

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 07-M-0548

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

CORRECTED RULING PRESENTING STRAW PROPOSAL

(Issued February 13, 2008)

ELEANOR STEIN and RUDY STEGEMOELLER
Administrative Law Judges

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I. INTRODUCTION

In this Straw Proposal we analogize to the methodology developed by Dr. Robert Socolow, Co-Director of the Carbon Mitigation Initiative at Princeton University, in seeking reduction of greenhouse gas emissions by identifying stabilization wedges.¹ For this Straw Proposal we draw on the proposals and work of Staff, the parties, the Working Groups, and the Clean Energy Collaborative to identify the wedges of energy usage reduction that will aggregate to accomplish the goal set forth by the Commission in the Instituting Order: a 15% reduction of electric energy from that projected to be in usage in New York State by the year 2015, with comparable reductions in end user consumption of natural gas.

A. The Objective of the EEPS

The objective of this Straw Proposal, in particular, is to attain those wedges of the overall statewide 15 x 15 target attributable to the investor-owned electric and gas utility ratepayer-funded sector. Implementation depends upon immediate and substantial increase in funding for electric

¹ "Humanity already possesses the fundamental scientific, technical, and industrial know-how to solve the carbon and climate problem for the next half-century," Dr. Socolow wrote, considering energy efficiency the wedge both fastest and least expensive to attain.

energy efficiency programs and the addition of new aggressive natural gas efficiency programs needed to support adoption of the EEPS and to attain the specific targets detailed below.

The proposals of the parties concerning the fundamental issues of program design tended to assign primary responsibility, funding and emphasis either to NYSERDA or to the utilities, on the California model. After comparing those experiences and proposals, we conclude that both types of entities are essential to a successful EEPS. In NYSERDA New York has an experienced and creative public authority. The state's utilities express determination to develop their energy efficiency business. Utilities can bring access to end-use customers, especially mass market customers, an ability to leverage outside funding through on-bill financing, and the potential to integrate energy efficiency with overall energy resource planning. In addition, New York City, independent energy efficiency providers and non-profit and community institutions evince contributions to the EEPS and the broader 15 x 15 goal. To engage the contributions of all of these entities we recommend a cooperative hybrid model. The model is "cooperative" in the sense that we expect NYSERDA and the utilities to coordinate their programs and to incorporate into their plans the input and needs of all stakeholders. The model is "hybrid" in the sense that there are important roles both for NYSERDA and the utilities.

The proposal below and the procedures established for the next phase of this proceeding, focus on the Public Service Commission jurisdictional entities and ratepayer funding issues, in the context of the statewide 15 x 15 initiative.

This proposal addresses the immediate major design issues: quantification of the baseline and target benchmarks for electric efficiency gains, integrated with utility sales forecasts and other commitments; identification of entities responsible for specific aspects of reaching the targets; program administration and coordination; funding mechanisms; assuring reliable evaluation, measurement and verification; governance and overall EEPS structure; and actions appropriate

for immediate implementation upon Commission adoption of the EEPS.

B. The Design of the EEPS

This design is intended to:

1. Maximize participation by NYSERDA and the utilities, as well as ESCOs, new technologies, community organizations and all other energy efficiency providers.
2. Enhance the role of energy efficiency in resource planning.
3. Integrate competitive procurement into plan administration and program implementation.
4. Manage rate impacts by, among other things, leveraging participant and other private financing using on-bill financing.
5. Ensure that the energy efficiency potential of New York City is realized, given the City's unique circumstances.
6. Develop regional data pertaining to energy efficiency potential, at a utility-quality level, to serve as a common resource for program administrators, and statewide data to inform the Commission's ongoing EEPS review.
7. Ensure consistent and reliable program evaluation, measurement and verification.

II. BASELINE, TARGETS, AND ENERGY EFFICIENCY BENCHMARKS FOR UTILITIES AND NYSERDA

This section includes a definition of the baseline, a calculation of the overall goal in total energy to be saved and the jurisdictional or ratepayer-funded portion of that goal, as well as target benchmarks establishing periodic gains to be measured and assessed.

A. The Jurisdictional Baseline

Based upon the Staff estimates, the Working Group III reports and underlying data, and the information adduced as part of the Draft Generic Environmental Impact Statement, we propose the following preliminary findings. First, we adopt with some minor corrections the approach to determine what energy

efficiency measures' impacts count toward achievement of the 15 x 15 goal, as proposed by Working Group III as its Option Two: the EEPS will include in its incremental efficiency quantification all those demand side management or energy efficiency measures gained after January 1, 2007. This includes those measures - and their forecast efficiency gains through 2015 - installed pursuant to the preexisting plans of NYSERDA and the utilities.

B. The Clean Energy Collaborative

On November 30, 2007, the Clean Energy Collaborative filed its estimates of those portions or wedges to use of the Statewide 15 x 15 electric energy usage reduction target that each of the participating entities expect to realize between now and the year 2015.

For the purpose of recommending energy efficiency target benchmarks for investor-owned utilities and ratepayer-funded NYSERDA or other programs necessary to reach the 2015 goal, the Clean Energy Collaborative estimates that affect those targets will, for the most part, be taken as given. That is, because these estimates represent conclusions by the involved State agencies as to their plans and potential to realize energy efficiency gains during the subject period, and they are not under the jurisdiction of the Commission, we accept them as working estimates, subject to updates, as to what remaining portion of the entire Statewide 15 x 15 target must be realized by ratepayer-funded programs, implemented by the utilities, NYSERDA, or others. The estimates of the codes and standards wedges will be adjusted to eliminate potential interaction/overlap with other programs estimated by NYSERDA. In addition, to be conservative, our proxy estimates of the potential for generation and transmission & distribution efficiency gains will be subtracted from the estimate of gains due to changes in codes and standards. The estimates contained in the codes and standards wedges warrant further exploration in order to clarify the basis for the assumptions contained therein.

We have received conflicting estimates of the post-2006 incremental efficiency gains expected by LIPA and NYPA in their currently-planned programs. Because those estimates do not affect the utility and NYSERDA targets under our methodology, we have not attempted to resolve those conflicts. We understand that the reason for the conflicts is the fluid nature of the plans of LIPA and NYPA as those authorities adjust their plans to provide for more aggressive measures. We identify in the Technical Appendix the gaps between the portion of the overall goal attributable to LIPA and NYPA and their preexisting plans. The Technical Appendix is available on line at http://www.dps.state.ny.us/Case_07-M-0548.htm.

C. The Jurisdictional Baseline and Target Benchmarks for Electric Energy Efficiency

Based upon this approach described above, we have included in the Technical Appendix baseline information and target benchmarks for each electric utility and NYSERDA. In addition, the target benchmarks should be revisited every two years, as recommended by Working Group III.

III. ROLES OF NYSERDA, THE ELECTRIC UTILITIES, AND OTHERS IN ADMINISTRATION OF ENERGY EFFICIENCY PROGRAMS

In recent years New York energy efficiency has primarily been realized, through the SBC, on a single provider (NYSERDA) model, complemented by programs of other public agencies and authorities. Continuation of the single provider model to meet the EEPS targets has the considerable advantage of simplicity, what Staff terms a "common look and feel" of programs statewide, cost effectiveness, and reliance upon the proven performance record of NYSERDA. For the reasons given below, however, we prefer a hybrid model.

A. The Hybrid Model

There are several reasons for including utilities as program administrators. These include:

1. Aligning utility financial interests with the goal of efficiency for long-term integration of efficiency into utility resource planning.

2. Developing alternatives, such as on-bill financing, to ratepayer-funded efficiency programs.

3. Making use of utility access to customers and customer information, and making such information available to all program administrators to the extent compatible with customer privacy.

4. Benefiting from competitive efficiencies and diversity of approach.

Taking the institutional interests of market participants into consideration, the Commission's first priority will remain the welfare of utility customers and the efficacy of meeting the 15 x 15 target in a timely and cost-effective manner, by ensuring that programs are presented to customers in a manner that engenders confidence and market acceptance, and by ensuring continuity and reliability of program funding for contractors and energy professionals.

We do not accept the recommendation of some parties to draw a clear division between resource acquisition and market transformation, and to assign one area to utilities and the other to NYSERDA. We are not persuaded that a clear demarcation exists for many programs; and we are not persuaded that NYSERDA should in all cases be prevented from participating in resource acquisition. We also find that disruption of ongoing programs should be avoided unless the need to do so is clearly indicated.

Through the Program Administrators and the Program Administration Group, programs should be coordinated so that utilities, NYSERDA, and other efficiency providers may, but need not necessarily, have specific exclusive areas of service or program emphasis. Areas of overlap may exist for various reasons including: administrative, planning and financing commitments; transition periods to ensure continuity and avoid customer confusion; or to maximize participation in recognized successful programs.

B. The Role of NYSERDA

1. NYSERDA will be allocated \$181,294,839 per year through 2015. NYSERDA may immediately allocate funds to any existing programs that, in its determination, are capable of being expanded. Such allocations are expected to conform proportionally to the Fast Track proposal submitted by NYSERDA on November 1, 2007. Allocation to new programs, or substantial increases to specific programs above the sums identified in the November 1 proposal, will require approval of the Commission.

2. NYSERDA will administer energy efficiency block RFP programs, available through competitive procurement, to non-utility and non-NYSERDA energy efficiency providers including ESCOs, nonprofits, community organizations, and vendors of emerging technologies.

3. NYSERDA will be the exclusive provider of Statewide market transformation programs.

4. If proposed utility resource acquisition measures overlap with measures offered by NYSERDA, the Program Administration Group will attempt to resolve any coordination issues. NYSERDA's total funding stream will not change as a result of a decision to withdraw from a program. The Commission will determine (a) whether the utility will proceed with the proposed program, and (b) the effect if any on related NYSERDA programs, taking into account NYSERDA's programmatic, contractual and administrative commitments.

5. NYSERDA will continue to be the principal provider of new construction programs through, at a minimum, the early years of the EEPS.

6. NYSERDA will have primary responsibility and funding for green workforce development programs, both workforce training and certification and at the higher education level.

7. NYSERDA will assist in development, training, implementation and enforcement of codes and standards.

8. Except in the context of utility programs approved in individual rate cases, NYSERDA will have primary

responsibility for R&D and funding support for emerging technologies.

9. NYSERDA, in conjunction with the NYISO, will have primary responsibility for development of an integrated Statewide energy usage database and development of efficiency forecasts of sufficient quality that usage reductions will be reflected in system reliability planning.

10. NYSERDA will be a standing member in the statewide Evaluation Task Force (ETF), as recommended by Working Group III.

11. Because NYSERDA is allotted the leading role in areas such as research and development, support for codes and standards, and other statewide administrative responsibilities, it should submit additional budget proposals to meet these needs.

C. The Role of the Utilities

1. Utilities will be allocated a total of \$146,450,047 per year through 2015 from the SBC, as presented in the Technical Appendix.

2. Each utility will be responsible for achieving the energy efficiency target for its service territory presented in the Technical Appendix.

3. Contractors implementing utility-administered programs will be selected through competitive procurement.

4. Utilities will provide, for NYSERDA and other program administrators, initial point-of-contact services for small business and residential customers.

5. Utilities will develop on-bill financing mechanisms and make the requisite adjustments to their billing systems. Utility-administered programs will, to the maximum extent possible, leverage SBC-funded customer incentives with on-bill financing.

6. Utilities will make on-bill financing available to the Dormitory Authority of the State of New York.

7. Utilities will have an opportunity to earn incentives and will also bear the risk of negative performance adjustments.

8. Combination gas and electric utilities will offer integrated programs to end-use customers; electric utilities sharing service territories with gas-only utilities will use best efforts to offer integrated programs.

9. Initial proposals of utilities will not include new construction programs.

10. Where utility proposals overlap with present or past NYSERDA programs, NYSERDA benefit/cost performance will serve as a benchmark in evaluating the cost of utility programs including earnings incentives; benchmarking will not constitute the sole criterion for approval.

11. Utilities, with NYSERDA, will develop a central pool of utility-quality customer usage data that: provides usage reduction data of the quality usable by the NYISO to adjust capacity requirements commensurate with energy efficiency effects; informs all program administrators as to where the greatest energy efficiency potential lies; and is consistent with protection of consumer privacy.

12. Each utility program will include a provision for measures to be administered by ESCOs, nonprofits, community organizations, and vendors of emerging technologies.

D. On-Bill Financing

The Dormitory Authority of the State of New York (DASNY) has presented evidence of the efficacy of on-bill financing programs. Lack of capital, unwillingness to allocate capital, and difficulty of attaining approval for capital spending, in the case of municipalities, have been identified as substantial barriers to efficiency programs. On-bill financing is a mechanism to allow customers to install efficiency improvements without upfront costs. If on-bill financing operates through assignment of responsibility to a meter rather than a customer, then it further serves the purpose of

addressing the barrier of split incentives for rental structures.

For purposes of the EEPS, we will refer to on-bill financing as a conservation Tariffed Installation Program (TIP). Utilities should integrate TIP into their resource acquisition programs to reduce the overall level of ratepayer funding. Utilities may combine TIP with other measures. TIP reduces the need for direct ratepayer funding of measures. It has potential to substantially increase private sector capital investment in energy efficiency infrastructure. The implementation of TIP must be developed consistent with New York policy concerning disconnection.

Administrative steps may require substantial time prior to the implementation of TIP. We propose that TIP be phased in by utilities, as is reflected in the assumptions of the Technical Appendix.

We also propose that on-bill financing be made available to DASNY, which has indicated a willingness to devote capital to the EEPS program. Because DASNY has a lower cost of capital than many customers, on-bill financing through DASNY has further potential to reduce system-wide costs. Program costs to utilities, including administrative costs and increased uncollectible risk, if any, should be borne by DASNY and/or its program participants.

E. Program Approval Criteria

The Program Attributes identified by Working Group Two should be used as criteria in approving programs. Specific attributes that must be used in evaluating proposals are:

1. Cost-effectiveness. Cost effectiveness will be measured by the Total Resource Cost Test. The criteria will take into account the duration of the benefit as well as the duration of the pay-back period.

2. Co-benefits. Measures targeted to areas in need of load relief, pursuant to a load relief plan identified by a utility or by the NYISO, should be treated as high priority programs, and the value of load relief may outweigh direct

customer energy benefits. Other co-benefits include service to low-income customers, employment opportunities, demand reductions other than those accounted for in specific demand reduction programs, improved building stock, and improved customer health, particularly in environmental justice and other communities hosting disproportionate numbers of power plants and other emission sources. Mitigation of climate change is a co-benefit of any efficiency measure.

3. Scalability. Programs must build market confidence for contractors, suppliers, and outreach participants through stable, multi-year funding commitments.

4. Portfolio approach. Programs should be part of a balanced and equitable portfolio that is flexible enough to shift resources when required. The criterion of flexibility is secondary to the importance of stable funding commitments.

5. Fuel integration. The extent to which a measure addresses gas and electricity simultaneously through a single-point-of-contact whole customer approach, should be considered as an evaluation criterion.

6. Market Acceptance. Measures similar to those with proven benefit/cost records are preferred, particularly in new utility-administered programs.

7. Outreach. Measures with well-defined outreach programs, particularly those using community organizations in lieu of paid media advertising, should be favored.

F. Other State Agencies

NYSERDA should propose programs and allocation of SBC funds by providing expertise and, as appropriate, support implementation and enforcement for the energy efficiency efforts of other State agencies, if necessary. These may include support for the Department of State's work on Codes and Standards, and to the Division of Housing and Community Renewal for additional funding for its Weatherization Assistance Program (WAP), if no other source of additional funding is available.

G. DHCR Weatherization Assistance Program

The Weatherization Assistance Program (WAP) provides residential conservation energy service to lower-income households to improve energy efficiency and reduce expenditures for fuel. It is funded entirely by federal grants; there is currently no state funding. To qualify the household has a DOE approved energy audit and the program takes the whole house approach. DHCR allocates funds to program providers statewide and programs are evaluated along U.S. Department of Energy guidelines. Staff proposed expanding this program immediately, and we agree. One argument adduced against funding WAP is that this program should be funded through taxes, not rates. We conclude the importance of expanding successful programs serving critical communities - in this case, low income consumers and multi family dwellings - outweighs that concern. DHCR assesses that the program could be expanded to target multi-family rental housing. There is currently an 18-month waiting list for new participants, and DHCR anticipates substantial energy efficiency savings from added funds. Most parties favor adding funds for WAP, pointing to its success in reaching multifamily buildings, a critical underserved sector. Central Hudson submits that allocation of SBC funds to a DHCR program constitutes an *ultra vires* tax. This proposed assistance to weatherization in particular of multi-family dwellings, however, will be a NYSERDA program in furtherance of the EEPS priority to address energy efficiency relief for multi-family dwellings.

NYSERDA should propose a program and budget for it to assist in expansion of existing DHCR programs, in particular those affecting multi-family dwellings, to eliminate the waiting list for the WAP program on a two-year transitional basis. In addition, any WAP program receiving NYSERDA assistance must conform to the Evaluation Task Force standards for evaluation, measurement and verification practices and protocols.

H. The EEPS Administration Consensus-Parties' Recommendation (NRDC/Pace)

1. General Review

This recommendation is targeted at coordinating the statewide EEPS goals with the NYC commitment to reduce greenhouse gas emissions 30% from current levels by the year 2030, and in 10 years for governmental operations. The recommendation is for a statewide replication of a NYC-based model. Because the NYC-based utilities, NYC, and other NYC-based parties have reached consensus in particular as to NYC, the proposal will be analyzed as a City-based rather than a statewide model. Should a comparable consensus be reached by parties in another region, it will be considered at that time.

With the dedication of NYC funding, this model holds promise for overcoming the barriers to adoption of energy efficiency on a large scale by bringing to bear on the problem the panoply of City government and public and private partners, through a strategic plan and the close coordination of all participants' programs for energy efficiency by all involved entities. New York City has begun the exploration of the energy efficiency resource potential of its population, and can take advantage of the knowledge base developed for PlaNYC.

The NRDC/Pace proposal in effect vests in the Partnership the planning function of a Program Administrator. The planning function of the Partnership must be performed in a manner that does not delay implementation; the involved utilities will be held to the incremental performance targets established by the Commission.

Some aspects of the NYC plan that are within the authority of the Commission run counter to the statewide cooperative hybrid model. With the following modifications, we propose that the Commission approve the proposal for the New York City region only.

2. Modifications

- a. NYSERDA's role should not be limited to market transformation programs but should be as defined in this Straw Proposal.

- b. The M & V and program evaluation protocols should be developed by Program Administrators, but those for PSC jurisdictional programs must, and those of other entities should, be subject to assessment by a Statewide Evaluation Task Force.
- c. DASNY, as it requests, should be included in the partnership. Environmental justice, other community participants, and the NYISO should be included at least in an advisory role.
- d. The Partnership's strategic plan must address split incentives in rental structures.

IV. PROGRAM FINANCING

The proposed ultimate goal for the Commission is the creation of a New York Clean Energy (NYCE) program encompassing energy efficiency and renewable generation. The SBC should immediately be increased as indicated in the Technical Appendix, as the most expeditious mechanism to fund additional energy efficiency programs. The SBC and RPS should over time be merged into a NYCE fund, populated by a surcharge on both electric and natural gas rates, to be drawn upon by NYSERDA and utilities.

V. DEMAND RESPONSE

The Working Group IV report contains a thorough assessment of best practices. Some recommendations mentioned in the Working Group report pertain to proceedings or entities beyond the purview of this proceeding: revisions to ISO practices, legislation, AMI and Smart Grid.

Proposals that could be considered in this proceeding include: (a) additional funding for demand response audits, (b) requirement of greater utility cooperation with curtailment service providers, (c) additional funding for training of curtailment service professionals, (d) block RFPs for demand reduction, (e) capacity valuation for energy efficiency projects, (f) integration of customer contact for energy

efficiency and demand response programs, and (g) changes in rate design.

The chief emphasis of the Commission's Instituting Order was to obtain efficiency gains. Most energy efficiency provides some degree of demand reduction, and some demand reduction provides a degree of energy efficiency. From economic and environmental standpoints, however, there are significant differences.

All targets in the EEPS will be established in terms of energy efficiency, and all program expenditures will be designed to achieve energy efficiency targets. Impact on peak load will be a criterion in evaluating programs and may be considered a benefit in the evaluation of energy efficiency measures, where a measure would not otherwise meet the Total Resource Cost test.

The importance of demand response measures is clear. The respective roles of the NYISO and EEPS program administrators, however, as well as the need for EEPS funding of demand response measures that do not provide permanent efficiency gains, require further development. At this time, we do not propose specific demand reduction programs for inclusion in the EEPS. Integration of demand reduction into the EEPS should continue to be explored.

It should be noted that any decision regarding demand response in this proceeding will not preempt the field. Utilities and other entities may propose demand response programs independent of the EEPS.

VI. UTILITY INCENTIVES

The Commission should adopt a statewide policy providing guidelines for the development of utility incentives to encourage an aggressive approach to energy efficiency gains. Utility-specific incentives should be developed in individual utility rate cases, taking into account specific utility circumstances, revenue requirement implications and constraints on incentive program design. Incentives should be awarded through variations in utility earnings.

Utility incentives, properly designed, can serve at least four purposes: (1) to align utilities' financial interests with energy efficiency; (2) to provide through negative performance incentives a mechanism to hold utilities accountable for meeting targets; (3) to encourage control of program costs; and (4) to encourage achievement of increased efficiency gains.

There are two incentive models that should be evaluated with reference to these purposes: incentives calculated on the basis of program costs; and incentives calculated on the basis of net customer benefits.

Both methods serve the purpose of aligning utility financial interests with greater efficiency, and providing an accountability mechanism.

The cost-based method might not serve the third purpose because utilities would have an interest in high program budgets. The cost-based method can serve the fourth purpose if incentives are scaled to levels of efficiency achievement.

The benefit-based method can serve the third purpose because net benefits increase when program costs are reduced, giving utilities an interest in low program budgets. In order for benefit-based incentives to reduce overall program costs, utilities would need to drive down costs further than the value of the incentives themselves.

Benefit-based incentives can also serve the fourth purpose, but this is problematic with respect to portfolio diversity. A benefit-based incentive indexed to TRC scores will not account for co-benefits. Programs such as low-income and home performance will not be emphasized.

There is also a likelihood that a benefit-based incentive will encourage "cream-skimming," encouraging relatively narrow measures to increase scores, while foregoing other measures that could be achieved through the same customer contact. It could be argued that this is irrelevant because utilities must meet their targets in any event. This argument, however, assumes that there will be no further need for efficiency gains beyond 2015; it also ignores the value of many co-benefits.

Negative incentives will also need to be established for each utility program. Negative incentives will serve two purposes: to establish accountability for achieving targets, and to establish a just and reasonable balance against the opportunity to earn premiums.

The Commission has already determined that an incentive based simply on encumbrance of funds, without accounting for performance levels, is not acceptable:

...the goals of establishing energy efficiency programs are to use less natural gas, to reduce greenhouse gas emissions, and to provide additional capacity on the utility's systems, among others [fn omitted]. None of those goals can be meaningfully measured by the collection or encumbrance of program funds [fn omitted]. Goals on which financial incentives are based must be clearly defined, measurable, verifiable, and performance based.²

We are inclined toward a benefit-based approach similar to that adopted by the California Public Utilities Commission.³ Under the California order, utilities earn 9% of net customer benefits if performance achieves 85% of the target, and 12% of benefits if performance exceeds 100%. If performance falls below 65% of targets, utilities pay an adjustment per kWh as well as compensating ratepayers for negative net benefits.

Our concerns with the California approach include the application of one set of statewide percentages rather than a utility-specific approach, and the impact on program diversity as described above. California partially addressed the diversity issue by removing low-income programs from the

² Case 06-G-1332, Con Edison Gas Rates, Order Adopting in Part the Terms and Conditions of the Parties' Joint Proposal (issued September 25, 2007), p. 34.

³ Order Instituting Rulemaking to Examine the Commission's post-2005 Energy Efficiency Policies: Interim Opinion on Phase 1 Issues: Shareholder Risk/Reward Incentive Mechanism: Decision 07-09-043, September 20, 2007.

calculation of the utilities' portfolio TRC scores, while including the efficiency gains as progress toward targets.

VII. ALLOCATION ISSUES

A. Cost Allocation

Cost allocation will be performed using the SBC model, updated with the most recently available utility operating revenues. Interclass equity will be achieved through program distribution and design, not cost allocation; programs will be targeted toward classes so as to match the sources of program funds. Intra-class equity issues will be addressed in the same manner, and program administrators will demonstrate that customers of different sizes have an opportunity to participate that is reasonably related to the proportion of program funds. Programs utilizing on-bill financing must not rely unduly on one customer class for customer participation.

NYPA full requirement customers will be exempt from contributing to, and participating in, the program. NYPA partial requirement customers will be considered full participants for purposes of the SBC surcharge.

B. Geographic Equity

Utility-administered programs will be restricted to end-users in utility service territories. NYSERDA will assess participation in its programs annually and will consider adjusting programs to achieve a reasonable correlation between contributions and participants.

VIII. EEPS ADMINISTRATIVE STRUCTURE

Administrative or structural issues follow the EEPS functions designed above. As to the issue of governance, the starting point is that by statute the Public Service Commission is authorized and responsible to oversee the collection, disbursement, and allocation of ratepayer funds. Ultimate approval of EEPS programs funded through the SBC or utility rates lies with the Commission. Interested parties will have the opportunity to participate through working groups, task

forces, and advisory groups, but lines of communication should not be confused with lines of authority.

A. General Design

1. The Straw Proposal does not include the design of a statewide body responsible for an integrated statewide energy plan and planning process, as these issues are outside the Commission's authority and this proceeding's mandate. However, we recognize the Commission's energy efficiency program is an integral part of the work of the Clean Energy Collaborative and that coordination of all state agency and authority energy efficiency programs is desirable and may be essential to attaining 15 x 15.

2. Areas of responsibility are delineated for NYSERDA, utilities, and other energy efficiency providers; however, a very high level of coordination is essential for all programs funded through the SBC and should be mandated by the Commission, as a precondition for ratepayer funding for energy efficiency programs.

B. The Program Administration Group

Any proposal to the Commission for approval of a program will be evaluated by a Program Administration Group. For consideration of any specific proposal, Staff will convene a Group including NYSERDA, any utilities within whose service territories the program would be offered, and any directly affected public authorities or other program administrators. For programs affecting New York City, the NYC Partnership may be deemed a Program Administrator for design and planning purposes. Other utilities, affected State agencies and authorities, the NYISO, nonprofits, and ESCOs will be encouraged to participate as needed in order to coordinate their respective efficiency programs.

The task of the Program Administration Group will be to resolve potential conflicts among program administrators and to ensure that proposed programs are consistent with the criteria for program approval, coordinated with other programs,

and seamless to customers. Energy efficiency strategies and resource potential will vary among the State's regions, and the Working Group will take this into account.

Upon conclusion of the Group efforts, the program administrator initiating the proposal may submit the proposal, including any modifications, to the Commission for approval. The submission will include a description of the Group efforts, the degree of cooperation achieved, and unresolved issues identified by members of the Group.

C. The Policy Advisory Board

The structure proposals examined by Working Group I and advanced by parties generally include some form of advisory board, or partnership of program administrators; or a strictly advisory "college" of stakeholders. We find that advisory bodies are essential components of an EEPS, and that an ongoing stakeholder process will ensure that affected interests continue to contribute their points of view to help shape the EEPS and attain the goals. The working groups and regional roundtables have been incubators for this stakeholder process and participants are encouraged to step forward to serve.

1. The Commission will have ultimate approval/authority over all ratepayer funding of program.
2. The Commission will be advised by an EEPS Policy Advisory Board, which will include stakeholders and may include independent experts in the field.

D. The Evaluation Task Force

Working Group III recommended the creation of a statewide Evaluation Task Force (ETF) charged with developing evaluation protocols to be adopted by all Program Administrators. Of critical importance is that the ETF must be integrated into the statewide EEPS structure. The ETF would serve as the EEPS Independent Program Evaluator to ensure that all program administrators are evaluating programs and reporting results consistently, reliably, and regularly. While the

proposal is that the ETF review evaluation plans of state agency and authority non-jurisdictional program administrators, as well, the primary task of the ETF is to report to the Commission as to the integrity of the EEPS evaluation process and results.

We agree. The assurance of consistent, rigorous and verifiable assessment regime is critical to the success of the EEPS as a whole. The ETF should be constituted as proposed by Working Group III. Among its first tasks is to assess and recommend what portion of the EEPS budget is appropriate to ensure a robust evaluation program.

IX. NATURAL GAS

At present there is no SBC funding stream for gas, and NYSERDA does not operate gas efficiency programs, while several LDCs have obtained approval to operate efficiency programs. Because the record regarding a natural gas efficiency program is not as fully developed as the record regarding electricity, treatment of natural gas will occur in two phases.

A. Phase One

Phase One will be developed for Commission approval using the same schedule as the electricity portion of the Straw Proposal. Parties' briefs may provide comments on this proposal as well as comments on the 2006 Optimal Report and the forthcoming 2008 update.

1. Statewide annual program expenditures established in Phase One will be no less than \$80 million. Per the Optimal study, such expenditures over five years will result in energy savings of approximately 21,280 Mdt in the eighth year. Each LDC with more than 14,000 customers will establish a System Benefits Charge to collect annually its percentage of total non-generation sales volume (among participating LDCs) times \$80 million. If any LDC has an already-approved program exceeding that amount, the higher amount will be maintained and collected through the SBC, and will not reduce the proportional share of other LDCs. Percentages will be developed from a five-year average and will not be recalculated annually.

2. Electric generation service will be excluded from all calculations and electric generation customers will neither contribute toward, nor participate in, the program.

3. Interruptible customers will neither contribute toward, nor participate in, Phase One of the program.

4. Each LDC, after consultation with NYSERDA and other interested parties, will propose a program to the Commission not more than three months later than the date of the Commission order. LDC programs will be limited to measures already employed by the LDC, measures identified in the Optimal report, fuel switching measures that would result in substantial efficiency improvements in gas usage, or other measures serving needs unique to the LDC's service territory.

5. Natural gas efficiency programs should be integrated with electricity efficiency programs, in a whole customer approach, in cases where total energy savings can be maximized by that approach. Within six months of the Commission order: (a) combination gas and electric companies will offer integrated programs to end-use customers, (b) where electric programs are offered by NYSERDA to end users, LDCs will offer integrated programs with NYSERDA to the extent that programs overlap. LDCs sharing territories with public authorities and/or with unaffiliated electric utilities will use best efforts to offer integrated programs and will report to the Commission within one year of the Commission order.

6. LDCs that do not have revenue decoupling mechanisms will track lost revenues and defer recovery.

B. Phase Two

1. Staff Target - Taking into account the 2008 Optimal update and other sources as needed, Staff will evaluate a range of targets which may include: (a) 15% reduction in forecast usage among non-generating customers by 2015, (b) 15% or greater reduction by 2020, (c) zero growth over all customer classes through the years 2015 and 2020, or (d) any other target scenarios that Staff deems advisable. Staff may consider whether to establish targets, beyond the Phase One targets,

based on regional growth rates and capacity needs. Following a comment period a target will be recommended.

2. Taking into account Phase One programs, incidental gas savings from NYSERDA electric programs, and changes in codes and standards, Staff will develop a wedge analysis to identify additional savings needed to achieve target scenarios.

3. A collaborative will be convened to develop a gas efficiency program to achieve the recommended target. LDCs may propose additional measures that will be achieved by utilizing on-bill financing. NYSERDA may propose a program that will include increased support for combined heat and power and may include (a) end-use gas efficiency measures where NYSERDA offers end-use service to electric customers and no LDC programs are available to integrate gas efficiency, (b) market transformation measures, and (c) emerging technologies. NYSERDA and LDCs will be strongly encouraged to fashion a unified proposal. Upon approval an addition will be made to the SBC surcharge.

Non-generation interruptible customers, in order to maintain their exemption from the surcharge, must demonstrate that they have undergone an energy audit and have adopted a reasonable plan for implementation of audit recommendations.

X. REVIEW AND ASSESSMENT

1. Program review. In addition to the ongoing evaluation, measurement and verification efforts of the Evaluation Task Force, the Commission will require a comprehensive assessment of the EEPS program not later than December 1, 2010. The assessment will allow for flexibility in program design going forward, and will inform the Commission's consideration of the renewal of the SBC allocations that expire June 30, 2011.

2. Program continuation beyond 2015. One clear lesson learned from the collaborative process is the importance of long-term commitments to programs, to ensure workforce availability and marketing continuity. For that reason, the Commission should determine well before 2015 whether and to what extent the ratepayer-funded programs of the EEPS will be

continued. Some parties have argued that ratepayer-funded programs are not sustainable in the long term and that the Commission must adopt other strategies. Moreover, the development of market transformation, codes and standards, and new technologies are likely to render many efficiency measures unnecessary. By 2012, the Commission should require an evaluation of methods to maintain or improve upon EEPS goals beyond 2015, with specific emphasis on the feasibility of non-ratepayer funded measures such as rate design changes and increased reliance on on-bill financing.

XI. CONCLUSION AND NEXT STEPS

The purpose of the Straw Proposal is to advance this process by focusing parties' comments on those fundamental EEPS design recommendations we are at present inclined to make to the Commission. We have drawn upon the design proposals of DPS Staff, NYSERDA, the utilities, the signatories to the NRDC/Pace Consensus Recommendation, and all other parties. We have relied heavily on the compilation of recommendations by the four Working Groups. The Straw Proposal is a set of proposed outcomes. It is premised upon an analysis of the basic underpinnings of an EEPS: detailed modeling of the target attributable to ratepayer-funded energy efficiency measures, and the cost of reaching targets through 2015.

1. Several issues would benefit from further collaborative effort of the parties, though they need not reach completion prior to an initial Commission decision on the issues presented in the Straw Proposal. These issues include: establishing a process, useful to all market participants, for collection and access to customer data for optimal targeting of efficiency measures; identifying measures to increase transmission and distribution efficiency; identifying strategies and measures to increase the effectiveness of efficiency programs where customers have split incentives, e.g., rental housing; and identifying an optimal strategy for demand management within the context of an EEPS. A conference of the

Steering Group members will be scheduled to discuss organization of these efforts.

2. This Straw Proposal does not address every issue of program design. Parties are encouraged in their briefs to identify and address all issues, not limited to those discussed in the Straw Proposal.

3. In order to facilitate consideration of parties' positions on the issues, briefs must refer to the Straw Proposal table of contents, point by point.

4. A technical conference has been scheduled to commence March 5, 2008. Written clarification requests regarding the Technical Appendix may be directed to the ALJs via the listserv. Additions to the Technical Appendix, with explanations, will be issued shortly.

Parties may identify issues for the Technical Conference by February 22, 2008.

(SIGNED)

ELEANOR STEIN

(SIGNED)

RUDY STEGEMOELLER