MULTIPLE INTERVENORS
REPRESENTING NEW YORK'S LARGE ENERGY CONSUMERS

July 16, 2018

VIA ELECTRONIC FILING

Hon. Kathleen H. Burgess
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Re: Case 18-M-0084 – In the Matter of a Comprehensive Energy Efficiency Initiative

Dear Secretary Burgess:

Attached for filing in the above-referenced proceeding are the Preliminary Comments of Multiple Intervenors, submitted in response to the solicitations for feedback made at the June 18 and 29, 2018, technical conferences conducted herein. Copies of these Preliminary Comments are being served herewith on the other active parties to this proceeding and the New York State Energy Research and Development Authority ("NYSERDA") at the requested e-mail address.

Respectfully submitted,

MULTIPLE INTERVENORS

Michael B. Mager

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Counsel to Multiple Intervenors

MBM/dp
Attachment
cc: Active Parties (via E-Mail; w/Attachment)
NYSERDA (via E-Mail; c/o NewEfficiencyNY@nyserda.ny.gov; w/Attachment)

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

In the Matter of a Comprehensive Energy Efficiency Initiative **Case 18-M-0084**

MULTIPLE INTERVENORS' PRELIMINARY COMMENTS

PRELIMINARY STATEMENT

Multiple Intervenors, an unincorporated association of approximately 60 large industrial, commercial and institutional energy consumers with manufacturing and other facilities located throughout New York State, hereby submits its Preliminary Comments in the above-referenced proceeding. Pursuant to the solicitation to which this submission is responsive, these Preliminary Comments are being transmitted to an e-mail address maintained by the New York State Energy Research and Development Authority ("NYSERDA"), *i.e.*, NewEfficiencyNY@nyserda.ny.gov.

On February 8, 2018, the New York State Public Service Commission ("Commission") instituted this proceeding to consider issues related to energy efficiency ("EE").[1] On April 26, 2018, the New York State Department of Public Service ("DPS") and NYSERDA issued a White Paper entitled, "New Efficiency: New York" (hereinafter, the "Proposal"). On June 18 and 29, 2018, DPS and NYSERDA conducted technical conferences on the Proposal. During those conferences, feedback was solicited from interested stakeholders by

[1] Case 18-M-0084, *In the Matter of a Comprehensive Energy Efficiency Initiative*, Notice of New Case Number and Announcing Stakeholder Forums (issued February 8, 2018).

or before July 16, 2018, in advance of a more formal process to be conducted by the Commission. These Preliminary Comments provide such feedback.

Initially, Multiple Intervenors is a strong proponent of EE, although not necessarily all Commission current policies relating thereto. Multiple Intervenors members are amongst the largest, and most efficient, consumers of electricity and natural gas in the State. Many Multiple Intervenors members operate in energy-intensive industries and/or at very high load factors. Because energy typically constitutes a substantial operating cost, members devote significant attention, and resources, to ensure that they are consuming energy as efficiently and productively as possible. Multiple Intervenors members also recognize certain environmental and other benefits associated with cost-effective EE. Indeed, all or most Multiple Intervenors members have been practicing EE for decades, long before the Commission started mandating that customers fund EE programs through rates and surcharges.

As addressed herein, Multiple Intervenors has a number of concerns regarding the Proposal, and the Commission's policies with respect to EE. Some – but not all – of those concerns relate to the costs of mandated EE programs on electric customers, which already are very substantial, and are incremental to a panoply of other discretionary, policy-oriented programs and initiatives being undertaken by the Commission that similarly impose substantial costs on customers. Multiple Intervenors also contends that the costs of EE programs are being recovered from customers in an inequitable manner, placing disproportionate burdens on large, high-load-factor, non-residential customers. In addition to these over-arching concerns, Multiple Intervenors is troubled by numerous aspects of the Proposal specifically, and those concerns are detailed, *infra*, in these Preliminary Comments.

PRELIMINARY COMMENTS

Multiple Intervenors' initial comments regarding the Proposal are set forth below. Multiple Intervenors expressly reserves its rights to modify and/or supplement its positions in the formal process to be employed by the Commission in this proceeding as further information and details regarding the Proposal, and how the Proposal might be implemented, are made available publicly. Accordingly, for now, the positions advanced herein should be construed as preliminary in nature.

1. The Proposed Goal Has Not Been Justified Adequately

In the Proposal, DPS and NYSERDA recommend establishment of a 2025 statewide EE target of 185 trillion British thermal units ("TBtu") of cumulative annual site energy savings relative to forecasted energy consumption in 2025. (Proposal at 2.) The Proposal treats this 185 trillion TBtu goal as a given, and contains inadequate justification for its selection and adoption. For instance, there is little to no explanation – let alone actual analysis – as to, *inter alia*, (i) why this specific goal is being recommended, (ii) what it might cost customers to achieve that goal, (iii) why existing, Commission-approved EE programs and funding levels suddenly should be deemed inadequate, and (iv) what other goals, if any, even were evaluated and the reasons for their rejection.

Multiple Intervenors contends that this proceeding should have started with a process to evaluate existing EE efforts and determine what modifications or improvements, if any, should be made with respect thereto. To the extent existing EE programs and funding levels were demonstrated to be lacking – something that has not occurred to date – a record then could be developed as to the projected benefits and costs of potential alternate EE goals. Instead, a goal that has not been justified as optimal, and may in fact be sub-optimal, is being pursued without adequate justification or public input.

Multiple Intervenors recommends that further analyses be conducted, and then presented to stakeholders, with respect to the proposed 185 TBtu goal and the justifications for that particular savings target. The Commission also should consider stakeholder input with respect to the proposed goal and only then determine whether that goal, or an alternate goal, should be adopted in this proceeding.

2. The Proposal Requires Considerable Further Development Before It Should Be Acted Upon

As seemingly recognized by DPS and NYSERDA representatives at the technical conferences conducted in June 2018, the Proposal very much is a work-in-progress. While that circumstance appropriately has been recognized, it warrants emphasis here. The Proposal advances numerous recommendations at an extremely high level, and lacks critical specificity as to, *inter alia*, what approaches and programs are contemplated and/or what precisely they would entail; how certain approaches and programs actually would be implemented; the entities responsible for implementing and/or administering the preferred approaches and programs; and what various approaches and programs would cost, and how the associated costs would be allocated and recovered, if at all, from electric and gas customers.

Accordingly, the Proposal is preliminary in nature. It requires considerable further development, and should not be acted upon by the Commission until, at a minimum, stakeholders are accorded a sufficient opportunity to review and provide feedback on a more fully-developed Proposal.

3. Customer Costs Have Not Been Evaluated Adequately

The Proposal lacks analysis of the costs to customers of achieving the 185 TBtu savings goal. The Proposal also lack analysis of the costs of various recommendations and approaches intended to contribute to achievement of that goal. The current lack (or absence) of focus on customer costs raises a red flag and needs to be remedied.

Multiple Intervenors supports EE in concept and in practice. On a relative basis, EE produces greater benefits, and makes more sense, than many of the other initiatives being pursued currently by the Commission. That being noted, EE investments, policies, recommendations, programs, *etc.*, cannot be evaluated – and should not be adopted – without a rigorous analysis of not only benefits, but also costs. The costs of this new EE initiative should be analyzed not only on a standalone basis, but also in aggregate with other funding commitments being imposed concurrently on customers.

Customers currently pay hundreds of millions of dollars, if not more, annually toward EE programs administered by NYSERDA and the State's electric and gas utilities. The Proposal does not address whether, and to what extent, that burden may be increased as a result of this initiative. Such analysis must be undertaken, and completed, before – not after – decisions are made committing customers to new, greater financial burdens. No one purchases a house without knowing what it costs. Similarly, the Proposal should not be acted upon until stakeholders are provided with, and are accorded ample opportunity to review and provide feedback on, detailed projections of what implementation of the Proposal would cost customers on an individual component basis and in its totality.

Furthermore, financial commitments imposed on customers related to this EE initiative should not be evaluated in a vacuum, but, rather, in context with all of the other discretionary, policy-oriented costs that currently are, or potentially will be, imposed on customers. For instance, customers currently are paying surcharges, higher delivery rates or higher commodity prices to pay for the following programs or initiatives that are not essential to the provision of safe and reliable utility service: (1) above-market payments to large-scale renewable projects under the Renewable Portfolio Standard; (2) above-market payments to large-scale renewable projects under the Clean Energy Standard ("CES"); (3) above-market payments to selected nuclear projects under the CES; (4) above-market payments to behind-the-meter renewable projects under the Value of Distributed Energy Resources initiative; (5) EE programs administered by NYSERDA under the Clean Energy Fund ("CEF"); (6) EE programs administered by electric and gas utilities under the Energy Efficiency Transition Implementation Plans; (7) funding the capitalization of the New York Green Bank under the CEF; (8) higher market prices due to the Regional Greenhouse Gas Initiative; (9) utility Earnings Adjustment Mechanisms ("EAMs") mandated under Reforming the Energy Revision ("REV"); and (10) REV-related investments and pilot programs. As though these ten programs are not enough, on deck are: (1) potential new incentives for beneficial electrification; (2) potential new storage-related requirements and incentives; (3) proposed above-market payments to offshore wind projects; and (4) the potential implementation of carbon pricing.

Many of these programs and initiatives have extremely-large price tags, some of which are in the billions of dollars on an individual basis, and also involve long-term commitments of customer funds. Without getting into the relative merits of these programs and initiatives, the point is that the Commission is considering and/or implementing numerous programs and initiatives that involve substantial, long-term financial commitments by captive customers, and there is little to no examination of the aggregated financial costs and obligations that are being and/or would be imposed on those customers. Customers' financial resources are limited, and new, costly initiatives should not be evaluated in a vacuum.

4. The Layering of Customer-Funded Subsidies Is Harmful to Economic Development

While considerable attention in the Proposal is accorded to an expected growth in EE-related jobs, there is no mention of economic harms (*e.g.*, reductions in economic activity and/or capital investment) related to higher energy costs. Many New York businesses also operate in, and/or possess the ability to locate to, other states and countries. For energy-intensive businesses, such as manufacturing, the cost of energy – and particularly electricity – is one of the key factors used in determining where to locate facilities, production, employees and capital investments.

From an energy cost and economic development perspective, the practice of layering expensive, customer-funded program on top of expensive, customer-funded program simply is not sustainable. The Commission needs to rely on market-based approaches, spurring voluntary and non-subsidized EE projects, to a much-greater extent, while reducing – not increasing – the funding obligations being imposed on customers. This is especially true if EE-related reductions well in excess of prior achievements are desired.

Problematically, most Multiple Intervenors members – even those that have participated aggressively in EE programs wherever feasible – pay far more in program costs than the benefits they receive therefrom, although there are very-limited exceptions. Thus, what often occurs is that through higher rates, members essentially subsidize the EE projects of other customers, including potential competitors. They also experience higher energy costs than if they funded 100% of their own EE projects without incentives but did not have to pay for EE programs.[2] The impact of the Proposal on the State's economic well-being should be addressed.

5. The Proposal Fails to Adequately Address Critical EE-Related Cost Allocation and Cost Recovery Issues

As detailed, *supra*, Multiple Intervenors is very concerned with those portions of the Proposal calling for increased reliance on customer-funded EE programs. Importantly, to the extent the Commission elects to continue to rely on such programs, it needs to address critical EE-related cost allocation and cost recovery issues that are not addressed adequately, if at all, in the Proposal.

For many years, the Commission has allocated and recovered EE-related costs volumetrically, based solely on consumption (*i.e.*, per kWh or therm).[3] Such an approach is inequitable because it is inconsistent with cost causation. EE programs are designed and intended not only to reduce consumption, but also to reduce demand, including but not limited to peak demand. Accordingly, EE program costs should be allocated to and recovered from customers partly on the basis of energy and partly on the basis of demand.

It is important for the Commission to understand that the purely volumetric allocation and/or recovery of EE-related costs not only is inequitable, it results in

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[2] Many Multiple Intervenors members have been investing heavily in EE projects at their facilities for a very long time, and are reaching a point of diminishing returns. For some such large customers, the prospective investment in EE projects does not offer nearly the payback that initial large-scale EE projects achieved in the past. For more mature facilities in particular, attempting to obtain the same level of EE-related savings moving forward likely will be much harder, and more expensive, than in prior years. The Proposal, perhaps, recognizes this reality to some extent. (*See* Proposal at 11, Figure 1, "Energy Efficiency Achievable Savings Potential by Market Vertical" [depicting only 4% of achievable savings coming from "Manufacturing & Processing" and 0% from "Industrial Other"].)

[3] In this context, "allocate" refers to how EE-related costs are assessed to a utility's various customer service classifications, while "recover" refers to the manner in which a service classification's responsibility for EE-related costs is collected from individual customers.

disproportionate and excessive rate impacts on large, high-load-factor customers (who, ironically, are amongst the most energy efficient customers in the State). For years, Multiple Intervenors members individually have paid many hundreds of thousands – or millions – of dollars annually towards EE-related surcharges. Indeed, unlike other types of customers for which surcharges constitute only a small portion of their total electric delivery bill, many Multiple Intervenors members routinely have been forced to pay surcharges that exceed the cost of traditional delivery service from the utility. These enormous and inequitable surcharges have caused untold damage to economic development efforts within the State.

6. There Should Be Less – Not More – Reliance on Customer-Funded Utility Incentives

The Proposal seeks to increase reliance on utilities to achieve greater EE-related savings (which potentially conflicts with the stated goal of also increasing reliance on market-based approaches). To the extent customer-funded EE programs are deemed necessary at this time, Multiple Intervenors does not oppose such programs being administered by utilities.[4] Significantly, however, the purported need to provide utilities with greater customer-funded incentives to administer EE programs has not been justified.

Currently, as a result of REV, utilities that have completed rate proceedings now have in place certain EAMs related to EE goals. Multiple Intervenors does not agree that existing EAMs are necessary or ultimately will be beneficial to customers. The Commission possesses ample authority to direct the State's utilities to implement and administer EE programs. Customer-funded incentives – on top of recovery of program costs and lost revenues

[4] Assuming some continued reliance on customer-funded EE programs, Multiple Intervenors similarly does not oppose such programs being administered by NYSERDA. Multiple Intervenors cautions, however, that under such circumstances, the roles of NYSERDA and the utilities should be clear, such that customers are not funding competing programs by multiple entities.

– are not necessary, or at most should be limited in magnitude and to reward only exemplary performance.

Of course, in designing utility incentives, there are significant informational advantages possessed by utilities, which make the development of equitable incentives especially challenging for regulators and intervener parties alike. Moreover, it is not clear to Multiple Intervenors why customers should fund positive incentives to reward achievement of certain EE performance levels without utilities being exposed to negative incentives for failing to achieve certain minimum performance levels. Furthermore, inasmuch as existing EAMs are extremely new, there has been no real justification or analysis advanced for increasing reliance on them or exposing customers to even-greater costs, especially given an absence of any demonstration that current EAMs are inadequate. Accordingly, the Proposal should not include, or rely upon, new utility incentives that would be borne by customers.

7. The Proposed Fuel Neutral Approach Is Inequitable to Utility Customers

The Proposal advances "a fuel neutral approach to programs to be delivered by utilities, consistent with New York's commitment to reduce emissions from all fuels and across all market segments." (Proposal at 3.) Multiple Intervenors contends that such application of a fuel neutral approach is inequitable to utility customers and should be rejected.

Multiple Intervenors is not opposed to reasonably-priced and cost-effective efforts "to reduce emissions from all fuels and across all market segments." Importantly, however, Multiple Intervenors opposes proposals to make electric and/or gas customers fund such efforts. Such proposals are inequitable because they require utility customers to subsidize consumers of other fuels as well as other market segments. If the desired emission reductions are important to the State, it should fund such efforts itself, or extract the costs of such efforts from consumers of other fuels and the other market segments being targeted.[5] It would be far more equitable to (i) limit the financial obligations of electric customers to Commission-mandated electric EE programs, (ii) limit the financial obligations of gas customers to Commission-mandated gas EE programs, (iii) require consumers of other fuels to fund emission-reducing activities associated with such fuels, and (iv) require sectors other than the electric and gas sectors to fund emission-reducing activities associated with those particular sectors.

8. The Proposed Reliance on More Stringent Building Codes and Appliance Standards Is Appropriate

The Proposal recommends strengthening existing statutes "on building codes, appliance standards, and finance to result in greater energy efficiency impact." (Proposal at 3.) Multiple Intervenors generally supports this approach.

As detailed, *supra*, Multiple Intervenors has substantial concerns regarding the possible imposition of incremental (and presently unknown) financial burdens on electric and gas customers as a result of this initiative, especially in the form of increasingly-expensive, customer-funded EE programs. Multiple Intervenors also is concerned about the prospect of electric and gas customers being forced to fund efficiency gains in other sectors. Increasing the stringency of building codes and appliance standards, where justified, is a more appropriate – and equitable – means of achieving meaningful efficiency gains. Modifying building codes and appliance standards should result in EE-related savings, potentially of a substantial magnitude, without (i) increasing electric and gas costs or (ii) causing electric and gas customers to cross-

[5] Similarly, not all electric customers take gas service from the same utility, and *vice versa*. Thus, it is inherently inequitable to force (i) electric-only customers to fund gas EE programs and expenditures and (ii) gas-only customers to fund electric EE programs and expenditures.

subsidize other sectors.[6] Thus, Multiple Intervenors encourages reliance on more stringent building codes and appliance standards, where warranted, as an alternative means to achieve increased EE without increasing the already-significant energy cost burden imposed on customers.

9. EE Program Collections and Expenditures Should Be Equitable on a Customer Type and Geographic Basis

For the reasons detailed, *supra*, Multiple Intervenors is concerned about the proposed expansion of customer-funded EE programs above existing levels. To the extent the Commission continues to rely upon customer-funded EE programs, it should, at a minimum, adopt reasonable guidelines to ensure that collections and expenditures related to those programs are equitable on a customer type and geographic basis.

For instance, one measure of equity could be to ensure that program expenditures targeted at large non-residential customers generally are consistent with program collections from such customers.[7] The same standard obviously would apply to other customer types. In other words, the Commission should attempt to minimize interclass subsidies between customer

[6] For many energy-intensive businesses and industries, electric and/or natural gas costs are amongst the largest costs of operations and, consequently, the relative cost of energy in existing and prospective locations often is a critical or the determinative factor in decisions such as where to locate facilities, production lines, employees and capital investments. Consequently, proposals to require electric and gas customers to fund EE programs or projects targeted at other fuels, or other sectors entirely, if implemented, would exacerbate New York's competitive disadvantage vis-à-vis other states in terms of energy costs and reduce economic activity within the State.

[7] There are substantial differences between large non-residential customers and small non-residential customers with the respect to the design and the implementation of EE programs, and, therefore, such customer types should not be lumped together for purposes of evaluating whether EE program collections and expenditures are equitable.

types in the implementation of customer-funded EE programs.[8] Additionally, the Commission should strive for geographic equity, such that customers of one utility are not subsidizing customers of another utility with respect to EE programs.[9] While such forms of equity may not be achievable on an exact basis, and other considerations may justify modest variations, there should be at least some reasonable expectation that EE programs and collections as equitably as possible.

CONCLUSION

For all the foregoing reasons, Multiple Intervenors urges that the Proposal be modified in accordance with these Preliminary Comments.

Dated: July 16, 2018
Albany, New York

Respectfully submitted,

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[8] Under no circumstances, however, should EE programs be implemented unless they are demonstrably cost-effective. It makes little sense to force customers to fund EE programs that are not cost-effective. If customer collections exceed the cost of truly cost-effective programs, then collections are too high. Moreover, programs and/or individual components thereof should not be aggregated for the purpose of masking an uneconomic program or component with one or more that truly are cost-effective.

[9] This concern is more applicable to EE programs administered by NYSERDA than ones administered by individual utilities.