Multiple Intervenors
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October 15, 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-M-0548 – Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio Standard

Dear Secretary Brilling:

Pursuant to the Ruling Setting Collaborative Agenda and Modifying Comment Schedule, issued on September 13, 2007 in the above-referenced proceeding, enclosed for filing are the original and five copies of Comments of Multiple Intervenors on Fast Track Issues. In accordance with the filing and service procedures adopted for this proceeding, these Comments are being served electronically on the presiding administrative law judges and all active parties.

Respectfully submitted,

MULTIPLE INTERVENORS

Michael B. Mager

Michael B. Mager

MBM/cgw
Enclosures
cc: ALJ Eleanor Stein (via E-Mail; w/attachment)
ALJ Rudy Stegemoeller (via E-Mail; w/attachment)
Active Parties (via E-Mail; w/attachment)
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TABLE OF CONTENTS

Page

PRELIMINARY STATEMENT

Pursuant to the Ruling Setting Collaborative Agenda and Modifying Comment Schedule ("Ruling") issued on September 13, 2007, Multiple Intervenors hereby submits its Comments on Fast Track Issues in Case 07-M-0548.[1] Multiple Intervenors is an unincorporated association of approximately 50 large industrial, commercial and institutional energy consumers with manufacturing and other facilities located throughout New York State. The members of Multiple Intervenors pursue energy efficiency projects, where cost-effective, because it makes economic sense to do so and often is in accord with established organizational goals. In fact, Multiple Intervenors members have been implementing efficiency projects for decades and are among the most efficient consumers of energy in the State. Multiple Intervenors would like to support the adoption and the implementation of an Energy Efficiency Portfolio Standard ("EPS") in New York, but it does have specific interests and concerns, summarized herein, that need to be addressed.

On August 28, 2007, New York State Department of Public Service Staff ("Staff") issued its "Preliminary Proposal for Energy Efficiency Program Design and Delivery" ("Preliminary Proposal") in this proceeding. Multiple Intervenors agrees with and supports certain aspects of the Preliminary Proposal, and it also disagrees with and opposes other aspects of that Proposal. Based on the Ruling, however, this submission is limited to: "Comments on fast track or expansion of existing programs only." (Ruling at 5.) Multiple Intervenors understands that other issues in this proceeding, including many raised in or by

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[1] Case 07-M-0548, Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio Standard.

the Preliminary Proposal and/or relating to the long-term implementation of an EPS, will be addressed in a subsequent phase of this proceeding.

In the Preliminary Proposal, Staff recommends that:

> [P]rograms need to ramp up quickly in the near term to place the State on track to meet the overall savings targets for 2015. For this reason, a set of proven programs that can be scaled up rapidly without market disruptions should be deployed on a "fast track" basis, with a more extended process for planning the balance of the program portfolio needed to meet the 2015 goal.

(Preliminary Proposal at 24.) Given the ambitious EPS goal and practical time constraints, it appears reasonable to focus certain initial efforts on "Fast Track" programs (i.e., those that will be implemented and/or expanded in 2007 and 2008).

Importantly, the near-term implementation of Fast Track programs raises numerous cost-related issues, in addition to widely-recognized issues pertaining to selection, design and implementation of the programs themselves. During the collaborative meeting held on September 17, 2007, Administrative Law Judge Eleanor Stein confirmed that the cost-related issues identified by Multiple Intervenors are within the scope of Fast Track issues to be addressed herein.[2]

Multiple Intervenors' Comments on Fast Track Issues are organized into two sections. In Point I, Multiple Intervenors advances its positions on numerous cost-related issues with respect to the design and the implementation of an EPS, including, but not limited to, Fast Track programs. In Point II, Multiple Intervenors details, and provides

[2] Judge Stein indicated that no decision has been made as to whether such cost-related issues would be resolved now solely with respect to Fast Track programs or for the duration of this proceeding. As demonstrated, infra, Multiple Intervenors' positions with respect to cost-related issues are applicable equally to Fast Track programs and programs that may be implemented during a subsequent phase of the proceeding.

examples of, desirable characteristics of energy efficiency programs for large commercial and industrial ("C&I") customers on both a Fast Track and longer-term basis.

ARGUMENT

POINT I

MULTIPLE INTERVENORS' POSITIONS ON COST-RELATED ISSUES SHOULD BE ADOPTED

The institution of this proceeding by the New York State Public Service Commission ("Commission") to facilitate the design and the implementation of an EPS raises numerous cost-related issues that have yet to be resolved. On July 11, 2007, Multiple Intervenors submitted its Initial Comments in Response to Staff's Questions, wherein it identified and advanced positions on a number of cost-related issues. In its Preliminary Proposal, Staff addressed, in part, some but not all of those cost-related issues. At the September 17th collaborative meeting, Judge Stein confirmed that the cost-related issues identified by Multiple Intervenors should be addressed in parties' submissions on Fast Track issues. Accordingly, Multiple Intervenors hereby advances its positions on those cost-related issues that need to be resolved contemporaneous with the approval of Fast Track programs, although such resolutions also could be applicable for the remainder of this proceeding.

Multiple Intervenors' positions on cost-related issues are as follows, and are advanced more fully below: (a) the rate impacts of the EPS must be minimized; (b) EPS costs must not be imposed on New York Power Authority ("NYPA") allocations and service under electric and gas flex-rate contracts; (c) EPS costs must be recovered in a manner that promotes interregional equity; (d) EPS costs must be recovered in a manner that promotes

interclass equity; and (e) EPS costs must be recovered in a manner that promote intraclass equity. The importance of these cost-related issues cannot be overstated. Multiple Intervenors' positions on cost-related issues are applicable to the electric EPS and any comparable EPS adopted for gas.

A. The Rate Impacts of the EPS Must Be Minimized

The average price of electricity in New York State has been, and remains, well above the national average. According to the Energy Information Administration, for the first six months of 2006, the average price of electricity in New York for all sectors was 13.42 cents per kWh, which was: (a) sixth highest in the United States; and (b) 4.82 cents per kWh, or approximately 56%, higher than the national average of 8.60 cents per kWh.[3] Unfortunately, New York's competitive disadvantage vis-à-vis the rest of the nation with respect to electricity prices is increasing, not decreasing. For the first sixth months of 2007, the average price of electricity in New York for all sectors was 14.77 cents per kWh, which was: (a) over 9% higher than the comparable figure for 2006; (b) fourth highest in the United States; and (c) 5.84 cents per kWh, or approximately 65%, higher than the national average of 8.93 cents per kWh.[4] It is essential that the Commission proceed very cautiously with respect to implementation of the EPS – the resulting rate impacts on customers must be minimized as much as possible.

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[3] Energy Information Association, Average Retail Price of Electricity to Ultimate Consumers by End-Use Sector by State (Report Released September 10, 2007).

[4] Id. See also Case 07-M-0548, supra, Initial Comments of Multiple Intervenors in Response to Staff's Questions (dated July 11, 2007) at 8 (providing additional information regarding New York's poor competitive position with respect to electricity prices).

Energy prices are particularly important for large C&I customers, many of which consume substantial amounts of electricity and gas as part of manufacturing and other processes. The most recent 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.[5]

Moreover, the relationship between economic activity and reasonably-priced energy costs is strong and beyond serious dispute. The State Energy Plan 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 such policies "support reducing energy costs to consumers ...."[6] The State Energy Plan also 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 growth within the State."[7]

Due to the importance of energy costs on a business's profitability, many large C&I customers, including Multiple Intervenors members, implement cost-effective energy efficiency projects on a regular basis – with or without financial subsidies – because such projects make good business sense. Multiple Intervenors members will continue to implement efficiency projects, where cost-effective, irrespective of whether and in what form

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[5] New York State Energy Plan and Final Environmental Impact Statement (June 2002) (hereinafter, "State Energy Plan") at 2-16 (footnote omitted).

[6] State Energy Plan at 2-15.

[7] Id.

the EPS is implemented. Multiple Intervenors, however, is very concerned about the electric and gas rate impacts of the EPS, and that its members may be forced to subsidize the undertaking of efficiency projects by other customers, including business competitors.

Some parties may contend that implementation of the EPS ultimately will result in lower energy prices and improve the State's economic competitiveness. Multiple Intervenors hopes that will be the case, although whether such outcomes actually come to fruition will not be ascertainable for quite some time. Importantly, however, the Commission should recognize that: (a) to the extent it relies on customer-funded efficiency programs, the EPS will increase rates; (b) most customers likely will not participate in EPS programs, notwithstanding the best efforts of the parties hereto; and (c) non-participants will experience higher energy bills. Indeed, in its Preliminary Proposal, Staff acknowledges that "[h]istorically, participation rates [in energy efficiency programs] have been low" and "non-participants will experience net bill increases." (Preliminary Proposal at 73.)

It is essential that the rate impacts of the EPS be minimized as much as possible. In its Preliminary Proposal, Staff recognizes that EPS goals can be satisfied without relying exclusively, or even predominantly, on customer-funded subsidies:

> The need for additional funding sources could be significantly mitigated through an accelerated effort to increase the energy efficiency levels embodied in building codes and the energy efficiency standards for various appliances and equipment. Increased activity from the private sector to encourage use of energy efficiency products and services could also reduce the need for public support as the means to achieve EPS targets. The greater use of existing financing mechanisms as well as the creation of new financing mechanisms needs to be fully explored to lessen the need for increased surcharges on energy consumption.

(Preliminary Proposal at 6-7.) Work on increasing the energy efficiency levels and standards embodied in building codes and in appliances and equipment should commence immediately and be accorded the highest priority. The Commission also should rely extensively on national programs, existing and new financing mechanisms, and voluntary customer projects as means to achieve EPS goals while minimizing rate impacts on customers.[8]

Due to the expedited nature of the consideration of Fast Track programs, it is not possible, at this time, to estimate reasonably the level of contribution toward EPS goals that can be achieved through means other than customer-funded efficiency programs (e.g., more stringent codes and standards, increased use of financing mechanisms, voluntary efficiency projects). Importantly, however, inasmuch as those means do not increase rates to New York consumers, or exacerbate the State's already-poor competitive position in terms of energy prices, the Commission should rely on them – instead of customer-funded efficiency programs – to the maximum extent practicable. Accordingly, although the approval of customer-funded Fast Track programs may be considered imminently, the Commission should proceed very cautiously, and minimize the financial commitments that will be borne

[8] With respect to voluntary, customer–initiated efficiency projects, the Commission should following the precedent established in Case 03-E-0188, the Renewable Portfolio Standard ("RPS") proceeding. In that proceeding, the Commission decided to rely on voluntary efforts to achieve a meaningful portion of the RPS goal, 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." Case 03-E-0188, Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard, Order Regarding Retail Renewable Portfolio Standard (issued September 24, 2004) (hereinafter, "RPS Order") at 4. 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 relying solely on subsidies paid for by New York energy consumers.

by customers until, at the earliest, other, less-costly means of achieving EPS goals have been evaluated comprehensively.[9]

B. EPS Surcharges Must Not Be Imposed on NYPA Allocations and Flex-Rate Contracts

It is absolutely essential that NYPA allocations and flex-rate contracts be exempt from any EPS surcharges. The purpose of NYPA allocations and flex-rate contracts is to reduce energy costs for the subject customers, primarily for important economic development reasons (e.g., attracting or retaining businesses, and jobs, to the State). The possible imposition of EPS surcharges on NYPA allocations and flex-rate contracts would defeat the very purpose of the allocations and contracts, and have significant, detrimental impacts on economic development goals.[10]

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.[11] As the State Energy Plan recognizes, the cost of energy remains a significant obstacle to New York's efforts to retain, expand and attract business.[12] In fact, the State Energy Plan concludes that:

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[9] For the reasons advanced in Point II, infra, Multiple Intervenors proposes that the imposition of EPS surcharges on any single, non-exempt customer be capped on an annual basis.

[10] Multiple Intervenors also supports an exemption from EPS surcharges for gas interruptible sales and transportation customers for the reasons articulated by Staff. (See Preliminary Proposal at 85-86.) In all likelihood, the imposition of EPS surcharges on interruptible gas customers would result in the increased use of alternate fuels and/or necessitate larger rate discounts to compensate for the new surcharges.

[11] State Energy Plan at 2-17, 2-22.

[12] 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.[13]

Previously, the Commission has exempted NYPA and flex-rate contract customers from the System Benefits Charge ("SBC") and the RPS surcharge. The Commission also ruled recently that NYPA customers should be exempt from utility stranded costs, and many flex-rate contracts similarly exclude stranded cost recovery. It is critical that the Commission follow the same approach with respect to the implementation of the EPS. Imposing EPS surcharges on NYPA allocations and flex-rate contract customers would be contrary to the State's economic development goals and, in many instances, would be a devastating blow in a company's efforts to retain production, and jobs, in New York. Accordingly, NYPA allocations and flex-rate contracts should be exempt from any EPS surcharge or related costs.

When the Commission first adopted the SBC in 1998, it exempted NYPA allocations from its imposition.[14] When the SBC was renewed in 2001, the Commission

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[13] Id. at 2-24.

[14] 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 flex-rate contracts that did not permit its imposition.

ruled expressly that: "By design, the current SBC is not applied to NYPA ... customers."[15] The Commission also ruled that customers whose flex-rate contracts do not allow the utility to collect an SBC "cannot be forced to pay an SBC without abrogating the contracts."[16] More recently, in extending the SBC for another term, 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 may 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."[17]

Significantly, in adopting the RPS, the Commission similarly exempted NYPA allocations and flex-rate contracts from the 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

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[15] 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").

[16] Id. at 23. Where the imposition of the SBC would constitute an abrogation of contract, the same conclusion also should be reached with respect to the imposition of EPS surcharges.

[17] Case 05-M-0900, 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.

would be counterproductive to these economic development goals.[18]

Thus, the Commission concluded, appropriately, that it would be counterproductive to impose the RPS surcharge on NYPA allocations and flex-rate contracts that did not permit its imposition. The exact same conclusion should be reached here with respect to any EPS surcharges.

In conjunction with Case 05-E-1222, the last New York State Electric & Gas Corporation ("NYSEG") electric rate proceeding, the Commission was required to rule upon a joint proposal that, if adopted, would exempt new NYPA allocations from NYSEG's stranded costs, which are recovered through a non-bypassable charge ("NBC"). In adopting that joint proposal, the Commission recognized, again, the importance of not burdening NYPA allocations with surcharges that would frustrate the economic development goals being pursued: "the JP provides a standard NBC cost exemption for new allocations of NYPA Power that will enhance economic development in NYSEG's service territory."[19] Thus, the Commission repeatedly has recognized the importance of exempting NYPA allocations from surcharges (e.g., the SBC, the RPS surcharge, the NBC) that would increase costs to customers that the State already has determined require lower-priced electricity supplies to achieve important economic development objectives.

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[18] Case 03-E-0188, supra, RPS Order at 11 (emphasis added); see also id. at 53-55.

[19] Case 05-E-1222, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of New York State Electric & Gas Corporation for Electric Service, Order Adopting Joint Proposal on New York Power Authority Issues (issued July 20, 2007) at 5. Exempting new NYPA allocations from the NBC also was consistent with the regulatory treatment accorded to longstanding NYPA allocations. See id. at 1-4.

With respect to NYPA customers, there are a number of additional reasons why they should be excluded from any EPS surcharges. First, NYPA customers typically have long-term contracts and, therefore, are unlikely to benefit from any declines in market price experienced as a result of EPS-related electricity consumption and/or peak demand reductions. Second, NYPA customers tend to be large energy consumers for whom electricity represents a significant cost of doing business. Therefore, many NYPA customers – including Multiple Intervenors members – routinely implement energy efficient projects on their own, without financial subsidies, because it is cost-effective to do so. Third, NYPA customers – which tend to be extremely price-sensitive – have made numerous, critical business decisions based on the projected cost of their allocations. Under such circumstances, it would be extremely inequitable to impose any EPS surcharges on NYPA allocations – particularly surcharges that, on a percentage basis, could have a devastating impact on a customer's cost of electricity. Finally, in conjunction with their allocations, most (if not all) NYPA customers already have undergone comprehensive energy audits at their facilities, and NYPA itself implements extensive efficiency programs.[20]

Similarly, there also are additional compelling reasons to exempt flex-rate contracts from any EPS surcharges. 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."[21] The State Energy Plan concluded that the State's "[l]ow-cost power programs have been successful to date in retaining and expanding

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[20] See generally Preliminary Proposal at 19-20.

[21] State Energy Plan at 2-16.

employment opportunities in the state."[22] It also concluded that: "[o]ffering electricity discounts as a means of retaining or attracting jobs is an important economic development tool."[23] Many flex-rate contract customers made business decisions, and commitments to their New York operations, based upon energy rates (electricity and gas) that were fixed in negotiations prior to the institution of this proceeding. Under such circumstances, it would be inequitable, and counterproductive to economic development goals, to impose the costs of the EPS on flex-rate contract customers.

For all the foregoing reasons, it is absolutely essential that NYPA allocations and flex-rate contracts be exempt from any EPS surcharges that may be imposed in this proceeding.

C. EPS Costs Must Be Recovered in a Manner That Promotes Interregional Equity

The implementation of the EPS may result, over time, in the expenditure of billions of dollars of customer funds on energy efficiency programs across New York State. Programs may be administered by, inter alia, State agencies, utilities and municipalities, resulting in a geographically-uneven distribution of program benefits. Therefore, it is very important that the EPS be implemented in a manner that promotes interregional equity. Specifically, EPS costs should be allocated to, and recovered from, the regions for whose direct benefit the costs were incurred. Customers in Buffalo, for example, should not have to pay for EPS programs implemented on Long Island, and vice versa. By acting to ensure interregional equity – starting with the implementation of Fast Track programs – the

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[22] Id. at 2-36.

[23] Id. at 2-37. The same benefit also can be attributed to flex-rate gas contracts.

Commission can avoid concerns and criticisms that one or more regions of the State are being subsidized by customers in other regions.

In the order instituting this proceeding, the Commission stated 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.[24] In evaluating regions in which peak demand reductions should be targeted, it is 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.

For instance, to the extent the EPS programs are targeted, at least in part, toward reducing peak demand, it would be more appropriate to focus those programs on the Downstate region. 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 (i.e., encompassing a period subsequent to the EPS goal established herein).[25] Based on current and forecasted resources statewide (generation, transmission and demand response) and growing electricity demand, the RNA concluded that power deficiencies could occur by 2011, and become acute by 2016, if expected demand is not addressed adequately.[26] The NYISO concluded that the need identified for 2011 is being

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[24] Case 07-M-0548, supra, Order Instituting Proceeding at 2, 11.

[25] NYISO, Comprehensive Reliability Planning Process: 2007 Reliability Needs Assessment (dated March 16, 2007).

[26] Id. at 10.

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 of the State's transmission system.[27] Conversely, in terms of Upstate New York, there are no projected reliability needs identified through 2016.[28]

The need for additional generation capacity is just one regional difference that exists today. Certain EPS programs may work well for some regions of the State and not other regions. For instance, although suffering through a very difficult economic climate, there is more industrial activity in selected Upstate regions than Downstate. In the Downstate regions, particularly New York City, there are far more tenant-occupied residences than what exists Upstate, and those types of residences present specific challenges and opportunities for efficiency efforts. There also are distinct regional differences in terms of the availability of capacity on interstate gas pipelines and, consequently, there may be compelling reasons for gas efficiency programs to reflect such regional differences (including different levels of costs). Numerous, additional regional differences exist, which similarly may warrant disparate approaches – and financial commitments – toward achieving EPS goals.

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[27] Id.

[28] Id. at 11, 12. Months after the RNA was issued, at the end of July, 2007, Besicorp-Empire Development Company, LLC announced that it had obtained sufficient funding to proceed with the construction of the Besicorp-Empire power project located in Rensselaer, New York. That project has been described as a 660 MW combined cycle unit and was not included in the RNA base case analysis. NYISO, The Comprehensive Reliability Plan 2007: A Long-Term Reliability Assessment of New York's Bulk Power System – Final Report (dated September 18, 2007) at 50, n.28. Thus, it appears that the need for additional capacity in Upstate New York is farther out into the future than the analysis contained in the RNA.

Importantly, equity dictates that interregional equity be promoted as much as possible in the implementation of the EPS. If there are reductions to energy consumption and peak demand in Buffalo, for instance, the economic benefits would be realized largely through reduced energy prices in NYISO Load Zone A and the Rest-of-State installed capacity market. Customers on Long Island would not realize those benefits. Similarly, energy consumptions and peak demand reductions experienced on Long Island would have little to no economic impact in Buffalo. Thus, it is imperative that the Commission allocate customer-funded EPS program costs – starting with Fast Track programs – to the geographical regions which should benefit directly from those programs.

In approving the continuation of the SBC in 2001, the Commission recognized the importance of maintaining at least some level of interregional equity. The Commission ruled that: "the allocation of the responsibility to collect SBC funds should roughly correspond to benefits customers are likely to receive from such programs."[29] In that context (i.e., the SBC in 2001), the Commission elected to approve the same SBC across the State because: (a) "a large focus of the SBC program will be on load reduction and capacity-building efforts"; and (b) allocating SBC responsibility by utility revenues was deemed more equitable than by sales levels.[30] With respect to the EPS, while the Commission still should strive to maintain interregional equity, there is no need to maintain uniformity in terms of EPS surcharges. Presumably, efficiency programs designed to reduce consumption will be implemented across the State, although not necessarily on a uniform basis; however, to the

[29] Case 94-E-0952, supra, Order Continuing and Expanding the System Benefits Charge for Public Benefit Programs at 24.

[30] Id.

extent programs are implemented to reduce peak demand, even in part, such programs should be targeted primarily (if not exclusively) Downstate, not Upstate (and the costs of such efforts should be recovered from Downstate customers, not Upstate customers).

Accordingly, for each customer-funded EPS program that is implemented – starting with Fast Track programs – the Commission should evaluate the region of the State wherein the direct beneficiaries reside, and allocate the program costs to that region. Given the potential magnitude of EPS expenditures, and the importance of promoting and maintaining interregional equity, the benefits achievable by such an exercise far exceed the administrative burdens, which should not be excessive.

D. EPS Costs Must Be Recovered in a Manner That Promotes Interclass Equity

The costs of the EPS may be substantial, possibly totaling in the billions of dollars. Consequently, in addition to minimizing rate impacts on customers and preserving interregional equity, the Commission must ensure that EPS costs are recovered in a manner that promotes interclass equity. For instance, large C&I customers should not be forced to pay for energy efficiency programs targeted at residential and/or small C&I customers. Similarly, residential and small C&I customers should not be forced to pay for energy efficiency programs targeted at large C&I customers. In utility rate proceedings, the Commission generally strives to allocate costs to customer classes in a fair and equitable manner, consistent with cost of service principles. There is no compelling reason why EPS costs should be treated differently – indeed, because EPS program costs are expected to be relatively discrete, they should be easier than most types of costs to allocate equitably among customer classes. Importantly, the Commission should strive to achieve widespread support

for the EPS – that support likely would be weakened, and substantial opposition may be encountered, if implementation of the EPS creates or exacerbates interclass subsidies.

The Commission previously has endorsed, in certain circumstances, the allocation of demand-side management ("DSM") 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 for implementation 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 recover 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.[31]

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.[32]

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[31] 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).

[32] Id.

In Case 92-E-0108, et al., the Commission adopted a settlement that allowed, inter alia, Niagara Mohawk Power Corporation's largest C&I customers to forego participation in the utility's base DSM program and thereby avoid 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."[33]

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 forego utility provided DSM services, and thus enable them to pay lower utility rates."[34] 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.[35]

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[33] 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.

[34] 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.

[35] Id. at 5.

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

The issue of interclass equity is being addressed in Case 07-G-0141, the current National Fuel Gas Distribution Corporation ("NFG") gas rate proceeding. In that proceeding, NFG proposed an energy efficiency program, dubbed the Conservation Incentive Program ("CIP"), which is targeted solely at residential customers, including low-income customers, and small C&I customers (consuming less than 12,000 dekatherms of gas annually). Large C&I customers (consuming more than 12,000 dekatherms of gas annually) would not be eligible to participate in the CIP. NFG proposed that all customers, including large C&I customers, pay for the CIP. Multiple Intervenors objected to that proposal and advocated that large C&I customers be exempt from CIP costs because they are not eligible to participate in the program and will not benefit directly from its implementation. In his Recommended Decision, the presiding administrative law judge recommended that large customers be exempt from CIP costs for the rate year, and noted that this proceeding will examine efficiency-related cost allocation issues in greater detail on a generic basis.[36]

Importantly, although it agrees with and supports the Recommended Decision in this regard, Multiple Intervenors: (a) recognizes that the Recommended Decision is not binding upon the Commission; and (b) does not rely on it here as controlling precedent.

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[36] Case 07-G-0141, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of National Fuel Gas Distribution Corporation for Gas Service, Recommended Decision (issued September 28, 2007) at 57-58.

Briefs on and opposing exceptions still need to be filed in the NFG gas rate proceeding, and there is no certainty as to the ultimate outcome of this issue. There is one excerpt from the Recommended Decision's treatment of this issue, however, that is very instructive and, from Multiple Intervenors' perspective, highly relevant to the Commission's consideration of interclass equity issues with respect to the EPS. In the Recommended Decision, the presiding administrative law judge recommends that: "In the context of the statewide proceeding, and the NFG collaborative, the parties should either attempt to find common ground for such an important program as this one, or, at a minimum, they should refine their positions to demonstrate the true and full merits of running such programs with the support and involvement of business and industry or without them."[37]

Multiple Intervenors would like to support the implementation of the EPS in New York. Importantly, however, it is difficult if not impossible to envision large C&I customers embracing the EPS if they are required to subsidize efficiency programs targeted at residential and small C&I customers (which similarly may object to the EPS if they are required to subsidize efficiency programs targeted at large C&I customers). By this argument, Multiple Intervenors is not seeking to eliminate any contribution from large C&I customers toward the EPS goal. It recognizes that: (a) it is highly likely that certain Fast Track and longer-term customer-funded energy efficiency programs targeted at large C&I customers will be implemented; and (b) interclass equity requires that such programs be paid for solely by large C&I customers. Significantly, however, the principles of interclass equity should be applied to all EPS programs – with respect to programs that are customer-funded, those targeted at residential customers should be funded solely by residential customers;

[37] Id. at 58.

those targeted at small C&I customers should be funded solely by small C&I customers; and those targeted at large C&I customers should be funded solely by large C&I customers.

The EPS must be implemented in a manner that promotes interclass equity. To hold otherwise would: (a) result in subsidies flowing across customer service classifications; (b) jeopardize customer support for the EPS; and (c) likely cause the expenditure of substantial resources litigating program budgets and the allocation of such costs.[38] Accordingly, the Commission should adopt as a principle herein that the cost of customer-funded EPS programs will be allocated only to those customer classes than can participate in, and benefit directly from, the programs.

E. EPS Costs Must Be Recovered in a Manner That Promotes Intraclass Equity

In addition to implementing the EPS in a manner that promotes interregional and interclass equity, it also is extremely important for the Commission to ensure that EPS costs are recovered in a manner that promotes intraclass equity.

For large C&I customers, the Commission should recognize that: (a) many such customers are struggling to compete in their respective businesses due, in material part, to New York's noncompetitive energy 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 efficiency projects on their own,

[38] For instance, if Multiple Intervenors' position on interclass allocation is adopted herein, it would cease to have any direct interest in the budgets of EPS programs targeted at residential and small C&I customers. If Multiple Intervenors' position is not adopted, however, and its members could be allocated a share of program costs incurred to benefit residential and/or small C&I customers only, Multiple Intervenors would have a strong interest in minimizing those costs – and their possible allocation to large C&I customers – to the greatest extent possible.

such customers object to having to subsidize the efforts of customers that have not made similar investments, some of which may be business competitors. As detailed in Point II of these Comments, infra, several of the desired design characteristics recommended by Multiple Intervenors for large C&I efficiency programs attempt to address, and minimize, intraclass subsidies.

Additionally, Multiple Intervenors is troubled by, and opposes, proposals that EPS surcharges be recovered solely on a volumetric basis. (See, e.g., Preliminary Proposal at 6.) Arbitrarily recovering EPS costs from all customers on a volumetric basis would penalize large, high load factor customers (ironically, high load factor customers often are the most energy efficient customers). Initially, EPS costs should be allocated among customer service classifications in an equitable manner based on program eligibility and receipt of direct program benefits (see supra). After the cost responsibility of a service class – or subclass – is calculated, EPS costs then should be recovered within each class in a manner reflective of cost of service principles.

For instance, while it may make sense to recover the costs of efficiency programs designed solely to reduce energy consumption on a volumetric basis, the same clearly would not be true of programs targeted at peak demand reductions, which should be recovered on the basis of demand.[39] While this issue may not be relevant to non-demand-metered customers, such as residential customers, it is very important to large C&I customers (particularly given the potential costs of an EPS). Accordingly, the Commission should not

[39] In accordance with fundamental cost of service principles, such as those used historically by the Commission to allocate investments in utility plant, the costs of efficiency programs designed to reduce both consumption and peak demand ideally should be recovered partly volumetrically and partly on a demand basis.

adopt a simplistic cost recovery methodology (i.e., a volumetric surcharge) but, instead, should evaluate more sophisticated approaches that (following a cost-based interclass allocation) recover EPS costs, as appropriate, based on number of accounts, demand and/or consumption. Such an approach would best promote intraclass equity.

For all the foregoing reasons, the EPS should be implemented in a manner that: (a) minimizes rate impacts to customers; (b) exempts NYPA allocations, flex-rate contracts and interruptible gas service from EPS surcharges; (c) promotes interregional equity; (d) promotes interclass equity; and (e) promotes intraclass equity.

POINT II

THE DESIGN OF DESIRABLE ENERGY EFFICIENCY PROGRAMS FOR LARGE C&I CUSTOMERS

Multiple Intervenors recognizes that, in order for the EPS goal to be achieved, it is likely that customer-funded efficiency programs targeted at large C&I customers will need to be implemented. This section of Multiple Intervenors' Comments details, and provides examples of, desirable design characteristics for large C&I customer efficiency programs. As an association comprising approximately 50 of the largest energy consumers in New York, Multiple Intervenors is positioned uniquely to identify such characteristics for future implementation within this proceeding, as part of Fast-Track programs and longer-term programs.

Initially, in order to evaluate the optimal design characteristics for efficiency programs targeted at large C&I customers, it is essential that the Commission first recognize some of the characteristics that differentiate large C&I customers from other customers (e.g.,

residential customers, small C&I customers). Those characteristics include, but are not limited to, the following: (a) large C&I customers typically are very energy-intensive, and energy often comprises a significant cost of doing business; (b) large C&I customers typically are very price-sensitive; (c) most large C&I customers are very knowledgeable about energy efficiency; (d) most large C&I customers have been implementing energy efficiency projects for years – if not decades – because it has made good business sense to do so; (e) most large C&I customers already have captured the "low hanging fruit" in terms of efficiency programs, such as lighting and motor retrofits; (f) the energy efficiency projects being undertaken now by large C&I customers generally are industry-specific, facility-specific and/or process-specific, and are the exact opposite of the "cookie cutter" type programs prevalent for residential and small C&I customers; (g) large C&I customers are extremely concerned about energy prices and, at least with respect to Multiple Intervenors members, the potential costs of the EPS; and (h) having implemented energy efficiency projects at their facilities for years, many large C&I customers also are very concerned about subsidizing projects for less-efficient customers, some of which may be business competitors.

Thus, Multiple Intervenors asserts that, for large C&I customers, the Commission should adopt energy efficiency programs that: (a) are very flexible, and facilitate customer implementation of projects specific to their business needs and facilities; (b) subject to certain exemptions that are warranted (e.g., NYPA allocations, flex-rate contracts, interruptible gas service), include a cap, or ceiling, on the amount of EPS surcharges than can be imposed on an individual customer within a 12-month period; and (c) "bank" individual customers' EPS surcharges and accords them the first opportunity to

recoup them, on a dollar-for-dollar basis, to fund their own efficiency projects. If, arguendo, this type of "banking" program is not implemented, the Commission should adopt a competitive solicitation approach, similar to that in effect in Texas. Moreover, to the extent the Commission directs the implementation of "cookie cutter" type efficiency programs for large C&I customers, those customers unable to participate actively therein should be permitted to "opt out" of both the programs and the program expenses. Each of these design characteristics is discussed in more detail below.

A. Large C&I Customer Efficiency Programs Should Be Extremely Flexible

Most large C&I customers already have implemented the most basic of energy efficiency improvements (e.g., lighting, motors). For instance, Staff acknowledges in its Preliminary Proposal that certain efficiency programs targeted at C&I customers use 34.6% of the SBC funding, but are responsible for 76% of the energy savings. (Preliminary Proposal at 51.) "Cookie cutter" type programs designed to serve the masses no longer satisfy the needs of large, energy-intensive C&I customers. In order to maximize incremental energy efficiency from large C&I customers, programs must provide sufficient flexibility to allow customers to implement unique efficiency projects specific to their industries, facilities and/or processes. One of the most frustrating aspects of existing efficiency programs for many Multiple Intervenors members is that the targeted efficiency improvements already have been undertaken and/or incremental opportunities pale in comparison to the costs being imposed to fund such programs.

In order to maximize future energy efficiency from the large C&I sector, efficiency programs implemented hereinafter should be extremely flexible, and facilitate the

undertaking by customers of efficiency projects specific to their particular needs and circumstances. Rigid program requirements that, inter alia, limit eligibility to certain types of equipment or products and/or make customers "jump through hoops" that are administratively burdensome should be avoided.

B. Subject to Certain Customer Exemptions, EPS Surcharges Should Be Capped Annually for Large C&I Customers

For the reasons set forth in Point I(B), supra, it is essential that NYPA allocations, flex-rate contracts and interruptible gas service be exempt from any EPS surcharges. Subject to those exceptions, and a proposed "opt out" election if "cookie cutter" type efficiency programs are implemented, it is imperative that EPS surcharges be capped annually for large C&I customers. Even before the implementation of an EPS that ultimately may cost customers billions of dollars, New York's energy prices are among the highest in the nation and have a significantly-detrimental impact on the State's economic development efforts. In addition to raising rates, the EPS may create tremendous uncertainty for large C&I customers making decisions about whether to come to or leave New York, or to shift production to or from the State. Adoption of an annual cap on EPS surcharges for non-exempt large C&I customers would be extremely beneficial because it would: (a) limit the potential rate impacts from the EPS to a pre-determined level; and (b) eliminate the tremendous uncertainty that exists today regarding the maximum rate impacts likely to stem from this proceeding. Importantly, the adoption of an annual cap on surcharges is not unprecedented and, in fact, several states already have such caps in place.

1. New Mexico

In 2007, the New Mexico Legislature enacted statutes designed to promote renewable energy and energy efficiency.[40] Although the legislation requires electric suppliers to participate in energy efficiency, the suppliers are permitted to recover their costs by imposing special fees on their customers. Importantly, however, those fees are limited. A public utility may recover the costs associated with energy efficiency and load management programs as set forth in a tariff rider, but that rider is limited to "the lower of the commission's approved tariff for that customer's bill or seventy-five thousand dollars ($75,000) pear year."[41]

2. Nevada

Nevada employs a "Universal Energy Charge," which is used to fund numerous activities and other funds, including the Fund for Energy Assistance and Conservation.[42] Significantly, Nevada limits the Universal Energy Charge for a retail customer to $25,000 per quarter.[43] If a customer pays more than $25,000 per quarter, that customer is entitled to a refund of the excess amount.[44]

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[40] See S. 418, at 1 (N.M. 2007).

[41] N.M. Stat. Ann. § 62-17-6(A). For large customers, the commission cannot approve an increase from this cap without the customer's consent. Id. The $75,000 cap existed prior to the most recent legislation.

[42] Nev. Rev. Stat. Ann. § 702.250(1).

[43] Nev. Rev. Stat. Ann. § 702.160(5).

[44] Id.

3. Illinois

Illinois enacted legislation in 2007 that in part sets forth requirements for energy efficiency and demand response programs.[45] The legislation calls for incremental energy savings starting in 2008. Utilities must implement those energy efficiency and demand response programs. The cost of those programs are capped, however, at a 0.5% rate impact in any one year, with an overall maximum rate increase of 2%.[46]

Thus, Multiple Intervenors urges the Commission to adopt an annual cap on EPS surcharges for non-exempt large C&I customers. In light of New York's already-poor competitive position vis-à-vis other states in terms of energy prices, the per customer cap on EPS surcharges should be less than those implemented in New Mexico, Nevada and Illinois. From Multiple Intervenors' perspective, it is difficult to justify imposing more than $25,000 per year in additional EPS-related surcharges on any customer, let alone a large C&I customer struggling to conduct business in a high-priced state.[47]

C. Customers Subject to EPS Surcharges Should Be Accorded the Opportunity to Use That Money to Fund Energy Efficiency Projects

Multiple Intervenors' strongest recommendation concerning customer-funded large C&I energy efficiency programs is that customers be permitted to "bank" any EPS surcharges and be accorded the first opportunity to recoup that money, on a dollar-for-dollar

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[45] American Council for an Energy-Efficient Economy, *Energy Efficiency Resource Standards Around the U.S. and the World*, Sept. 2007.

[46] Id.

[47] In evaluating the appropriate level for an annual cap on EPS surcharges, the Commission should be cognizant that most large C&I customers already are subject to non-competitive energy prices, the SBC, the RPS surcharge, and energy-related taxes.

basis, to fund their own efficiency projects.[48] Such projects would be subject to mandatory verification procedures.

This "banking" approach accomplishes many beneficial purposes. First, because large C&I customers are accorded an opportunity to recoup their money, the ultimate cost to customers should be reasonable. Second, by allowing customers to "bank" the EPS surcharges for their future use (for some reasonable amount of time), the issue of intraclass subsidies – and customers potentially subsidizing their competitors – is addressed satisfactorily. Third, because customers' ability to recoup money paid in response to EPS surcharges is contingent upon them completing efficiency projects at their own facilities, customers should be strongly motivated to undertake projects in furtherance of the EPS goal. Fourth, inasmuch as this approach provides customers with broad discretion to implement efficiency projects specific to their industries, facilities and/or processes, maximum flexibility is achieved, and customers that have pursued efficiency projects on their own would not continue to be "shut out" of limited program offerings that do not address their organization's specific needs. Set forth below are some examples of this type of approach being implemented by other states.

1. New Mexico

As discussed, supra, the New Mexico Legislature established a program to promote renewable resources and energy efficiency. Pursuant to this program, electric

[48] This approach is not intended to supersede customer exemptions that, as demonstrated, supra, are warranted for economic development purposes and should be adopted in this proceeding.

utilities are authorized to recover their costs from customers.[49] Significantly, however, New Mexico also provides an exemption for customers who have "self-directed programs."[50] A large energy customer "shall receive approval for a credit for and equal to the expenditures that customer has made at its facilities on and after January 1, 2005 toward cost-effective energy efficiency and load management."[51] The utility, or a "self-direct program administrator" that is approved by the commission, first must approve the expenditures.[52] Once approved, the customer receives a credit that "may be used to offset up to seventy percent of the tariff rider" used to set forth the utility's fees to recover its costs.[53]

2. Minnesota

Minnesota permits a large energy customer to exempt itself out of contributing toward a utility's energy efficiency expenditures under the New Generation Energy Act of 2007. The customer must petition the commission and prove that: (a) there are "competitive or economic pressures on the customer"; and (b) the customer must demonstrate "reasonable efforts to identify, evaluate, and implement cost-effective conservation improvements at the facility."[54] Although the utility must spend 1.5% of its "gross operating revenues" on energy

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[49] S. 418, at 1 (N.M. 2007).

[50] N.M. Stat. Ann. § 62-17-9 (2007).

[51] Id. at § 62-17-9.A.

[52] Id. at § 62-17-9.C.

[53] Id. at § 62-17-9.A.

[54] Minn. Stat. § 216B.241(b).

conservation efforts, those "gross operating revenues" do not include revenue generated from the exempted large electric customers.[55]

3. North Carolina

In 2007, North Carolina enacted a law establishing a renewable energy and energy efficiency portfolio standard.[56] Pursuant to that law, electric utility companies are allowed to recover from customers the costs associated with new DSM and energy efficiency projects.[57] Importantly, a large electric customer may elect an exemption from contributing to the utility's cost recovery if the customer has "implemented at any time in the past or, in accordance with stated, quantified goals for demand-side management and energy efficiency, will implement alternative demand-side management and energy efficiency measures."[58]

4. Wisconsin

Wisconsin similarly requires its energy utilities to invest in energy efficiency programs.[59] Accordingly, the utilities impose surcharges on their customers to recover the programs' costs. Large energy customers, defined as customers "that [have] an energy demand of at least 1,000 kilowatts of electricity per month ... [and are] billed at least

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[55] Id. at § 216B.241(a).

[56] N.C. Session Law 2007-397, S. 3.

[57] N.C. Session Law 2007-397, S. 3, at 8-9 (codified as N.C. Gen. Stat. § 62-133.8(d) (2007)).

[58] Id. (codified as N.C. Gen. Stat. § 62-133.8(f)).

[59] Wis. Stat. § 196.374(3)(b)2 (2007).

$60,000 for electric service [in a month],"[60] are permitted to pay for their own energy efficiency programs instead of paying for the utilities' programs. Wisconsin law provides that:

> A customer of an energy utility may, with commission approval, administer and fund its own energy efficiency programs if the customer satisfies the definition of a large energy customer for any month in the 12 months preceding the date of the customer's request for approval. A customer may request commission approval at any time. *A customer that funds a program under this paragraph may deduct the amount of the funding from the amount the energy utility may collect from the customer* under sub. (5)(b). If the customer deducts the amount of the funding from the amount the energy utility may collect from the customer under sub. (5)(b), the energy utility shall credit the amount of the funding against the amount the energy utility is required to [invest in energy efficiency programs].[61]

Thus, several states, in recognition of concerns similar to those advanced herein by Multiple Intervenors, permit large C&I customers to "bank" or obtain exemptions from energy efficiency related surcharges, provided that such customers implement efficiency projects at their facilities. For those large C&I customers not exempt from EPS surcharges for compelling economic development reasons (e.g., NYPA allocations, flex-rate contracts, interruptible gas service), this approach would be highly beneficial and should be adopted by the Commission on a Fast Track and longer-term basis.

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[60] Id. at § 196.374(1) (em).

[61] Id. at § 196.374(2)(c) (emphasis added).

D. If, Arguendo, the "Banking" Approach Described Above Is Not Adopted, a "Standard Offer" Program Similar to That Implemented in Texas Should Be Adopted for Large C&I Customers

For the reasons detailed above, Multiple Intervenors urges the Commission to adopt a "banking" approach for non-exempt large C&I customers. If, arguendo, such an approach is not adopted herein, the Commission alternately should approve a "Standard Offer" program for non-exempt large C&I customers, similar to that implemented currently in Texas.

Texas requires that "each electric utility will provide, through market-based *standard offer* programs or limited, targeted, market-transformation programs, incentives sufficient for retail electric providers and competitive energy service providers to acquire additional cost-effective energy efficiency equivalent to at least 10 percent of the electric utility's annual growth in demand."[62] Further, those standard offer programs "must be neutral with respect to technologies, equipment, and fuels, including thermal, chemical, mechanical, and electrical energy storage technologies."[63] Customers with a maximum demand of more than 100 kW are eligible to participate in the program. Pursuant to the Standard Offer Program, eligible customers propose to the utility the energy efficiency measures that they intend to implement. The utility then provides financial incentives based

[62] Texas Utilities Code § 39.905(a)(3) (2007) (emphasis in original).

[63] Id. at § 39.905(c).

on the customers' proposals, which are tailored to their specific needs. Customers must propose and implement verification measures to assess actual energy savings accurately.[64]

Some of the general rules and eligibility requirements of the Texas Standard Offer Program include the following: (a) projects can include new construction or retrofits; (b) incentives only are paid for verified energy and demand savings; (c) a single customer may not receive more than 20% of the annual incentive budget; (d) similar sites with similar measures may be combined as a single project; (e) savings must be achieved through increases in energy efficiency; (f) measures must have a useful life of at least ten years; and (g) installed measures must exceed minimum equipment efficiency standards.[65] Recent financial incentives paid to winning customers included $175 per kW reduction and $0.06 per kWh saved.[66]

While the "standard offer" approach does not address fully the issue of intraclass subsidies, because invariably some large C&I customers would receive financial incentives while others would not, the approach would achieve the following benefits: (a) customers would be accorded an opportunity to recoup their EPS surcharges – and possibly more – by implementing energy efficiency projects; (b) customers would have the flexibility to propose projects that meet their particular needs; and (c) customers would have a strong financial motivation to propose and, for those customers whose proposals are accepted, undertake efficiency projects in furtherance of the EPS goal. Thus, while the "banking"

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[64] See American Electric Power ("AEP"), Overview of AEP's Commercial & Industrial Standard Offer Program, http://www.aepefficiency.com/cisop/intro/index.htm. Other electric utilities in Texas offer similar programs.

[65] See, e.g., http://www.centerpointcisop.com.

[66] Id.

proposal detailed, supra, would be optimal for large C&I customers, the "standard offer" approach is worthy of serious consideration in the alternative.

E. Large C&I Customers Should be Permitted to "Opt Out" of Certain Efficiency Programs

The "banking" and "standard offer" approaches advanced above would be far preferable for large C&I customers than the "cookie cutter" type DSM programs prevalent in the past. Adoption of Multiple Intervenors' recommendations in this regard would facilitate incremental efficiency projects and accord customers substantial flexibility while, at the same time, addressing many of the cost-related concerns detailed herein. If, however, the Commission approves the implementation of efficiency programs for large C&I customers that are more narrow in scope (i.e., dependent upon specific types of improvements or equipment), then customers should be accorded the ability to "opt out" of those programs, including the recovery of program costs.

An "opt out" election has been incorporated into DSM programs previously in New York – as detailed in Point I(D), supra – primarily in recognition of the fact that large C&I customers typically are very knowledgeable about energy efficiency and, in many cases, already have undertaken the "basic" efficiency projects. Large C&I customers that have a record of undertaking energy efficiency projects should not be forced to fund programs from which they can derive little or no benefit.

Multiple Intervenors' recommendations with respect to large C&I efficiency programs should be accorded substantial weight by the Commission. As the only active party representing the interests of numerous large customers, Multiple Intervenors has advanced recommendations that address its members' cost-related concerns and desire for

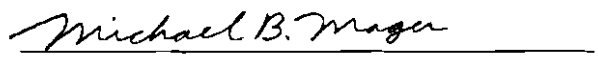
maximum flexibility while, at the same time, also should result in substantial energy efficiency projects being undertaken.

CONCLUSION

For all the foregoing reasons, Multiple Intervenors' positions should be adopted with respect to: (a) cost-related issues; and (b) the design of EPS programs targeted to large C&I customers. With respect to cost-related issues, the Commission should: (a) minimize the rate impacts of the EPS on customers; (b) exempt NYPA allocations and flex-rate contracts from any EPS surcharges; (c) allocate EPS costs in a manner that promotes interregional equity; (d) allocate EPS costs in a manner that promotes interclass equity; and (e) recover EPS costs in a manner that promotes intraclass equity. With respect to EPS programs targeted to large C&I customers, the Commission should: (a) maximize the flexibility of the programs; (b) institute a per customer cap on EPS surcharges; and (c) implement programs that allow customers implementing energy efficiency programs to recoup, dollar for dollar, their contributions to the EPS or, in the alternative, implement a standard offer program that pays customers for implementing energy efficiency projects that achieve verified energy consumption reductions.

Dated: October 15, 2007
Albany, New York

Respectfully submitted,



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