

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on May 17, 2012

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
Maureen F. Harris
Robert E. Curry, Jr.
James L. Larocca

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

CASE 08-E-1132 - Petition of New York State Energy Research and
Development Authority (NYSERDA) for Approval of
an Energy Efficiency Portfolio Standard (EEPS)
NYSERDA-Administered Electric Energy Efficiency
Program.

ORDER AUTHORIZING THE USE OF UNENCUMBERED INTEREST TO FUND
PAYMENT OF THE NEW YORK STATE COST RECOVERY FEE

(Issued and Effective June 1, 2012)

BY THE COMMISSION:

INTRODUCTION

The New York State Cost Recovery Fee is imposed on the
New York State Energy Research and Development Authority
(NYSERDA) by law to reimburse the State for the cost
attributable to the provision of central government services to
NYSERDA. In this order, we authorize NYSERDA to use
unencumbered interest earned on unexpended System Benefits
Charge (SBC) funds to pay the share of the Cost Recovery Fee
that is allocable to Energy Efficiency Portfolio Standard (EEPS)
program budgets approved prior to October 25, 2011 and not yet
provided for by the Commission in prior orders.

BACKGROUND

The New York State Cost Recovery Fee is imposed on public authorities and public benefit corporations pursuant to Section 2975 of the Public Authorities Law. The fee is intended to reimburse the State for the cost attributable to provision of government services to authority and public benefit corporations. The amount of the fee imposed on NYSERDA is periodically revised by the State and in general rises in rough proportion to the funds NYSERDA administers, so whenever the Commission calls upon NYSERDA to administer more funding for a program, the fee tends to rise. NYSERDA allocates the cost of the fee to each program it administers as a pass-through overhead cost. Currently, the fee is allocated among the programs in proportion to each program's expenditures.

By petition dated December 2, 2011, NYSERDA seeks authorization to pay the Cost Recovery Fee that is allocable to EEPS programs approved through 2011, which has not yet otherwise been provided for by the Commission, using accumulated unencumbered interest earned on SBC funds. NYSERDA estimates that it will allocate, in total, approximately \$9 million¹ of Cost Recovery Fees to its 2008 through 2011 EEPS programs based on an estimated rate of approximately 1.82% of total EEPS program budgets. NYSERDA notes that in general, orders authorizing NYSERDA EEPS programs for the years 2008 through 2011 have provided funding for program and administration costs, and evaluation, monitoring and verification (EM&V) costs for the programs, but not for payment of the Cost Recovery Fee. NYSERDA notes that the Commission in two recent orders approving NYSERDA

¹ Since NYSERDA allocates the fee based on program expenditures, and a significant portion of 2008-2011 program budgets remain unspent, an estimate of the total fees is all that can be provided at this time.

programs specifically provided for approximately \$934,000 in funding for Cost Recovery Fees.² NYSERDA therefore requests permission to recover the difference between the amount explicitly authorized and the total amount to be allocated (the difference is currently estimated by NYSERDA to be \$8.1 million) from interest earned on SBC funds. To the extent the actual total Cost Recovery Fee related to these programs exceeds the amount to be allocated, NYSERDA requests authority to be able to recover the additional amount in the same manner.

NOTICE OF PROPOSED RULEMAKING

A Notice of Proposed Rulemaking (Notice) concerning the NYSERDA petition was published in the State Register on January 11, 2012 [SAPA 08-E-1132SP4]. The minimum period for the receipt of public comments pursuant to the State Administrative Procedure Act (SAPA) regarding the Notice expired on February 27, 2012. No comments were received.

DISCUSSION

We have recognized in the case of the Renewable Portfolio Standard (RPS), the System Benefits Charge IV, and for some EEPS programs that NYSERDA should receive full recovery of

² Cases 10-M-0457 & 05-M-0090 - System Benefits Charge IV, Order Continuing System Benefits Funded Programs (issued December 30, 2010)(\$833,936); Cases 07-M-0548 & 08-E-1132- Energy Efficiency Portfolio Standard (EEPS), Order Approving an Emergency Agriculture Disaster Energy Efficiency Program (issued October 18 2011)(\$99,648). It should also be noted that for the period 2012 through 2015 and beyond, the Commission budgeted for the Cost Recovery Fee for all NYSERDA EEPS programs at a rate of 1.7% of total budgets. Cases 07-M-0548 & 07-G-0141, Energy Efficiency Portfolio Standard (EEPS) Order Authorizing Efficiency Programs, Revising Incentive Mechanism, and Establishing a Surcharge Schedule (issued October 25, 2011) (EEPS October 25, 2011 Order).

New York State Cost Recovery Fees allocated to the programs. NYSERDA does not control such costs and has no independent funding stream from which to absorb those costs created by its administration of programs at the request of the Commission. It is reasonable that, as the Cost Recovery Fee is incurred in the administration of NYSERDA's programs, ratepayers bear these costs.

We agree that NYSERDA should be authorized to recover Cost Recovery Fees properly allocated to programs it administers at our request. NYSERDA's proposal to use accumulated and uncommitted interest earned on SBC funds for that purpose is desirable as it will maintain the maximum amount of program funding available to achieve the EEPS energy savings targets, even though such use of the interest earnings acts as an increase in NYSERDA's total EEPS budgets and expenditures.

We note that actual costs related to the funding shortages addressed in this Order may not equal current estimates. We therefore ask NYSERDA to keep us apprised of the allocations and actual costs and disbursements over time so that reconciliations, whether positive or negative, and a consideration of ongoing needs for funding can be made at a future time.

SEQRA FINDINGS

Pursuant to our responsibilities under the State Environmental Quality Review Act (SEQRA), in conjunction with this order we find that the authorizations approved here are within the overall action previously examined by us in Case 07-M-0548 and will not result in any different environmental impact than that previously examined. In addition, the SEQRA findings of the June 23, 2008 order in Case 07-M-0548 are incorporated herein by reference and we certify that: (1) the requirements of

SEQRA, as implemented by 6 NYCRR part 617, have been met; and (2) consistent with social, economic, and other essential considerations from among the reasonable alternatives available, the action being undertaken is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable.

The Commission orders:

1. The New York State Energy Research and Development Authority (NYSERDA) is authorized to apply accumulated and uncommitted interest earned on System Benefits Charge (SBC) funds to pay the share of the New York State Cost Recovery Fee that is allocable to Energy Efficiency Portfolio Standard (EEPS) program budgets approved prior to October 25, 2011 and not yet provided for by the Commission in prior orders.

2. By June 1 of each year, NYSERDA shall submit a report summarizing the actual Cost Recovery Fee assessed by the State for the fiscal year ending on the preceding March thirty-first, and the amount of such assessment allocated to each NYSERDA program/funding source. The assessment allocated to EEPS shall be further broken down between program budgets authorized prior to the EEPS October 25, 2011 Order and program budgets authorized in or after the EEPS October 25, 2011 Order. For each program/funding source, the analysis will summarize the Cost Recovery Fee approved by the Commission for the program, the actual cumulative Cost Recovery Fee incurred to date, and the amount anticipated to be incurred for future Cost Recovery Fee expenses.

3. NYSERDA shall assist Staff in a review of all prior orders regarding the EEPS program to determine the full extent of budget allowances for such Cost Recovery Fees reflected in such orders. Upon completion of the review, Staff shall report its findings to the Commission.

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

5. These proceedings are continued.

By the Commission,

JACLYN A. BRILLING
Secretary