STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on December 16, 2010

COMMISSIONERS PRESENT:

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

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

CASE 05-M-0090 – In the Matter of the System Benefits Charge III.

ORDER CONTINUING SYSTEMS BENEFIT CHARGE FUNDED PROGRAMS

(Issued and Effective December 30, 2010)

BY THE COMMISSION:

INTRODUCTION

On September 20, 2010, the New York State Energy Research and Development Authority (NYSERDA) submitted a petition requesting Commission approval of a proposal for the continuation, with modifications, of programs funded through the System Benefits Charge (SBC) that is paid by utility ratepayers. This “Vision for the Future” (Vision Statement) set out by NYSERDA encompassed four primary elements.

(a) The scheduled June 30, 2011, expiration of the current portfolio of programs, known as SBC III, would be extended through December 31, 2011, synchronizing its termination with the programs operating under the terms of the Energy Efficiency Portfolio Standard (EEPS). Funding for the six-month extension would be authorized at the current SBC III level.

(b) Management and administration of eight energy efficiency resource acquisition programs, consisting of incentive-based measures designed to reduce energy usage, would be transferred to the EEPS portfolio along with their funding.

(c) A new Technology and Market Development (T&MD) portfolio would be defined to encompass programs designed to accelerate energy innovation through support for scientific research and market analysis, investment in technology development and demonstration, promotion of a clean energy economy through business and market development, acceleration of adoption of clean energy technologies and practices, and the incorporation of more rigorous energy-use standards in codes and industry best practices.

(d) Total SBC funding for the programs transferred to the EEPS portfolio (about $98 million) and the new T&MD portfolio (about $82 million) would be authorized at the current SBC III funding level of approximately $180 million annually for each of the five years ending December 31, 2016.

In this order, the Commission approves the six-month extension of SBC III and authorizes the transition of SBC energy efficiency resource acquisition programs to the EEPS portfolio. The Commission finds, however, that the proposed T&MD portfolio requires better definition, and directs NYSERDA to develop an operating plan in consultation with interested stakeholders. Guidance is provided as to the type of process expected, identifying the issues it must address, and final approval of the 5-year SBC extension is deferred pending Commission review of the outcome of that effort. Finally, recognizing both the need to provide relief to ratepayers during the current economic downturn and the results of an analysis performed by NYSERDA and Staff of the Department of Public Service (Staff) showing that SBC collections currently scheduled for 2011 can be deferred to

2012 and 2013 without detriment to the program, a new schedule of collections is defined that reduces the SBC III assessment for 2011 to zero.

BACKGROUND

In Opinion 96-12, the Commission noted its responsibility to ensure that electric service is provided safely, cleanly, and efficiently might require continued financial support for programs providing important public benefits that had historically been funded through regulated utility rates, and could not be expected to be offered by competitive markets.[1] The Commission concluded that an SBC paid by ratepayers and collected by the utilities, was an appropriate means of funding such programs.

The first SBC was initiated in 1998, providing programs to encourage energy efficiency, promote a cleaner environment and reduce the financial burden of energy costs for New Yorkers. NYSERDA was designated as third party administrator of the statewide programs, subject to oversight by Staff. As SBC Program Administrator, NYSERDA consults with interested parties, prepares an "Operating Plan" to fund individual programs within the funding categories established by the Commission, receives and disburses SBC funds, conducts program evaluations, and prepares program reports.

In 2001, and again in 2006, the Commission extended the SBC program for five more years. Currently, SBC III has an annual funding authorization of approximately $180 million which expires on June 30, 2011.

Statewide benefits from the SBC program have been substantial. NYSERDA reports that through December 31, 2009,

[1] Cases 94-E-0952, et al., Opinion No. 96-12 (issued May 20, 1996) p.27.

the SBC efficiency programs and research and development initiatives have:

- Improved energy performance in over 45,000 homes, 71,000 multifamily housing units and 17,000 commercial and industrial facilities; provided more than 115,000 low income customers with energy efficiency services; and produced $680 million in annual energy cost reductions for program participants;
- Reduced electricity consumption by 3,820 GWh per year, and reduced peak load by 824 MW, through installation of energy efficiency measures; provided an additional 10 MW reduction in load through renewable generation, and established a callable load reduction capability of 590 MW that is available when needed to improve system reliability; and
- Reduced annual emissions by 3,030 tons of nitrogen oxide, 5,719 tons of sulfur dioxide, and 2.3 million tons of carbon dioxide.

In addition, through 2008, NYSERDA estimates that 4,900 net jobs have been created as a result of SBC initiatives.

PROCEDURAL HISTORY

A Notice of Proposed Rulemaking concerning consideration of NYSERDA’s petition was published in the New York State Register on October 6, 2010 [SAPA No.10-M-0457SP1]. The notice included a list of seven specific questions on which input was sought from interested parties. A companion notice [SAPA No. 05-M-0090SP6] seeking comments concerning the possible extension of SBC III through the end of 2011 was published on the same date.

To enable potential commenters to obtain a more complete understanding of NYSERDA’s proposal, a technical conference was convened in the Commission's Albany offices on November 4, 2010, with access available via teleconference from the Commission's offices in New York City and by telephone. More than 50 individuals and representatives of interested parties participated. The conference consisted of a series of presentations by NYSERDA explaining the key elements of its Vision Statement, followed by an open-ended opportunity for questions from conference participants.

On November 18, 2010, based on a review of an environmental assessment prepared by Staff, the Commission determined in accordance with Part 617 of the implementing regulations for Article 8 of the Environmental Conservation Law that the actions under consideration in these cases will not have a significant adverse impact on the environment, and that the preparation of an Environmental Impact Statement is not required. Notices incorporating those findings were issued by the Secretary in each case on November 19, 2010.

The minimum period for the receipt of comments pursuant to the State Administrative Procedure Act expired on November 22, 2010. Written comments were received from a diverse group of more than 90 parties representing environmental, energy efficiency, energy research and development, economic development, municipal and governmental, industrial and utility interests, as well as individuals concerned with various aspects of NYSERDA's proposal. A list of the parties submitting comments is attached to this order as Appendix B. A topical summary of the comments received is attached as Appendix C.

All comments timely received have been reviewed and taken into account in reaching the determinations set forth below.

DISCUSSION OF ISSUES

Extension of SBC III through December 31, 2011

In its Vision Statement, NYSERDA expresses concern that the June 30, 2011, expiration of authorization for SBC III funding could mean a gap in authorization for the programs being transferred to the EEPS portfolio, which is not up for renewal until December 31, 2011. It recommends that SBC III be extended for six months to synchronize its expiration with that of the EEPS portfolio. It argues that this approach will prevent any funding disruption, minimize administrative burden and facilitate SBC and EEPS coordination. None of the comments received expresses any opposition to the proposal.[2]

We agree that an extension will smooth the transition of SBC energy efficiency resource acquisition programs to EEPS. Our approval well before the beginning of the extension period will also enable NYSERDA to implement programs consistent with the EEPS programs beginning July 1, 2011. It will also provide ample time for the process we propose below to bring better definition to the new T&MD portfolio, without risking any break in funding authorization for the current research and development portfolio within SBC III. Accordingly, we authorize continued funding for SBC III at approximately the current level for the period from July 1, 2011, through December 31, 2011. Collections associated with this funding authorization will be deferred to 2013, as provided in the collection schedule included in Appendix A.[3]

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[2] The Joint Utilities preferred that no action be taken on the SBC III efficiency programs until after the 2011 EEPS review. The Commission's action in this order in no way prevents a full review of NYSERDA's energy efficiency resource acquisition programs as part of the EEPS review process.

[3] The level of collections reflected for 2013 assumes a $90,125,000 million overall program budget for the second half of 2011. The actual size of the program may differ depending on the Commission’s T&MD determinations during 2011.

Transfer of Resource Acquisition Programs to EEPS

NYSERDA currently operates eight energy efficiency resource acquisition programs in SBC III that it wishes to transfer to the EEPS portfolio and continue. These programs were designed and operated under a different set of rules than the more stringent ones we established for the EEPS portfolio. The two key differences are that: (a) SBC III programs were not examined under the rigorous measure-by-measure Total Resource Cost (TRC) test applied to EEPS or subject to the requirements of the EEPS Technical Manuals; and (b) some SBC III programs use funds from electric ratepayers to pay for non-electric efficiency measures, while EEPS requires a matching of the revenue source to the energy efficiency measure.

Of these eight SBC III resource acquisition programs, six have EEPS analogs administered by NYSERDA. Those six programs account for $78 million ($72 million electric, $6 million gas) of NYSERDA’S proposed $98 million annual resource acquisition budget. Merging the SBC III programs with their EEPS counterparts continues the established SBC III commitment to energy efficiency programs, but does so under the more cost- effective EEPS approach. The EEPS programs receiving the SBC funds have already been approved under the more stringent EEPS rules, so they will not be reviewed further at this time. Moreover, as a number of commenters point out, the existence of programs with a common administrator and comparable objectives operating under differing rules has created confusion in the marketplace. Merging these programs will remove that confusion.

Accordingly, as requested by NYSERDA, we approve the transfer of funding from the SBC III program budget to the EEPS program budget, with an effective date of July 1, 2011, for the following six programs:

Residential Multi-Family Building Performance;
Low Income Multi-Family Building Performance;
EmPower NY;
Existing Facilities;
High Performance New Buildings; and
Technical Assistance.

The two remaining SBC III resource acquisition programs that do not have EEPS portfolio counterparts are the Single Family Home Performance program and the Low Income Single Family Home Performance program. They account for $17 million ($11 million electric, $6 million gas) of NYSERDA’S proposed $98 million annual resource acquisition budget.

We will authorize continuation of these two programs, but they will be subject to EEPS rules and procedures effective July 1, 2011, and their continuation will be subject to Staff approval of a revised operating plan describing how the modified programs will be conducted under EEPS. The gas measures currently funded by electric ratepayers will, from July 1, 2011, forward, be funded by gas ratepayers.

In addition, we approve NYSERDA's proposal to devote up to 4% of the funds budgeted for direct measure installations in low income programs to health and safety matters such as back-draft testing for combustion appliances, installation of carbon monoxide detectors, minor safety-related repairs, and so forth. Such expenditures are often necessitated by the poor condition of structures being addressed by the programs, and we consider them to be consistent with our mandate to assure safe and reliable service for all of the State’s utility customers.

We also approve the transfer from the SBC III program budget to the EEPS program budget effective July 1, 2011 of an Outreach and Education (O&E) program facilitating general energy efficiency awareness. The O&E program accounts for $3 million of NYSERDA'S proposed $98 million annual resource acquisition budget.

All programs being transferred to EEPS will be subject to full portfolio evaluation and possible "mid-course correction" slated to take place in 2011. Accordingly, to the extent that the merger of SBC and EEPS resource acquisition programs produces a sub-optimal allocation of funding among competing alternatives, we will have an opportunity to address it as part of this more comprehensive review. In the meantime, these programs have all been fully vetted in the past and our immediate concern is to ensure the continuation of their forward progress.

Continuation of Other Resource Acquisition Funding

We recognize that a number of parties expressed concern that the transfer of SBC programs to EEPS would preclude the funding of measures aimed at achieving efficiency in the use of fuels other than electricity and gas. This is a particularly significant issue for New York City which estimates that over 10,000 buildings within its borders have oil-fired boilers. Nevertheless, it is our judgment that resource acquisition programs funded by electric ratepayers should be firmly focused on the achievement of the State's goals for reduced electricity consumption, an objective better promoted through the standards applicable to EEPS. Programs funded by gas ratepayers should similarly be aimed at reducing gas consumption. We also note that NYSERDA has reduced the peak load reduction component of SBC III in recent years and that such component does not have an equivalent EEPS program. NYSERDA has proposed to consider such measures under the T&MD umbrella.

After subtracting out the monies being transferred to EEPS (described above), and the monies supporting a continuation of Research & Development at current levels (described below), and making other minor adjustments for administration and overhead costs and the cessation of utility-administered programs, we will continue SBC III residual funding at its approximate current level until the earlier of December 31, 2011 or the date on which we make a determination regarding the T&MD operating plan. These continued funds will be designated in a "Combined Peak Load, Energy Efficiency and Outreach & Education, and Low Income" Major Program Category and NYSERDA will have the flexibility to designate their use more specifically in a revised operating plan.

Continuation of Research and Development Funding

As an interim transition measure until we can address the T&MD proposal more fully, we will also continue SBC III Research and Development funding at its current level until the earlier of December 31, 2011 or the date on which we make a determination regarding the T&MD operating plan.

Further Process for Establishment of a T&MD Operating Plan

The many comments we received on NYSERDA's proposed T&MD portfolio reveal three closely related areas of concern that were shared by a large number of commenters representing very diverse interests. The first concern relates to the scope of the program. The sheer volume of potentially worthy initiatives competing for a share of T&MD funding creates the risk that funding allocations will be spread so thinly that no area will receive sufficient support to make any real progress. Clearly, commenters say, an effective means of prioritization is essential to assure that New Yorkers realize the greatest possible return from their investment.

That leads to the second widely held concern, namely, that the prioritization criteria described by NYSERDA in its

Vision Statement are too general and too vaguely defined to provide any real guidance to third parties as to the performance expected from a successful proposal. Many commenters recognized that the types of research, development, demonstration and market transformation programs intended to be encompassed under the T&MD umbrella are not amenable to precise quantification of expected outcomes, but they nevertheless felt that some better definition of criteria was essential.

Finally, the concern that united nearly all commenting parties was that there had been inadequate provision for stakeholder involvement in the development of the Vision Statement, or for ongoing stakeholder feedback during the implementation of the proposed T&MD portfolio. Many different collaborative efforts, advisory groups and oversight boards having varying degrees of responsibility and authority were suggested by commenting parties. The one thing all of the suggestions had in common was a strong desire for a process that would be fully open and transparent to all stakeholder interests.

Fortunately, all of these concerns can be accommodated by taking advantage of a process that would have had to have been conducted in any event: the development of an operating plan for the T&MD program. Historically we have approved a funding level for the System Benefits Charge program in five-year increments and conditioned the start of program expenditures on Staff’s approval of a detailed five-year operating plan and related budget. In this case, for the proposed T&MD program, we will follow a somewhat different process. We will still require submission of an operating plan, but we also will require that the plan be submitted to us no later than May 1, 2011 for our review and approval. In addition, prior to our consideration of the plan, we will provide for initial and reply comments to be submitted to us by all interested parties. This process will permit a thorough, transparent airing of all concerns and will provide us with a well-informed record for a final decision that can be made well in advance of the scheduled starting date for the T&MD portfolio.

In addition, in light of comments received from interested parties, we will require NYSERDA to engage in an intensive outreach process with all stakeholders, including other interested State agencies as well as the utilities, in the course of preparing its operating plan. During this stakeholder outreach process leading up to preparation of the operating plan, we expect NYSERDA to fully account for the concerns of our Staff.

In order to facilitate preparation of the plan, we offer the following additional guidance. Our central objective is that there is a high level of confidence that ratepayers will benefit from the T&MD expenditures that are made. To that end, we expect the operating plan to reflect a critical reexamination of the number of potential initiatives set forth in the Vision Statement and, for each program area to be pursued in the operating plan, we expect a rigorous justification. These justifications should allay the parties’ concerns, which we share, that the program as presented appears to spread too few dollars across too many potential program areas, jeopardizing the likelihood of any program achieving its stated goals and producing benefits for ratepayers.

As a general matter, justifications should address: (i) the problem(s) to be targeted; (ii) the current state of knowledge or technology and why existing, related R&D initiatives are not adequate to address the problem; (iii) why it is particularly appropriate for New York ratepayers, through

NYSERDA, to be making the proposed financial commitment-- that is, why the problem addressed/solution opportunity is of particular concern to New York; (iv) expected benefits to New York in terms of increased safety and/or reliability, an improved environment, wholesale energy price reduction, economic development and jobs; (v) the history, status and results of similar projects previously funded by NYSERDA or others; (vi) the likelihood of leveraging SBC dollars with funds from external sources, and an appraisal of the likelihood that such external funding would be available absent a financial commitment from NYSERDA; (vii) for projects driven by NYSERDA's "feeder" concept[4], the expected link between those projects and meeting the Commission's clean energy goals; and (viii) for projects driven by anticipated economic development benefits, project evaluation criteria calling for business plans, budget and performance milestones, a demonstrated likelihood that recipients will stand on their own prior to expiration of SBC IV and a showing that benefits to ratepayers will be significant.

We share NYSERDA's view that T&MD expenditures should offer a balance of both near and long term projects that benefit utility systems and ratepayers, but we expect that in its operating plan NYSERDA will give more weight to projects with near-term benefits. For longer-term projects, we expect at least some benefits to be realized within the nearer-term five-year SBC funding horizon.

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[4] A substantial component of NYSERDA's T&MD program is intended to "develop and prove out emerging technologies, strategies, and practices that can be implemented in the near-term to achieve EEPS and RPS goals." NYSERDA characterizes this element of SBC IV as a "feeder" program (Vision Statement, p. 2). It is a concept we find appealing.

We have accounted for geographic balance and customer class equity in EEPS; and in the RPS, for geographic balance. Consistent with the comments of New York City and others we would expect the operating plan similarly to address such considerations. However, we also recognize that with respect to what is essentially a research, development, demonstration and deployment program there may well be compelling economic reasons to depart from those considerations. We expect the operating plan to make that case as appropriate.

The importance of, and need for, stakeholder input that was stressed so broadly in the comments we received has been a recognized element of the SBC program since its inception. We look to stakeholder input as potentially one means to help assure that projects are well-conceived, appropriately funded, and that NYSERDA has fully accounted for all available external resources. To date NYSERDA has not made clear its view on how to assure that stakeholders will have meaningful input into its basic T&MD programmatic decision-making. We expect the operating plan to address this concern. In that regard we are relatively less concerned that NYSERDA establish a high-level advisory body which meets infrequently to provide advice and guidance, although such a body may have value, and far more concerned that NYSERDA put in place a process to systematically reach out in advance to stakeholders with particular interests, expertise or resources in specific program areas (e.g., utilities in the area of potential smart grid projects).

Finally, projects in the nature of research, development, demonstration and deployment must be managed effectively. This need is underscored by our sensitivity to committing ratepayer funds at a time when the State is struggling to make its way out of a severe recessionary period.

We have no doubt that NYSERDA expects to be held accountable for achieving results efficiently and within specified timeframes. To those ends, the operating plan must contain a description of the periodic review, adjustment, and evaluation process NYSERDA will have in place to assure, among other things, ongoing satisfaction of project performance and budget milestones and to enable NYSERDA to redeploy funds as necessary. Thus, for each program area, we expect NYSERDA to define not only program success but also the time frame over which success will be achieved, and the (typically quantitative) metrics that will measure it.

As part of the May 1 operating plan filing, NYSERDA should also address a process for calculating and capturing from SBC III unencumbered funds, or funds that later become unencumbered, to reduce future collections upon expiration of SBC III.

Administration Fees

NYSERDA has provided sufficient justification (increased pension costs due to a pre-funding requirement, and inflationary effects) for the 8% level of administrative expenses contained in the budgets set forth in Appendix A for the second half of 2011. Given our concerns about the economy, ratepayer impacts and the need for all entities to operate as efficiently as possible, we expect NYSERDA to take actions to assure that it incurs no more than this 8% rate for administrative expenses.

Schedule of SBC Collections

A number of parties commenting on NYSERDA’s Vision Statement expressed concern about the impact of the cost of SBC programs on utility ratepayers during the severe economic downturn the State and the nation are currently experiencing.

Even some who strongly support continuation of the SBC program, and would like to see it expanded, recognized that their expectations needed to be tempered by economic reality.

We have addressed this same concern explicitly in relation to electric and gas delivery rates by requiring utilities to identify austerity measures that could be undertaken to reduce revenue requirements in the short run without any immediate or long-term detriment to service. Based on an analysis conducted jointly by our Staff and NYSERDA, we find that an analogous approach to the SBC is feasible.

The analysis considered NYSERDA's past and likely future spending patterns, and assumed the additional authorization of approximately $90 million for the second half of 2011 that we are now, in fact, approving in this order. With those spending pattern and funding assumptions, NYSERDA and our Staff concluded that it would be possible to delay collections related to the first half of 2011 until 2012, and collections related to the second half of 2011 until 2013, with no significant impact on the effectiveness of NYSERDA's current program.

Based on this finding, we are adopting the collection schedule, set forth in Appendix A, which reduces SBC III collections for 2011 to zero (overall SBC collections for 2011 are reduced by approximately $87 million) with the proposed deferrals to 2012 and 2013. We will further revise the schedule based on the outcome of the process described above through which the scope of SBC IV will be defined. In addition, if actual expenditures occur faster than the assumptions on which this conclusion was reached, NYSERDA is free to request a schedule modification and we will act on it expeditiously. We are also directing NYSERDA and the utilities that collect the SBC to work together to modify the collection agreements to better coordinate actual utility payments with NYSERDA expenditures in a way that is beneficial to utilities, ratepayers and NYSERDA.

Finally, we are interested in determining if there is a more automated way to address the need to make minor changes in the collections schedule thereby conserving both Department and NYSERDA resources. We direct Staff and NYSERDA to explore such a possibility and bring it to us in time for our consideration of the May 1, 2011, T&MD operating plan filing.

The new schedule also conforms the method of allocating SBC collections among utilities to the method currently in use for EEPS portfolio funding effective July 1, 2011. In the Notice of Proposed Rulemaking, we asked for comment on whether future SBC collections should be allocated on the basis of sales, as is the case with EEPS, or on the basis of revenues as is currently the case for SBC III. New York City and Con Edison strongly support the change, contending that Con Edison ratepayers have historically paid about 50% of SBC costs while receiving only 40% of program expenditures. MI and National Grid would prefer to continue use of revenues for the allocation, while NYSEG and RG&E state that they have no objection to the use of sales.

We most recently considered this issue in conjunction with our adoption of the EEPS portfolio and we chose sales as the most appropriate allocator for what is, after all, a volumetrically collected charge. We will apply the same methodology to the SBC portfolio in order to provide consistency, administrative simplicity and a measure of geographic equity to the program.

CONCLUSION

By this order, the Commission reaffirms its high level of commitment to the continuation of SBC programs and to the important State policy goals they support. By adjusting the schedule for SBC collections to better match the timing of required disbursements, the Commission provides some relief for ratepayers during these difficult economic times, but it does so without reducing the overall financial commitment to these important programs. The Commission approves the extension of SBC III through December 31, 2011, authorizes the transfer of certain SBC III energy efficiency resource acquisition programs to the EEPS portfolio, establishes a process for further definition of the proposed T&MD portfolio with stakeholder input, provides funding for the continuation of other SBC III programs, and modifies the schedule for SBC collections, all as more fully described in the body of this order.

The Commission orders:

1. The System Benefits Charge (SBC) is continued. The electric SBC is modified such that beginning on January 1, 2011 the level of overall SBC III electric revenue collections is decreased by $87,237,122 to zero for the first half of 2011, and such that beginning on January 1, 2012, the annual level of overall SBC III electric revenue collections is $87,237,122, and such that beginning on January 1, 2013, the annual level of overall SBC III electric revenue collections is tentatively set pending further review at $83,912,087, and the annual level of overall SBC III gas revenue collections is tentatively set pending further review at $6,212,913, to be collected in the manner shown in Tables 4 through 6 of Appendix 2. Central Hudson Gas & Electric Corporation (Central Hudson); Consolidated Edison Company of New York, Inc. (Con Edison); New York State Electric and Gas Corporation (NYSEG); Niagara Mohawk Power Corporation (Niagara Mohawk); Orange and Rockland Utilities, Inc. (O&R); Rochester Gas and Electric Corporation (RG&E); KeySpan Gas East Corporation (KEDLI) The Brooklyn Union Gas

Company (KEDNY) and National Fuel Gas Distribution Corporation (NFG) (collectively, the "utilities") shall make SBC III revenue collections in 2011 through 2013 in accordance with the schedules set forth in Appendix A to this order, including reductions to previously approved collections for 2011. Each utility shall establish its specific SBC collection rate on an annual basis to correspond to its collection allocation and year-by-year projections of the following year’s sales, with any over- or under-collections reconciled on an annual basis. Each utility shall maintain adequate records to justify its SBC rates, collections and reconciliations. As part of the reconciliations, SBC monies held by the utilities during the prior year shall be credited with accrued interest for the benefit of customers at the other customer capital rate for the time that the monies are held and not yet transferred to the New York State Energy Research and Development Authority (NYSERDA). The interest accrued should be credited to a regulatory liability account and the balance annually used to reduce collections going-forward or ultimately to be returned to ratepayers. The utilities shall establish by contract with NYSERDA, a schedule of payments, no less frequently than quarterly commencing January 1, 2012, to transfer electric SBC funds and commencing January 1, 2013 to transfer gas SBC funds to NYSERDA for NYSERDA-administered programs as set forth in Appendix A of this order. Each utility affected by this order shall file tariff amendments and/or statements on not less than 5 days' notice to become effective February 1, 2011, incorporating the revisions described herein. The requirements of Section 66(12)(b) of the Public Service Law as to newspaper publication of the changes proposed by these filings is waived.

2. An extension of funding for SBC III programs to be administered by NYSERDA is approved for the period from July 1,

2011 through December 31, 2011, in the aggregate amount of $90,125,000. This extension is subject to existing reporting requirements for SBC III and EEPS. Funds shall be allocated among Major Program Categories as shown in Appendix A, Table 3. Consistent with existing SBC rules, funding may not be reallocated among Major Program Categories without further approval by the Commission. Funding within the "EEPS Electric" and "EEPS Gas" major program categories is approved by program and the budgets and energy savings goals for the programs shall be as set forth in Appendix A, Tables 1 and 2 of this order. Consistent with existing EEPS rules, funding for these programs may not be reallocated among programs without further approval by the Commission. Consistent with existing EEPS rules, as to Energy Efficiency Portfolio Standard (EEPS) programs, NYSERDA shall have the same flexibility given in past EEPS orders to implement limited changes to the types of measures and the level of particular financial inducements/incentives/rebates under certain circumstances described in those past orders. Funding within the "EEPS Electric" and "EEPS Gas" major program categories shall be combined with the EEPS programs and administered in accordance with EEPS standards effective July 1, 2011. Funding within the "Combined Peak Load, Energy Efficiency and Outreach & Education, and Low Income" major program category may be allocated to individual SBC III carryover programs within the category, or to supplement EEPS programs, in a manner to be decided by NYSERDA, in consultation with Staff. Funding within the "Research & Development" major program category may be allocated to individual programs within the category in a manner to be decided by NYSERDA, in consultation with Staff.

3. Within 60 days of issuance of this order, NYSERDA shall submit a supplemental revision to the SBC Operating Plan.

The supplemental revision shall incorporate changes to NYSERDA's programs made in this order. The resource acquisition programs, including measures, quality assurance, marketing, administration, and evaluation plans, should be described and implemented in a manner that is consistent with the discussion in past EEPS orders.

4. Funding and energy savings associated with two SBC III energy efficiency resource acquisition programs identified in the body of this order that do not have current counterparts administered by NYSERDA under EEPS shall be transferred to the EEPS portfolio and administered in accordance with EEPS standards effective July 1, 2011, subject to prior Staff approval of the related portion of the modified operating plan to be submitted by NYSERDA. In making its approval determination, Staff shall apply the Total Resource Cost (TRC) test and the EEPS Technical Manual to the measures proposed.

5. For low income programs transferred to the EEPS portfolio, NYSERDA is authorized to spend up to 4% of the total program budget for direct measure installations on measures deemed necessary for the protection of health and safety, notwithstanding any EEPS portfolio requirement that might be construed to preclude such expenditures.

6. A decision concerning funding for NYSERDA's proposed Technology and Market Development (T&MD) portfolio is deferred pending submission for our approval of a proposed operating plan developed in accordance with the guidance provided in this order. The operating plan shall be submitted on or before May 1, 2011, and will be noticed for initial and reply comments from all interested parties.

7. NYSERDA and the utilities that collect SBC funds shall modify their collections transfer agreements in order to more accurately match utility transfers with NYSERDA's

expenditure obligations. Such modifications shall be accomplished in a way that is beneficial to both utilities and ratepayers.

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

9. These proceedings are continued.

By the Commission,

Jaclyn A. Brilling
Digitally Signed by Secretary
New York Public Service Commission

JACLYN A. BRILLING
Secretary

BUDGETS, SAVINGS, COLLECTIONS & TRANSFERS

Table 1

Program Budgets July 1, 2011 - December 31, 2011

	Electric	Gas
Existing Facilities	$12,000,000	
High-Performance New Buildings	$7,000,000	
Technical Assistance	$2,950,000	
Single-Family Home Performance (New & Existing)	$3,000,000	
Multifamily Building Performance (New & Existing)	$1,450,000	
General Awareness	$1,500,000	
EmPower NYSM	$4,450,000	
LI Single-Family Home Performance (New & Existing)	$1,500,000	$2,650,000
LI Multifamily Building Performance	$2,850,000	$2,650,000
Totals	$36,700,000	$5,300,000

Table 2

Program Savings Targets July 1, 2011 - December 31, 2011

	Electric MWhs	Gas Dts
Existing Facilities	151,194	
High-Performance New Buildings	62,246	
Technical Assistance	106,055	
Single-Family Home Performance (New & Existing)	21,463	
Multifamily Building Performance (New & Existing)	19,899	
General Awareness	0	
EmPower NYSM	11,097	
LI Single-Family Home Performance (New & Existing)	4,706	38,679
LI Multifamily Building Performance	25,412	79,259
Subtotal	402,072	117,939
Remove Technical Assistance Overlap (20%)	(21,211)	0
Total	380,861	117,939

Table 3

Interim Budget July 1, 2011 - December 31, 2011

Major Program Category	Budget Total	Program Costs	Evaluation	Administration	NYS Cost Recovery Fee
EEPS Electric	$43,021,495	$36,700,000	$2,151,075	$3,441,720	$728,701
EEPS Gas	$6,212,913	$5,300,000	$310,646	$497,033	$105,235
Combined Peak Load, Energy Efficiency and Outreach & Education, and Low Income	$19,555,682	$16,682,208	$977,784	$1,564,455	$331,235
Research & Development	$21,334,910	$18,200,000	$1,066,746	$1,706,793	$361,372
TOTAL	$90,125,000	$76,882,208	$4,506,251	$7,210,001	$1,526,543

Table 4

Adjustment to Electric Collections in 2011

Utility	Adjustment	Percentage of Total
Central Hudson	($3,045,969)	3.49%
Con Edison	($43,607,022)	49.99%
NYSEG	($10,821,964)	12.41%
Niagara Mohawk	($22,461,150)	25.75%
O&R	($2,604,148)	2.99%
RG&E	($4,696,869)	5.38%
Total	($87,237,122)	100.00%

Table 5

Incremental Electric Collections & Transfers to NYSERDA 2012 - 2013

Utility	2012	2013	Percentage of Total
Central Hudson	$5,088,546	$4,894,597	5.833%
Con Edison	$32,095,937	$30,872,604	36.792%
NYSEG	$12,290,661	$11,822,204	14.089%
Niagara Mohawk	$28,067,446	$26,997,658	32.174%
O&R	$3,763,664	$3,620,212	4.314%
RG&E	$5,930,868	$5,704,813	6.799%
Total	$87,237,122	$83,912,087	100.000%

Table 6

Incremental Gas Collections & Transfers to NYSERDA 2012 - 2013

Utility	2012	2013	Percentage of Total
Central Hudson	$0	$115,510	1.86%
Con Edison	$0	$1,605,025	25.83%
NYSEG	$0	$391,923	6.31%
Niagara Mohawk	$0	$736,205	11.85%
O&R	$0	$175,434	2.82%
RG&E	$0	$375,850	6.05%
KEDLI	$0	$867,820	13.97%
KEDNY	$0	$1,292,354	20.80%
NFG	$0	$652,791	10.51%
Total	$0	$6,212,913	100.00%

LIST OF COMMENTS RECEIVED

Commenting Party	Abbreviation*
American Council for an Energy Efficient Economy	ACEEE
Adirondack Community Trust	
Adirondack Council	
Adirondack Lakes Survey Corporation	ALSC
Adirondack Landowners Association	ALA
Adirondack Mountain Club	
Adirondack Research Consortium	ARC
Alliance for Clean Energy New York, Inc.	ACENY
The Altamont Program	Altamont
Behar, Salvador	
Brookhaven National Laboratory	BNL
The Building Performance Contractors Association of New York State	BPCA
Building Performance Institute	BPI
Business Council of New York State, Inc.	Business Council
Central Hudson Gas & Electric Corporation	Central Hudson
Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., and National Grid utilities	Joint Utilities
CHA, Inc.	
City of New York	NYC
City University of New York	CUNY
Clark, Frank A.	
College of Nanoscale Science and Engineering, University at Albany	
Columbia University	
Community Environmental Center	CEC
Consolidated Edison Corporation	Con Edison
Conservation Services Group	CSG
Consumer Power Advocates	CPA
Cook+Fox Architects LLP	Cook+Fox
Corning Incorporated	Corning

Daniel S. Natchez and Associates, Inc.	Natchez Associates
Dresser-Rand CHP Solutions	Dresser-Rand
ECR International, Inc.	ECR
Efficiency First	
Endurant Energy	Endurant
Ener-G-Rotors, Inc.	
Energy Concepts Engineering PC	
Environmental Advocates of New York	
Erika Hanson Design LLC	
Ferro Corporation	
Gas Technology Institute	GTI
GE Energy	
Gerster Trane Energy Services	
Green Light New York, Inc.	Green Light NY
Hayes, Jeremiah, Esq.	
H2Pump LLC	
Hirschfeld, Herbert E., P.E.	
HR&A Advisors, Inc.	
IBM Corporation	IBM
ICF International	
Lawrence, Gregory B.	
Lighting Research Center	
Malcolm Pirnie, Inc.	
Multiple Intervenors	MI
National Association of Energy Service Companies	NAESCO
National Grid Utilities	National Grid
New York Alliance of Clean Incubators	
New York Energy Consumers Council, Inc.	NYECC
New York State Department of Environmental Conservation	NYSDEC
New York State School Boards Association	NYSBA
New York State Smart Grid Consortium	Smart Grid Consortium
New York State Solar Energy Industries Association	NY Solar
New York University	NYU
Northeast Combined Heat and Power Initiative	NCHPI

Northeast Energy Efficiency Partnerships	NEEP
New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation	NYSEG/RG&E
New York State Energy Research and Development Authority	NYSERDA
Pace Energy and Climate Center and Natural Resource Defense Council	Pace/NRDC
Passive Housing (14 comments)**	
Plug Power Inc.	
Polytechnic Institute of New York University	NYU Polytechnic
Related Management Company	
Saranac Lake Central School District	
Syracuse Center of Excellence	Syracuse COE
Terrapin Bright Green LLC	
Thinkeco, Inc.	
United States Environmental Protection Agency	USEPA
UTC Power Corporation	UTC
Vornado Realty Trust	Vornado
Wal-Mart Stores, Inc.	Wal-Mart
Whaley, Ross	

* Abbreviations are shown only if used in the order or appendices.

** Represents the comments of Veronique LeBlanc and supporters.

SUMMARY OF COMMENTS

This Appendix provides a topical summary of the comments received by the Commission in response to SAPA notices No.10-M-0457SP1 and No. 05-M-0090SP6. It covers first those comments that were directly responsive to the seven questions listed in SAPA No. 10-M-0457SP1; then highlights significant additional issues raised by the commenting parties.

Questions from SAPA Notice No. 10-M-0457SP1

1. **Should the current non-EEPS energy efficiency programs that are similar to EEPS energy efficiency programs be administered in the same manner as the EEPS programs during the six-month period July 1, 2011 through December 31, 2011?**

NYSERDA interprets the question as suggesting that both the transfer of resource acquisition programs and the establishment of the new SBC Technology and Market Development (T&MD) program could take place on July 1, 2011. It says this approach has merit but that some programmatic details would have to be resolved to facilitate implementation of the transferred programs under EEPS standards. It also recommends that expenditures and savings associated with the transferred programs be transitioned to EEPS to avoid confusion.

Both National Grid and NYSEG/RG&E call for the non-EEPS energy efficiency acquisition programs to be administered under EEPS cost-effectiveness and payback standards during the transition period. National Grid contends that this levels the playing field for all program administrators.

The Syracuse COE supports the administration of SBC resource acquisition under EEPS provided that the programs are not “disconnected” from T&MD.

The Joint Utilities urge that a shift of funds from SBC to EEPS should be deferred until the Commission addresses the form of the post-2011 EEPS program, and that the post-2011 administration of the transitioned programs should be part of the planning process. MI suggests that if there are substantive changes in the manner in which transferred SBC programs are administered, their cost effectiveness should be reviewed.

NAESCO opposes the transfer administration of energy efficiency procurement programs to EEPS, saying that NYSERDA administration has been successful while EEPS is not yet proven. It points out that NYSERDA programs have become models for similar programs across the country.

ACENY recommends that rather than transferring SBC funds to EEPS, SBC programs should be fully funded and administered separately from EEPS and for a broader range of activities.

PACE/NRDC are concerned that dedicating a large portion of the SBC funds to EEPS risks undermining the broader public policy objectives that SBC was established to achieve. They state that the proposed allocation of SBC funding to EEPS “is not acceptable” if it is accompanied by the application of the Total Resource Cost (TRC) test similar to the current EEPS program administration requirements.

2. Should the allocation of costs among utilities be made on the basis of sales volumes (as is done for EEPS) instead of on the basis of historical revenues (as was done for SBC III)?

National Grid argues that the Commission should stick with the allocation of costs on the basis of operating revenues for the reasons stated in its order in the SBC III proceeding: benefits will generally be proportionate to costs, and revenues are an objective standard that is not administratively burdensome to apply.

Con Edison, in contrast, contends that the allocation of costs should be based on sales. This approach, it says, assures that all customers pay the same price per kWh, consistent with the program objective of having all customers receive comparable benefits. Con Edison argues that there is no satisfactory reason why its customers should pay an SBC rate twice that paid by customers of RG&E. NYSEG/RG&E say that they do not oppose an allocation based on sales rather than historic revenues.

MI contends that cost causation principles dictate that the costs of energy efficiency programs should be allocated 50% on the basis of demand and 50% on energy usage because, it says, efficiency savings are related to both demand and energy reduction. As to the T&RD programs, MI says the costs nor the benefits of T&RD programs are related to customer energy usage and their costs should be allocated on the basis of historical revenues. It also advocates that at the utility level, recovery of the costs should be allocated among customer classes on a comparable basis.

NYSERDA expresses no opinion on this question.

3. Should unspent, uncommitted and unencumbered SBC funds be addressed in a manner designed to encourage the efficient usage of allocated funds to achieve completed projects and to minimize the magnitude of the unspent and uncommitted funds?

NYSERDA responds that less that 1% of total SBC III funding is unspent and uncommitted when contracts awarded but not signed and applications received but not yet approved are considered committed. It says that in a number of program areas, payments are associated with milestones and, therefore, have unspent funds until all required work is completed. NYSERDA recommends that it be allowed to process all applications received and contracts awarded but not signed as of June 30, 2011, within program budgets. It also suggests that it be allowed to prepare a proposal for allocation of remaining uncommitted funds for consideration by DPS Staff.

The Joint Utilities contend that it should be presumed that unspent funds will be returned to ratepayers, as it is critical to stakeholder confidence that SBC programs not become a tax revenue stream for the State. National Grid agrees that unspent funds should be reallocated within, or returned to customers of the service territories where they were collected, and MI similarly calls for them to be used to reduce the cost of the SBC to customers.

NYSEG/RG&E recommend that no arbitrary goal be established for the minimization of unspent funds, while NAESCO proposes that unspent SBC funds be directed into the portfolio of resource acquisition programs with directions to NYSERDA to spend them as expeditiously as possible to provide more energy savings.

4. As robustly funding all of the potential new Technology and Market Development programs identified by NYSERDA would likely exceed the available funding, what priorities should be set for choosing which programs to fund (see NYSERDA’s Petition at page 10 for proposed prioritization criteria)?

NYSERDA states that it stands by the prioritization criteria set forth on page 10 of its proposal. It argues that it has demonstrated that it can pursue a broad mandate and broad program scope with a well-managed program built on a strong technical foundation, ample stakeholder and market input and steady evaluation of results. It adds that it has a history of leveraging funds to increase total investment in target areas.

The Joint Utilities argue that NYSERDA's prioritization criteria lack metrics and provision for oversight. They point out that NYSERDA acknowledges its list of T&MD initiatives is merely illustrative of the types of opportunities and needs that could be pursued through the T&MD program. Therefore, they say, it is imperative that an oversight committee of stakeholders be required to develop rating criteria with objective and understandable metrics and weighting. That, weighting, they say, should emphasize utility capabilities as utility R&D programs would likely provide better and more direct benefits to electric customers. They propose that all R&D activities be reviewed by the oversight committee which would prioritize and approve spending, consider program coordination and issue an annual report.

NYSEG/RG&E echo the joint Utilities' view that the prioritization criteria set forth in NYSERDA's proposal provide “woefully inadequate” functional guidance for prioritization decisions. They call for a collaborative with the utilities and all stakeholders to establish appropriate prioritization and oversight mechanisms.

National Grid also supports the call for a stakeholder oversight role. It says it does not understand NYSERDA’s explanation of “tangible benefits” as a basis for prioritization, and argues that T&MD programs should have defined milestones against which progress can be judged.

NYC also argues that the SBC program should identify discrete goals and targets. It calls for a restored SBC Advisory Board to assist NYSERDA in defining specific quantifiable program goals measured primarily in terms of kW and kWh savings and other expected demand reductions.

Several commenters identify specific prioritization criteria, both negative and positive. MI states that priority should be given to producing a return for customers by according a higher value to benefits that are tangible and likely, that inure directly to customers, and that tend to reduce overall electricity and gas prices in New York. Less emphasis, it contends, should be placed on "questionable" claims of potential economic development benefits.

CEC calls for prioritization to be based on "environmental and economic development impacts," while GTI says that program criteria should include (source) energy savings and a measure of cost effectiveness or a benefit/cost test like the TRC Test, as well as job creation potential and environmental benefits.

NY Solar advocates highest priority for programs involving solar energy which it sees as becoming the least cost delivered electric power in the state within ten years. Syracuse COE recommends a shift in prioritization criteria to focus on job creation and support for municipal sustainability plans such as PlaNYC.

NYC says that greater emphasis in SBC IV should be focused on residential demand and other programs that will serve urban ratepayers such as sector challenges aimed at encouraging emission reductions by entities with similar facilities and requirements, and support for greater use of submetering. Herbert E. Hirschfeld, P.E., agrees that submetering is critical to encourage participation in time-sensitive electricity pricing programs.

H2Pump LLC states that the SBC program should ensure stable funding for R&D activities related to such sectors as energy management in industrial sectors, waste stream energy recovery, greenhouse gas reduction, energy independence and industrial process enhancement for global competitiveness.

MI argues that priority should be given to electric programs which have the potential to benefit non-recipients of program funding through the reduction in electricity prices. Gas efficiency programs by contrast, MI says, benefit only recipients because even if successful they can have no measurable impact on the price of natural gas.

PACE/NRDC states that the mission of SBC IV should include not merely new technologies, strategies and practices, but also initiatives bringing to scale existing strategies by addressing market barriers to energy efficiency, particularly in large commercial buildings by creating improved value propositions for building owners. As examples they cite: an initiative to address the deficiencies in commercial leasing arrangements that create split incentives to adopt energy efficiency between tenants and owners; and, the establishment of a loan loss reserve fund to backstop private financing of energy efficiency projects.

ACENY supports NYSERDA's proposed SBC priorities to build market infrastructure to support EEPS and RPS. They recommend that NSERDA particularly develop initiatives that would support the deployment of offshore wind generation and a generation attributes tracking system.

5. Should priority be given to projects that will realize tangible benefits within the 2012 to 2015 time frame (mainly demonstration and commercialization projects) as opposed to projects that may entail higher risks and potentially greater benefits over a longer time horizon?

NYSERDA endorses an emphasis on "tangible benefits" as the essential basis for prioritization, with priority given to investments that can realize such benefits by 2015. It strongly recommends, however, that a balanced portfolio with some strategic longer-term investments be pursued, and that the definition of "benefits" be broad. Targeted longer-term investments, it says, can produce significant benefits for ratepayers, while flexibility and the ability to respond quickly to unforeseen opportunities will maximize the chances for success. Tangible benefits achieved may include energy savings, emission reductions and other environmental benefits, job creation, the leveraging of private capital, the creation of new clean energy start-up companies in New York, sales of new technologies and products, increased numbers of skilled workers, increased retail availability of energy efficient products, and the achievement of critical commercialization and policy development milestones, among other things.

A number of commenters urge that T&MD program emphasis should be on projects having a longer term payoff. CUNY expresses concern with the short-term focus implied by this question. It supports the devotion of a portion of SBC funding to Smart Grid initiatives, including long-term R&D, and argues that leveraging the benefit of NYSERDA investment in long-term R&D should receive greater emphasis in program planning.

BNL similarly indicates its concern for the suggestion that there should be a shift in SBC focus to programs having an impact by 2015. Particularly for technology development, it says, there needs to be a balanced portfolio of medium and long term R&D. Shifting funds wholesale from broader missions including R&D to narrowly defined energy efficiency criteria may create a long term negative economic impact for New York’s R&D and innovation infrastructure.

ALA points to the success of the program for long-term monitoring of lake chemistry in the Adirondacks as evidence that it would be a mistake to limit projects related to alternative fuels and environmental impacts to those that will show tangible results in three to five years. This short-term approach, it says, may be more appropriate for energy conservation projects.

National Grid also suggests that T&MD priorities should not be constrained by 2015 goals; that, it says, is the role of

EEPS. At the other end of the program spectrum, however, it argues that SBC IV is not large enough to have a major impact in areas requiring basic research. This, it says, is more appropriately the purview of the federal government or private sector.

Columbia University argues that the SBC program has played an important role in supporting R&D investment following utility deregulation, and expresses concern that NYSERDA's petition and the Commission's questions suggest an intent to shift funds wholesale from broader missions, including R&D, to near term narrowly defined energy efficiency criteria and activities. This, it says, may create a longer term potential negative economic impact for jobs and investment in New York’s R&D and innovation infrastructure due to New York’s failure to properly steward the electric grid of the future.

GTI urges that priority be given to longer term, higher payoff projects. It argues that the private sector is more likely to perform incremental R&D for near-term, shorter payback projects. It calls for support for natural gas R&D in particular, in areas such as combined heat and power, industrial process heat, gas heat pumps and related areas.

NY Solar similarly argues that the T&MD program should focus on longer term, riskier projects that have greater “game changing” potential, while EEPS and RPS focus on short-term deliverables.

A number of parties took the opposite view, calling for a focus on a shorter term payback for T&MD programs. MI says that emphasis should be placed on projects that produce near term benefits for customers. CEC argues that Projects should realize tangible benefits within the SBC IV time-frame, particularly with regard to pilot demonstrations of renewable energy technologies

Finally, other commenters called for a balanced approach. The Joint Utilities note that the nature of T&MD programs is not conducive to the quantification of benefits, but argue that customers should have confidence that resource acquisition and T&MD programs, in combination, will help them manage energy usage and reduce energy costs in both the short and long term.

NYSEG/RG&E say that an appropriate balance of long and short-term benefits should be developed as part of the prioritization and oversight process. Syracuse COE supports NYSERDA's balanced approach, and the Smart Grid Consortium also calls for a balanced portfolio that allows sufficient flexibility for NYSERDA to support some longer-term investments where benefits accrue beyond 2015.

NAESCO argues more broadly that NYSERDA's T&RD programs, in contrast to resource acquisition programs, are not supported by any quantitative analysis of overall economic benefits to ratepayers. If NYSERDA has done the analysis, it says, its proposal leaves the Commission and stakeholders in the dark. The proposed program areas are already the subject of intense interest and investment nationally and internationally. NYSERDA should be required to show some New York-specific basis for investing ratepayer funds. The proposed T&RD budget of $400 million is large and should be justified by some calculation of the expected return on investment.

6. What process steps should be followed to ensure that funding decisions are made in an open and optimal manner?

NYSERDA states that it fully supports an open stakeholder planning process for SBC funding decisions. For this renewal process, it recommends that the programs being transferred to EEPS follow the same course as has been used for other EEPS programs, including the filing of a supplemental operating plan.

For T&MD programs, it proposes to prepare an Operating Plan that will be submitted for DPS Staff approval following a workshop to obtain stakeholder input.

As for ongoing public involvement in the evolution of the T&MD program, NYSERDA suggests an annual workshop to review progress and discuss possible changes to the operating plan. In addition, it notes that it routinely solicits stakeholder and agency staff involvement in the conduct of its business, including program implementation and progress review by technical review groups, program advisory committees and evaluation contractors.

The Joint Utilities envision that the stakeholder committee they propose to aid in the setting of program priorities will maintain a strong oversight role, ensuring a transparent and collaborative process essential for public confidence. National Grid agrees that transparency is paramount. It calls for collaborative discussions and technical conferences to provide stakeholders opportunities to identify issues and understand proposals for resource allocation.

MI also calls for greater stakeholder involvement. It says that NYSERDA can be expected to work closely with DPS Staff and with funding recipients, but what is lacking is an advisory group composed primarily of customers that can have continuous, meaningful input to funding decisions.

The Business Council contends that NYSERDA's commitment to public involvement in the SBC decision-making process is inadequate, especially given the lack of detail in the vision statement. It says the Commission should require a stakeholder advisory and oversight function that would remain involved for the duration of the SBC IV program. The RGGI operating plan advisory committee, it says, provides a good model.

NEEP agrees that the absence of a permanent advisory group leaves program administrators, customers and efficiency practitioners at a disadvantage. Working groups on marketing and evaluation are a step in this direction, it says, but are inadequate. A statewide clean energy program stakeholder advisory board should be created, similar to those that are already in place in five other states in the region.

The NCHPI and Endurant Energy recommend that the Commission create a stakeholder advisory group representing the public and private sector to provide input concerning programs funded through the SBC, including recommendations for program modifications. They suggest that the historic SBC advisory group is a good model for achieving such transparency and stakeholder engagement, but should be augmented with representatives from the CHP industry.

PACE/NRDC call for an SBC IV Advisory Board that would consist of a diverse cast of technical experts and stakeholders to both inform the initial NYSERDA Operating Plan and to provide ongoing feedback as programs are rolled out. The general public, it says, should be provided an opportunity to comment on NYSERDA’s proposed plans, and feedback from the Advisory Board should be made public. CSG Supports the Pace/NRDC position.

NAESCO strongly recommends reinstitution of the former SBC Advisory Group with its broad membership of stakeholders. It says the absence of a stakeholders group advising NYSERDA on program design and implementation is a serious deficiency of the current proposal.

ACENY and NYC also call for restoration of the SBC Advisory Group. ACENY says the board, or alternatively more subject-specific advisory boards, should be used for input on operating plans and mid-course program changes, as well as program evaluation efforts. NYC says that the Advisory Board and the

Commission should receive regular reports based on a standardized data collection and tracking system that records expenditures by purpose, geographic area and linkage to specific goals, summarized by utility service territory, ISO zone and program. This, it says, will provide greater transparency and instill more confidence in program management.

The Smart Grid Consortium sees transparency and stakeholder involvement as high priorities, and recommends that it be designated as the advisory committee to oversee and prioritize smart grid R&D programs funded by SBC IV. The consortium points out that it is established and recognized, and includes all key stakeholders.

7. Should other potential new Technology and Market Development programs, beyond those identified by NYSERDA, be considered and if so with what priority?

NYSERDA suggests that the SBC program should include a mechanism to provide for program reaction to changing circumstances, needs and technology. This could lead to emphasis on new areas in the future and/or the elimination of some proposed focus areas. Such changes would follow analysis and stakeholder input and be reflected in a revised operating plan approved by DPS Staff.

The utilities generally agree that there should be flexibility to consider T&MD programs other than those initially proposed by NYSERDA. The Joint Utilities believe that this can be accomplished through the oversight committee process they recommend. NYSEG/RG&E suggest that the adoption of additional or different programs should be possible through the prioritization process, with input from interested parties and stakeholders.

National Grid finds that NYSERDA's proposal targets the right areas, but sees a danger funds will be spread too thinly. It recommends focus on Smart Grid and electric transportation infrastructure, energy efficiency on the customer side of Smart Grid efforts with emphasis on retrofits and the building envelope, and sustainable gas.

MI declines to advance any suggestions for additional programs, saying that the Commission's focus should be on reducing costs by paring down NYSERDA's “wish list.”

Other commenters addressed specific program areas. GTI urges the Commission to consider the development and demonstration of smart energy grid technology incorporating the natural gas grid to include gas supply, gas interaction with the electric grid, pipeline safety, two-way communication with customers and smart grid monitoring for M&E of efficiency measures. Syracuse COE says that funding of the New York Energy Regional Innovation Cluster should be one of the highest T&MD priorities.

ADDITIONAL ISSUES ADDRESSED IN THE COMMENTS

The State of the Economy

A number of comments consider the cost of SBC programs in the context of the weak state of the New York economy. NYU, for example, expresses the view that continuation of funding at current levels strikes a reasonable balance between economic considerations and support for valuable environmental and social programs.

NYSEG/RG&E suggest that in difficult economic times, SBC IV should focus on energy efficiency programs that provide the most short-term value to customers. MI takes a similar view, arguing that given current economic circumstances, T&MD programs that are unlikely to generate tangible economic benefits in the near-term should be rejected or scaled back substantially. It says the Commission must consider the economy in evaluating the cost of SBC programs just as it has done in requiring austerity measures from utilities to hold down delivery rates. MI notes that for some customers, SBC, RPS and EEPS charges are as significant as the cost of delivery service.

NYSBA contends that the direct benefits of the SBC program are far outweighed by the cost at a time when schools are facing dramatic reductions in state funding and a proposed cap on their ability to raise revenues. It argues that schools are effectively a conduit for the pass-through of local property tax revenues to fund a state program. Local taxpayers get a “double dip”, paying the SBC on their own utility bills and in their school taxes. NYSBA is opposed to continuation of the SBC unless schools are exempted.

NAESCO, by contrast, emphasizes the stimulus potential of the SBC programs. It says that resource acquisition and low income programs deliver both short and long-term benefits and immediate job creation, and that their funding should not be reduced.

Combined Heat and Power (CHP)

A considerable number of comments express concern that CHP projects, which derive much of their benefit from thermal, rather than electric, energy savings, would receive significantly less funding under SBC IV than under SBC III. They urge the Commission to prevent this from happening.

The U.S. Environmental Protection Agency, for example, strongly supports the continuation of the distributed generation/CHP program through 12/31/11 at SBC III levels and at current levels for SBC IV. It says that the EPA CHP Partnership has worked with NYSERDA for ten years and found its funding to be effectively administered and to have a significant impact on transforming energy generation markets. It says NYSERDA is unique in its engagement in demonstration and performance projects that help eliminate market barriers to the use of CHP, a technology that has been recognized as both an energy efficiency measure and a potential contributor to greenhouse gas emissions reduction.

Pace/NRDC agree that funding for CHP and district energy projects should be maintained at least at existing levels or, ideally, increased under SBC IV. They say that application of the TRC test used for EEPS measures under-represents the real environmental and economic benefits of these systems.

Endurant and NCHPI similarly argue that the TRC test undervalues CHP. They say that the leveraging of grants, federal funds and tax credits should be taken into account, thermal benefits should be more effectively recognized, and the test should be applied on a portfolio, rather than a project by project basis. Endurant notes that CHP funding by NYSERDA has been leveraged at a 6:1 ratio by other investment, and that CHP provides an effective approach for New York City which is a poor candidate for many renewable technologies. It supports continued CHP funding at least at SBC III levels.

NYECC expresses support for the positions of Pace/NRDC and NCHPI, and expresses particular concern that greater integration of program administration will be necessary for further expansion of DG/CHP in New York City. New York City endorses the views of NYECC, NCHPI and Pace/NRDC.

Vornado, which says it is one of the largest owners of commercial property in New York City, argues that the CHP industry is vital to energy efficiency in the State and would be significantly disadvantaged without continued NYSERDA funding under SBC IV. Energy Concepts Engineering contends that most of its clients would forego central plant upgrades altogether or install less efficient systems without the savings provided by a CHP installation.

Several companies involved with CHP stress the economic potential of this technology for New York. ECR, a manufacturer of systems for smaller installations, contends that so-called Micro-CHP is on the verge of leaping the “risk chasm” for emerging technologies. It says manufacturers, engineering firms and contractors would be severely harmed if NYSERDA funding in this area were cut significantly.

Dresser-Rand, which identifies itself as the largest private employer in Allegany and Cattaraugus Counties, says it has heavily invested in CHP and other energy saving technologies and has developed an aggressive marketing plan to expand its packaged CHP products that will be both manufactured and installed in New York State. Cutting back funding for CHP would have an extremely adverse impact on these plans, it says.

GE Energy states that New York ranks number one among states for CHP development potential. Over the past 8 years, it says, the State has provided approximately $75 million for CHP projects, leveraged with over $350 million in private investment. This could be lost if funding is not sustained. At a minimum, GE contends, current funding levels should be maintained for CHP, future resource acquisition programs should have guidelines separate and distinct from EEPS, and the process for selecting and funding CHP projects should be flexible to ensure continued funding.

UTC calls for CHP funding at 15% of the proposed $180 million SBC IV total, and says the program should include support for fuel-cell based CHP.

Codes and Standards

Several parties express support for NYSERDA’s proposal to include funding for advanced energy codes and standards within the T&MD portfolio. Pace/NRDC, ACENY and CSG argue that robust funding for the initiative is warranted because it is a highly cost-effective means of achieving significant long-term benefits by setting a floor for the energy performance of new construction, appliances and equipment. NEEP also urges NYSERDA to continue its efforts in this area, and BPCA supports development of new standards and best practices for the home performance industry.

Coordination of Efficiency Initiatives

The Joint Utilities point out that a common element of SBC, EEPS, RPS and RGGI is that they are paid for, directly or indirectly by utility ratepayers. In order to accomplish clean energy goals more efficiently and at less cost to utility customers, they say, the State should manage the programs in an integrated fashion. Ideally, the State could develop a mechanism to optimize the use of scarce customer resources: one that would allow funds to be reallocated from one “bucket” to another.

In separate comments, Con Edison takes this suggestion a step further, advancing the proposal that the oversight committee for SBC IV recommended in the Joint Utility comments be expanded to include RPS, EEPS and, in coordination with NYSDEC, RGGI. It recommends that the Commission, in concert with the committee, evaluate all of the State's clean energy programs with a view toward optimizing the overall benefits. This process, Con Edison suggests, should be repeated biannually and should generate a formal written report detailing the committee’s findings.

NYC supports Con Edison's proposal, saying that consolidated treatment of SBC, EEPS and RGGI programs is necessary to assure that important programs are not "orphaned" by being consigned to a program for which they are ill-suited. As an example, it points out that NYSERDA's decision not to use RGGI funds to support oil to gas conversions was made without the benefit of input from the City, even though a key priority for NYC is to reduce fuel oil usage, much of which is generated by low-income buildings. This, it says, demonstrates the basis for the City's sense of disadvantage that needs to be remedied by an open and inclusive process.

Resource Acquisition Program Transition to EEPS

Question 1 in the SAPA notice expressly dealt only with the issue of how SBC programs proposed for transition to the EEPS portfolio should be administered during the proposed six-month extension of SBC III from July 1, 2011 through December 31, 2011. A number of comments, however, address more general concerns about, or support for, the transition itself.

ACENY and PACE/NRDC argue that SBC programs have historically taken a broader view of benefits than EEPS programs restricted by the TRC test. They urge that SBC funds not be shifted to EEPS and that the SBC programs be fully funded with budgets administered separately from EEPS. NYC concurs, saying that SBC programs should continue to have a broader basis for support and should not be forced into the EEPS program with its rigid qualifications for electricity displacement.

In a similar vein, BPCA and CSG contend that the TRC test is inadequate and inappropriate for evaluating market transformation programs such as Home Performance with Energy Star, the Multi-Family Performance Program and EmPower New York. BPCA requests that a task force be created to investigate an alternative method for evaluating the programs that takes into account non-energy benefits that increase the health and safety of homeowners and the durability of homes. CSG adds the concern that emphasis on the TRC test might weaken the market-transforming features of the programs that give customers confidence in the process and in the practitioners.

CPA expresses its concern that measures providing relief from transmission and distribution system weaknesses may not be appropriate for EEPS which is intended to advance energy efficiency only. The TRC, it says, values the benefit of the distribution component at the system average long run avoided cost which may understate the benefit to consumers of relief from a load pocket or transmission congestion charges. These benefits can be considered under SBC.

The Smart Grid Consortium opposes transfer of SBC collected funds to EEPS portfolio administration on the more general grounds that the need for R&D is growing, not diminishing. It argues that it should be possible to use resource acquisition funds for smart grid programs where energy savings can be demonstrated.

Environmental Monitoring

Numerous parties expressed support for NYSERDA's proposal to continue funding in SBC IV for Environmental Monitoring, Evaluation and Protection (EMEP), generally, and for the work of the Adirondack Land Survey Corporation in particular. NYSDEC states its strong backing for the program which it says has been very productive in providing scientifically credible results in the development and direction of State policies on the environment. It adds that the SBC should serve as a catalyst for manufacturers to adopt pollution prevention programs that go beyond legal requirements.

ACENY and Pace/NRDC state that EMEP efforts contribute to the kind of comprehensive understanding of the links between energy usage and environmental impacts that is important to the development of effective programs to raise public awareness and address harmful impacts. Pace/NRDC adds that the program considers the environmental impacts of emerging and alternative energy technologies, leverages a regional network of experts, and provides essential information for the crafting of effective environmental and energy policies.

ALSC notes that the SBC provides essential support for its year-round monitoring of 52 lakes in the Adirondack Park, an internationally recognized leading program in the field of environmental monitoring. It says that ongoing analysis of data critical to the assessment of Adirondack ecosystem recovery is made possible through SBC funding, and that important studies of stream chemistry, fisheries and Whiteface Mountain cloud water are scheduled for the period of the proposed SBC extension, which ALSC strongly recommends be approved.

Support for continued, or increased, funding for the ALSC was expressed by Pace/NRDC, the Adirondack Council, Adirondack Community Trust, Adirondack Research Consortium, Gregory Lawrence, Ross Whaley, the Saranac Lake Central School District, and the Adirondack Mountain Club.

Fuel-Neutral or Whole-Building Energy Efficiency Measures

Several parties commented on the question of whether SBC funding should be available for the implementation of a “whole-building” approach to the delivery of energy efficiency measures without regard to the type of fuel in use. This is a particular concern to NYC which says it has over 10,000 oil-fired boilers, many in buildings occupied by low-income residents. Pace/NRDC strongly supports SBC funding for measures to address oil efficiency that would not be covered by EEPS, as well as NYSERDA’s proposal to seek cooperation from the oil industry and others to share financial support for whole-house energy efficiency.

BPCA encourages the implementation of a fuel neutral approach for home energy efficiency improvements that recognizes the need to treat the house as a system, especially for low-income customers.

CEC, CSG, BPI and Efficiency First all express concern with the inability to address oil efficiency through EEPS programs, and endorse a fuel blind, whole-house approach to energy efficiency measures, especially for low income customers. BPI says an “all fuels” approach to low income households should embrace a whole house retrofit regardless of fuel source. CSG agrees that a comprehensive approach to building diagnosis and treatment is needed.

Geographic Equity

The issue of geographic equity concerns the balance between SBC collections and program expenditures within a particular area of the State. NYC argues flatly that an extension of the SBC program is reasonable only if it can be demonstrated that the City will receive at least a fair share of the benefits provided. It says that the allocation of funds among programs that is proposed by NYSERDA will lead to substantially less spending on electric efficiency resource acquisition, most of which will come from low-income programs. This disproportionately affects NYC, it says, because 44% of low-income spending now is allocated to the Con Edison territory.

Con Edison also calls for SBC spending that reflects geographic balance. It contends that from 1998 to 2010, Con

Edison customers paid 49.8% of SBC funds and received 39.8% of expenditures.

NYSEG/RG&E, by contrast, argue that strict geographic balance is not necessary. Statewide benefit is the objective of the SBC program. Initiatives, they say, should be chosen based on appropriate prioritization criteria without regard to exact geographic parity.

The Smart Grid Consortium generally concurs with this view. It does not see a need for a perfect match between where funds are collected and where they are spent, but says that the Commission, NYSERDA and the Consortium should make sure that the customers of all utilities benefit from Smart Grid funding by selecting projects that reflect the diverse built-environment of the State.

Utility Involvement

A number of parties discussed the appropriate scope of the role to be played by the State’s regulated utilities in administering SBC funded programs. National Grid argues that utilities should have the lead role in prioritization of SBC IV funds, with NYSERDA’s role being coordination and information sharing as is the case with the Smart Grid Consortium. Utilities, it says, are better suited to take the lead in smart grid and electric transportation development than is NYSERDA. It notes, also, that utilities have already invested considerable resources in developing plans and strategies for smart grid and plug-in electric vehicle deployment, as well as expanded use of compressed natural gas.

The Joint Utilities argue that they are well positioned to “step up” and play an expanded role in implementing SBC-funded energy efficiency programs. It is clear, they say, that utilities will continue to play a central role in the provision of services to customers, and that they possess local expertise that can, and should, be leveraged. Just as the Commission concluded with EEPS, a hybrid approach taking advantage of the strengths of both NYSERDA and the utilities should be followed. As with EEPS, approximately 50% of SBC funds should be administered by the utilities. An operating plan should be developed collaboratively through the Joint Utilities' proposed oversight committee, with the Commission resolving any disagreements.

NYSEG/RG&E echo the view that utilities with their local expertise should have an enhanced role in SBC IV consistent with the role they were given for EEPS. This, they say, should include research and development programs.

Central Hudson calls for the convening of an ongoing collaborative to determine the best providers for program content.

NEEP does not address program administration, but sees utilities and their contractors as a logical gateway to other programs, and says these contact points should be leveraged as an opportunity for entrance into holistic and coordinated efficiency programs

CHA, on the other hand, supports continued SBC administration by NYSERDA to provide statewide consistency and coordination, reducing overlapping effort, minimizing customer confusion, gaining efficiency, and taking advantage of NYSERDA's experience, client relations and effective program evaluation. The Smart Grid Consortium is also concerned with reducing confusion and suggests NYSERDA should work collaboratively with utilities that have the customer relationship in order to accomplish that objective, to provide more comprehensive projects, and to allow one-stop shopping for available programs.

Workforce Development

Altamont supports continued SBC funding of the Clean Energy Workforce Initiative which it says is essential to the training programs it provides disadvantaged individuals. NYSERDA funding enables the program to provide internship opportunities with green companies at a living wage, to leverage privately available funds and to provide job placement assistance.

BPI agrees. It urges NYSERDA to foster collaboration and relationship building with New York's Department of Labor and Education for all energy efficiency retrofit trades; leverage resources for the development of standards, training, and certification for energy efficiency retrofits of mixed use buildings; ramp up training and certification for energy efficiency retrofits of multi-family housing; emphasize career paths from apprentice to the master technician level throughout its workforce development efforts; and establish a taskforce to investigate an alternative evaluation for market transformation programs to replace the TRC test.

CEC and Green Light NY also support NYSERDA's proposals for the development of a qualified energy efficiency workforce.

NYC, by contrast, argues that workforce development efforts appear to have had limited success. By March 2010, it says, the Smart Business Partners program had achieved only 11% of its goal for 2006-2011.   None of the $5.8 million allocated to workforce development in EEPS had been spent, and the Energy Smart Program had created only 5,300 jobs according to the 2009 SBC Annual Report.

The Business Council also takes the view that workforce development should not be a priority. It says this program category should be removed to allow additional resources to address core technology and infrastructure needs. The Department of Labor, the Council says, has concluded that "clean energy" jobs are adequately funded and are not unique to the industry.

Clean Energy Business Development

The Alliance of Clean Incubators and NYU Polytechnic recommend an early stage seed fund of $50 million with private sector matching funds as a top priority for SBC IV. The Alliance also calls for a continuation of incubator funding at the current $20M level.

NYU Polytechnic points out that the SBC has funded the New York City Accelerator for a Clean and Renewable Economy, and urges support for a "clean energy continuum" funding the type of startups that are creating additional jobs and economic growth.

The Joint Utilities advise the Commission to focus T&MD funding on programs that will produce primarily electric system benefits with the economic development attributes being a consideration, but not a driver in the selection. They say that while economic development is important, it is more properly addressed in both utility and public economic development programs.

Additional Program Areas Recommended

Energy-Aligned Leases. Pace/NRDC recommend that SBC IV establish an incentive and education program to promote the adoption of energy-aligned leases that address the split incentive barrier (landlord vs. tenant) to energy efficiency improvements in commercial buildings. NYSERDA, they say, should also consider incentives that would reward commercial building owners for energy saved.

Generation Attribute Tracking. ACENY urges that funds be allocated for implementation of a generation attribute tracking system. It notes that NYSERDA's proposal included no money for “environmental disclosure.” New York, it says, is the only state without an effective tracking system in place. The current system, it contends, is inadequate to support the achievement of a liquid and transparent market. Some SBC IV funds should be set aside for this purpose.

Loan Loss Reserve. Pace/NRDC, ACENY and CSG all support the creation of loan reserve fund to address the inability of private building owners to acquire upfront capital for the funding of energy efficiency measures. PACE/NRDC recommend that the fund be created by setting aside $25 million annually from each of SBC electric, SBC gas and RGGI, providing a total of $375 million over five years that could leverage up to 10 times that amount in private financing.

Off-Shore Wind. ACENY urges NYSERDA to explore the use of SBC funds to support activities that will help accelerate the development of offshore wind resources for New York, including serious, concrete studies and activities designed to facilitate permitting and answer stakeholder questions and concerns. Pace/NRDC suggests that such support work, placed in the public domain, could shorten development lead times and potentially reduce capital costs that would otherwise have to be recovered through power purchase agreements.

NY Solar, while agreeing that off-shore wind could be a viable option for utility-scale delivery of renewable power in downstate New York, advocates greater emphasis on solar as a means of achieving longer term benefits statewide.

Passive Housing. Veronique LeBlanc, supported by some 14 messages received by the Commission from other individuals and a petition containing 118 signatures, urges NYSERDA to include support for passive housing in the SBC portfolio, including support for building science research, manufacture of components, contractor and tradesperson training, passive house construction, and integration of passive house principles into building codes, as appropriate. Natchez Associates, an environmental design consulting company, echoes these recommendations.

Comments on Process

Central Hudson states that it did not see NYSERDA’s proposal for SBC IV until it was filed, providing inadequate time for review. It says stakeholders must be given an opportunity to help design the SBC. To do this, Central Hudson recommends that the SBC be extended for six months with no rate or program changes, and that a collaborative including utilities, customer representatives, third party providers and other stakeholders be convened to formulate an SBC IV proposal. The collaborative should have a mandate to avoid an increase in SBC charges while enhancing program content or reducing charges. Central Hudson also calls for institution of an independent audit of program content and administrative costs just as utilities are audited, and the application to NYSERDA of the same standards and limits on administrative costs that apply to utilities.

Pace/NRDC say that the slow pace at which the Commission has approved NYSERDA and utility programs – resulting in large part from DPS administrative delays and micromanagement – have put New York in danger of falling far short of its 15 by 15 goal. It says the Commission needs to cease its over-deliberation.

Additional Points Raised in the Comments

Broaden the proposal. NAESCO states that it is surprised that the NYSERDA’s proposal is not more ambitious. It says the vision should lay out a plan for weatherization of all the homes of low-income residents and ensure that all customers undertake cost-effective energy efficiency and load management measures. It should also consider whether to adopt energy efficiency mandates such as the commercial building program proposed for NYC; should investigate offering industrial customers $.05 per kWh for every additional kWh saved; and should consider applying the paid-from-savings model to smaller customers, including low-income residential customers.

High profile demonstration projects. Cook+Fox points out that NYSERDA funding of energy efficiency technologies in high-profile projects such as One Bryant Park in New York City have demonstrated the viability of, and attracted attention to, technologies not in widespread use. It says that it has observed how these prominent examples have resulted in such technologies becoming common in subsequent construction. In this manner, it says, NYSERDA SBC funds have a multiplying factor.

Support for New York Industry. Corning states that NYSERDA has funded 47 projects for it, including development of a strategic roadmap that has saved the company millions of dollars and helped to ensure its competitiveness.

Payment in kind. Wal-Mart supports the goals of the SBC program with the proviso that the Commission solicit comments in the near future on possible modifications including the feasibility of customers meeting SBC obligations through self-funded energy efficiency and renewable programs.