit directly from the programs.⁴⁴ For example, if a particular EPS program is targeted at some or all residential customers, its costs should be recovered solely from the residential customer classes that are eligible to participate in, and benefit directly from, the program. Similarly, if an EPS program is designed for large industrial customers, the program costs should be recovered from the appropriate large industrial customer classes eligible for the program. Such a method for recovering EPS costs promotes interclass equity and avoids the creation of any new subsidies.

⁴³ It also may be appropriate to exempt future flex-rate contract customers from EPS goals in furtherance of economic development goals.

⁴⁴ See generally National Association of Regulatory Utility Commissioners, Electric Utility Cost Allocation Manual (January 1992) at 12.

The Commission previously has endorsed, in certain circumstances, the allocation of energy efficiency costs to specific customer classes to minimize the possibility of interclass subsidies. In response to rate impact concerns, the Commission also has allowed certain customer classes that historically are active in implementing energy efficiency projects on their own to “opt-out” of program costs. These approaches should be considered in this proceeding.

For instance, in Cases 92-E-0621, et al., the Commission noted that:

Central Hudson, LILCO, NYSEG and Niagara Mohawk assign DSM costs on a program-by-program basis to the sectors of customers eligible to participate in each program. As a further refinement, Central Hudson and Niagara Mohawk conduct a reconciliation to recover DSM costs from specific customer classes based on their actual participation in programs. Supporters of cost recovery based on program eligibility argue that it is fair because it does not require any customer to pay a share of the costs of programs in which the customer does not have an opportunity to participate.⁴⁵

The Commission also noted in the same order that:

OEEE’s preference is that costs specifically related to implementing large-scale DSM resource programs should be allocated only to the customer classes eligible to participate on a program-by-program basis. Equity considerations suggest that it is inappropriate to assign specific program costs such as rebates to classes of customers who do not have an opportunity to participate in the programs and thereby exercise a degree of control over their electricity bills.⁴⁶

⁴⁵ Cases 92-E-0621, et al., Order Concerning 1993 and 1994 Demand Side Management Plans and HIECA Business Plans (issued March 19, 1993), 142 P.U.R.4th 305, 1993 WL 259592 (N.Y.P.S.C.) (pagination not available).

⁴⁶ Id.

In Case 92-E-0108, et al., the Commission adopted a settlement that allowed, inter alia, Niagara Mohawk Power Corporation's largest industrial and commercial customers to forego participation in the utility's base DSM program and thereby escape certain DSM-related charges (such customers also became ineligible for rebates). In so ruling, the Commission noted that it had "specifically encouraged" the development of "approaches that would allocate DSM costs more directly to the customers deriving the greatest benefits from the program."⁴⁷

Similarly, in Case 95-E-0673, the Commission approved a DSM plan incorporated into a settlement agreement for Rochester Gas and Electric Corporation that, recognizing the "high level of knowledge of and interest in energy efficiency by the utility's industrial and commercial businesses," allowed such customers "to forgo utility provided DSM services, and thus enable them to pay lower utility rates."⁴⁸ In describing this proposal, the Commission stated that:

The parties acknowledge that many customers targeted by this [opt-out] program are committed to energy efficiency and possess considerable expertise with respect to it. The parties also recognize the customers in this class have invested in energy conservation because it makes good business sense, and they reason that these customers should not be required to pay for RG&E's DSM programs if they do not directly participate.⁴⁹

⁴⁷ Cases 92-E-0108, et al., Opinion No. 93-3, Opinion and Order Conditionally Approving Settlement (issued February 2, 1993), 33 NY PSC 95 at 142.

⁴⁸ Cases 95-E-0673 and 95-G-0674, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Rochester Gas and Electric Corporation for Electric and Gas Service, Opinion No. 95-20, Opinion and Order Approving Settlement of DSM Issues (issued December 27, 1995) at 6; see also id. at 4-9.

⁴⁹ Id. at 5.

The Commission should consider such approaches here to maintain interclass equity while, at the same time, minimizing the rate impacts of an EPS on the most price-sensitive customers that already invest a considerable amount of their own resources in energy efficiency because it is cost-effective for them to do so.⁵⁰

Thus, interclass equity is a very important concern in determining how the costs of an EPS should be recovered. At a minimum, customers should not be required to pay for programs in which they are not even eligible to participate. The costs of energy efficiency programs should be allocated only to those customer classes that can participate in, and benefit directly from, the programs. Additionally, for large industrial, commercial and institutional customers, the Commission should recognize that: (a) many such customers are struggling to compete in their respective businesses notwithstanding New York's noncompetitive electricity prices; (b) the vast majority of such customers already devote considerable attention and resources to energy efficiency because to do so makes good business sense; and (c) having implemented many energy efficiency projects on their own, such customers object to having to subsidize the efforts of customers that have not made similar investments, some of which may be business competitors.

In addition to striving to maintain interclass equity, the Commission also should seek to preserve intraclass equity. As addressed above, customers that have funded energy efficiency projects on their own should not have to subsidize the efforts of other

⁵⁰ Another approach that may warrant consideration is to establish a ceiling, or a cap, on the cost of an EPS to individual customers. For instance, for very large industrial, commercial and institutional customers subject to an EPS, an annual \$5,000 cap on the costs of the EPS would help control rate impacts and ensure a beneficial level of cost certainty for such customers.

customers, particularly competitors. For instance, if EPS costs are recovered from a customer class solely on a volumetric basis, such a recovery methodology would be inequitable to high volume, high load factor customers. While it may make sense to recover the costs of efficiency programs designed solely to reduce electricity consumption on a volumetric basis, the same would not be true of programs targeted at peak demand reductions, which should be recovered on the basis of demand.⁵¹ While this concern may not be applicable to non-demand-metered customers, such as residential customers, it is very important to large industrial, commercial and institutional customers (particularly given the potential level of cost of an EPS). Accordingly, the Commission should not adopt a simplistic cost recovery methodology (i.e., a volumetric surcharge) but, instead, should examine more sophisticated approaches that recover EPS costs, as appropriate, based on number of accounts, demand and/or consumption. Such an approach would best promote intraclass equity.

F. The EPS Should Reflect Regional Differences

In the EPS Order, the Commission states that the benefits of energy efficiency include, inter alia, forestalling the building of new generation, developing independent energy sources for New York State, and savings in capacity charges resulting from peak load reductions.⁵² In evaluating regions in which peak demand reductions should be targeted, it is

⁵¹ Additionally, in accordance with fundamental cost of service principles, such as those used to allocate investments in utility plant, the costs of efficiency programs designed to reduce both consumption and peak demand probably should be recovered partly volumetrically and partly on a demand basis.

⁵² EPS Order at 2, 11.

clear that there are regional differences within the State that must be recognized. For instance, the Downstate region – not the Upstate region – has the most pressing need for additional capacity in the coming years. The EPS should reflect regional differences that exist in terms of resource needs and demand growth.

On March 26, 2007, the New York Independent System Operator, Inc. (“NYISO”) issued its Reliability Needs Assessment (“RNA”) for 2007, examining the period 2007 through 2016.⁵³ Based on current and forecasted resources statewide (generation, transmission and demand response) and growing demand, the RNA concluded that power deficiencies could occur by 2011, and become acute by 2016, if expected demand is not addressed adequately.⁵⁴ The NYISO concluded that the need identified for 2011 is being driven by growth in electricity demand – in excess of 2% annually – in the Lower Hudson Valley and New York City regions, as well as planned generation retirements and increasing congestion on the State’s transmission system.⁵⁵ Conversely, in terms of Upstate New York, there are no projected reliability needs identified through 2016.⁵⁶

Moreover, on May 3, 2007, the NYISO issued its Power Trends 2007 report (“Power Trends”). In Power Trends, the NYISO determined that although the current condition of the bulk electricity grid is adequate to meet near-term reliability requirements

⁵³ NYISO, Comprehensive Reliability Process (“CRPP”): 2007 Reliability Needs Assessment (dated March 16, 2007).

⁵⁴ Id. at 10.

⁵⁵ Id.

⁵⁶ Id. at 11, 12.

through 2010, infrastructure additions will be needed in southeastern New York by 2011.⁵⁷ Specifically, the NYISO found that “[l]oad growth in excess of two percent per year in southeastern New York – the Lower Hudson Valley, New York City and Long Island – and barely adequate transmission capability in that region of the state will lead to violations of reliability criteria by the year 2011.”⁵⁸

Based on the foregoing, there are clear regional differences within the State in terms of future resource needs. Specifically, the “need” to reduce electricity consumption and/or “shave” peak demand to forestall future generation projects is far more pronounced in the Downstate region of the State than in the Upstate region. Accordingly, to the extent energy efficiency programs are designed and implemented to delay the construction of new generation and/or reduce peak demand, such programs should be targeted primarily at, and the costs recovered from, the Downstate region. Such an approach not only would maximize the expected benefits of an EPS, it would promote interregional equity in terms of cost recovery.

G. Energy Efficiency Programs Targeted at Large Industrial, Commercial and Institutional Customers Should Be Flexible to Maximize Benefits

Energy efficiency programs designed to target large industrial, commercial and institutional customers should be as flexible as possible in order to maximize benefits. There is much less uniformity between large customers – in terms of facilities, manufacturing and other processes, equipment utilized, etc. – than, for example, residential

⁵⁷ Id. at 1.

⁵⁸ Id. at 2.

or small commercial customers. Thus, while one-size-fits-all types of efficiency programs may (or may not) be appropriate for small customers, it would be a mistake to rely on such programs for large customers.

Rather than implementing programs tailored solely to the replacement of limited pieces of equipment (e.g., lighting, motors), efficiency programs designed to serve large customers should focus on a broad range of possible projects while, at the same time, retaining the flexibility to include customers with unique needs and/or circumstances. Not only would such an approach help maximize participation, it also would facilitate intraclass equity. To the extent large customers are required to pay for the costs of an EPS, they should have a full and fair opportunity to participate in the programs and benefit from the EPS to a degree at least commensurate with their financial contributions.

H. The Energy Efficiency Programs Implemented Under an EPS Must Be Demonstrably Cost-Effective Without Reliance Upon Non-Quantifiable Factors

Energy efficiency programs implemented under an EPS should be demonstrably cost-effective – i.e., projected, quantifiable benefits should exceed projected, quantifiable costs by a material amount. Programs that are projected to be only marginally cost-effective, or which rely on the consideration of non-quantifiable externalities to appear cost-effective, should not be implemented. As detailed, supra, New York's electricity prices are staggeringly high and not competitive with the national average. Accordingly, if rates are

going to be increased further as a result of an EPS, the Commission should approve only efficiency programs that are demonstrably cost-effective on a quantifiable basis.⁵⁹

In the Preliminary Staff Analysis, Staff estimated that, if the EPS goal was achieved, the following benefits, among others, would accrue to customers: (i) \$6.5 billion in savings in energy that would no longer be consumed; (ii) \$2 billion in reductions in average market prices of energy resulting from reduced energy consumption; (iii) reduced emissions as a result of less fossil fuel burned; and (iv) increased economic development associated with the creation of jobs.⁶⁰ While Multiple Intervenors hopes the latter two benefits are realized, they should not be considered in evaluating the cost-effectiveness of a potential energy efficiency program. Such benefits are speculative and not capable of quantification. For instance, a large, expensive EPS certainly will create jobs in New York in the energy efficiency industry. However, how would the benefits of such jobs be quantified in evaluating the cost-effectiveness of a specific efficiency program? More importantly, to the extent that the EPS raises electricity prices that already are noncompetitive, the likely result is that New York would lose a substantial number of jobs because energy-intensive businesses and industries would be less likely to come to, or remain in, the State. How would such costs be quantified and applied to a single efficiency program?

Implementation of an EPS in New York is likely to have significant rate impacts. In order to minimize those impacts, and ensure that customers receive the “biggest

⁵⁹ If a specific program appears only marginally cost-effective and then, after it is evaluated, it turns out the program was not cost-effective, there is no way to return the ill-spent money to customers.

⁶⁰ Preliminary Staff Analysis at 3.

bang for the buck,” the EPS should exclude efficiency programs that are not demonstrably cost-effective on a quantifiable basis.

I. All EPS Programs Should Be Evaluated Annually By an Independent Entity

As part of the implementation and continued administration of energy efficiency programs under an EPS, an independent entity should be selected to rigorously review the effectiveness of all programs on an annual basis. The entity should be selected by, and work for, an entity that is not also responsible for implementing the programs. The evaluating entity should have no motivation or bias – explicit or perceived – to find the programs implemented are any more or less cost-effective than what the actual evaluation results demonstrate. Given the amount of money that may be spent on an EPS, customers are entitled to assurances – from a truly independent entity – that the EPS reflects money well spent. Moreover, by conducting rigorous evaluations on an annual basis, program design changes can be implemented on a periodic basis to improve the cost-effectiveness of selected EPS programs and/or to discontinue programs that are not demonstrably cost-effective.

POINT II

MULTIPLE INTERVENORS’ POSITIONS IN RESPONSE TO STAFF’S QUESTIONS

Set forth below are Multiple Intervenor’s current positions in response to some – but not all – of Staff’s Questions. As detailed above, Multiple Intervenor reserves its rights to refine or modify its positions as additional information becomes known during the course of this proceeding. Because Multiple Intervenor has set forth, at length, its general positions on issues related to the design and the implementation of an EPS in New York State

in Point I, supra, it will not repeat those positions here. Rather, where appropriate, Multiple Intervenors will respond to Staff's Questions by referencing positions advanced in Point I.

Question No. 2

What is a reasonable goal for natural gas energy efficiency programs?

Response to Question No. 2

The Commission should refrain from adopting any goals for natural gas energy efficiency programs at this time. Upon information and belief, no party has conducted any cost/benefit analyses of natural gas energy efficiency programs as part of this proceeding. Accordingly, no record has been developed herein that could possibly justify the establishment of any particular goal. For example, there currently is no record of, inter alia, the cost of natural gas energy efficiency programs, how much gas consumption would be reduced by a given level of programs and/or the benefits associated with such reductions. Therefore, it would be premature, at best, to establish specific goals at this early stage of the proceeding.⁶¹

Question No. 3

What are the most appropriate methods and processes for establishing program specific goals and for measuring progress toward long term goals (including program monitoring, measurement, and evaluation)?

⁶¹ See Point I(A), supra, addressing a similar lack of record support for the stated goal of the EPS compared to possible alternative goals.

Response to Question No. 3

See Point I(I), supra, wherein Multiple Intervenors asserts that energy efficiency programs implemented under an EPS should be subject to rigorous evaluations, conducted on an annual basis, by a truly independent entity.

Additionally, the specific goals of an EPS must be reconciled with the State's other policies, including critical economic development activities. For instance, in the EPS Order, the Commission concludes that "reducing New York's electricity usage 15% from expected levels by 2015 [is] in the public interest."⁶² However, if New York succeeds in improving its economy, such that businesses start relocating to the State, thereby causing electricity consumption and demand to increase, that outcome should not be viewed negatively, or as some type of failure to achieve the goals of the EPS. Indeed, Governor Spitzer has stated that economic development, particularly Upstate, is a primary goal.⁶³ Thus, the EPS should not implemented in such a manner as to conflict with, or undermine, the pressing need to improve the State's economy. If the economy improves, electricity consumption and peak demand can be expected to rise (at least above previously-projected levels), and such an outcome should be welcomed by all parties to this proceeding.

Question No. 7

What role should building codes and appliance standards play in reaching New York's energy efficiency goals and should such standards vary by geographical area (i.e., metropolitan New York City versus upstate)?

⁶² Case 07-M-0548, supra, EPS Order at 2.

⁶³ See Press Release: "Renew New York Agenda Seeks Upstate Turnaround" (dated January 2, 2007) (announcing an initiative to "spark an economic resurgence in Upstate New York" and describing the Upstate economy as "a long-standing problem that affects millions of New Yorkers").

Response to Question No. 7

For the reasons set forth in Point I(C), supra, in order to minimize the rate impacts of an EPS, the Commission should rely, to the maximum extent practicable, on national programs, modifications to standards and codes, and voluntary efforts. Additionally, because relevant geographical differences exist (see Point I(F), supra), the Commission should examine whether standards should be allowed to vary by geographical region. However, Multiple Intervenors expresses no opinion here as to how such standards should deviate from region to region.

Question No. 11

Should customers of natural gas utilities served under value of service or market-based rates, such as interruptible customers, be included in the overall efficiency program? If so, what types of programs are appropriate for these customers? In what ways would a natural gas efficiency program affect the oil and propane competitive markets and what steps could be taken to eliminate or minimize such impacts (e.g., limiting the program to non-dual-fuel customers)?

Response to Question No. 11

Interruptible gas transportation customers should not be subject to the costs of an EPS. Those customers have competitive alternatives to natural gas and, if their gas delivery rates are increased to accommodate an EPS, they would be much more likely to burn alternate fuels (which also may be a less favorable outcome from an environmental perspective). Additionally, imposing an EPS-related surcharge on interruptible transportation customers would achieve no purpose – the utilities then would have to discount their standard transportation rates by a larger amount to ensure that gas is the chosen fuel for such customers, which will negatively affect the interruptible revenues that are used for the benefit of firm customers.

Question No. 12

What role should a) distributed generation, b) demand response, and c) combined heat and power play in reaching New York's energy efficiency goals?

Response to Question No. 12

Multiple Intervenors members are strong proponents of demand response programs, as administered by the NYISO. Demand response programs can help reduce electricity consumption and demand, and have the following favorable characteristics: (a) they have no negative rate impacts (i.e., retail electric rates are not increased to accommodate the programs); (b) participation in the programs are voluntary; and (c) participants are compensated in accordance with NYISO tariffs – there are no subsidies paid for by non-participating customers. In fact, demand response programs generally reduce prices for all customers, unlike energy efficiency programs (whose benefits typically outweigh the costs only for participants).

Question No. 17

Should utilities (or other entities) receive incentives for implementing successful energy efficiency programs? If so, what is the appropriate level and form that these incentives should take and should such incentives be performance based?

Response to Question No. 17

The Commission should not approve financial incentives as part of an EPS. Such incentives would cause the cost of an EPS to customers to increase. If utilities are chosen to implement energy efficiency programs as part of an EPS, they should be directed to do so by the Commission and no additional financial incentives are necessary.

Question No. 25

What constitutes a reasonable level of funding for the electric and gas energy efficiency programs? How, and from whom, should the various program costs be funded, allocated and recovered?

Response to Question No. 25

It is not possible to determine a reasonable level of funding for electric and gas energy efficiency programs at this time. Other than the Preliminary Staff Analysis, which is very preliminary in nature, there has no been analysis in this proceeding of the potential costs and benefits of electric energy efficiency programs. As detailed in response to Question No. 2, supra, the goals of natural gas energy efficiency programs have yet to be established – or even examined – in this proceeding. Funding determinations, which involve, inter alia, cost/benefit analyses, examination of alternatives to customer-funded efficiency programs, and due consideration of customer rate impacts, would be premature at this early stage of the proceeding and should be reconciled with the impacts of utility-specific energy efficiency programs that already are underway.

CONCLUSION

For the foregoing reasons, Multiple Intervenors urges that its positions on the design and the implementation of an EPS be adopted as part of Staff's Straw Proposal. Multiple Intervenors looks forward to working with ALJ Stein, Staff and the other parties as the multitude of issues pertaining to an EPS are examined in a thorough and comprehensive manner.

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Respectfully submitted,

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