STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on June 30, 1998

COMMISSIONERS PRESENT:

Maureen O. Helmer, Chairman
John B. Daly
Thomas J. Dunleavy
James D. Bennett

CASE 94-E-0952 - In the Matter of Competitive Opportunities Regarding Electric Service.

System Benefits Charge -- New York State Energy Research and Development Authority's Proposed System Benefits Charge Plan; Systems Benefits Charge-Funded Utility-Run Programs; and Petitions for Rehearing.

ORDER APPROVING SYSTEM BENEFITS CHARGE PLAN WITH MODIFICATIONS AND DENYING PETITIONS FOR REHEARING

(Issued and Effective July 2, 1998)

BY THE COMMISSION:

BACKGROUND

Opinion No. 96-12[1/] established a system benefits charge (SBC) to fund public benefit programs, during the transition to fully competitive energy markets, in the areas of energy efficiency, research and development, environmental protections, and low income. In Opinion 98-3[2/], we further refined our concept of the SBC. We found that programs in most of these areas could deliver greater benefits and operate more effectively on a statewide basis and determined that the SBC is

---

[1/] Cases 94-E-0952 et al., In the Matter of Competitive Opportunities Regarding Electric Service, Opinion No. 96-12 (issued May 20, 1996), (hereinafter "Opinion No. 96-12").

[2/] Case 94-E-0952, et al., In the Matter of Competitive Opportunities Regarding Electric Service, Opinion No. 98-3, Opinion and Order Concerning System Benefits Charge Issues (issued January 30, 1998), (hereinafter "Opinion No. 98-3").

not to fund transmission and distribution-related activities, recovery of stranded costs or deferred program costs, taxes, or costs of compliance with state or federal law. In Opinion No. 98-3, we also designated the New York State Energy Research and Development Authority (NYSERDA) as the statewide SBC fund administrator charged with the preparation of a plan, for our approval, regarding the administration of SBC funds and programs. A Memorandum of Understanding (MOU), dated March 11, 1998, among NYSERDA, the Commission, and the Department of Public Service further defines NYSERDA’s responsibilities in this regard.

NOTICE AND COMMENT

The MOU requires NYSERDA to solicit input from all concerned parties prior to submitting an SBC plan to the Commission. In compliance with the MOU, NYSERDA solicited written comments from interested parties, held a public forum on April 8, 1998, to present information on the SBC fund and to solicit comments, and met with its Advisory Group on April 28, 1998. On May 8, 1998, NYSERDA submitted the Proposed Plan for Public Benefit Programs Funded by System Benefits Charge (the SBC Plan) for the three year period beginning July 1, 1998.

Staff met with NYSERDA on several occasions to discuss and clarify aspects of the Plan. Staff and NYSERDA have discussed many of the clarifications and modifications described below, and Staff will continue to monitor and work with NYSERDA during its administration of the SBC programs.

Pursuant to the requirements of the State Administrative Procedure Act (SAPA), a notice was published on April 29, 1998 in the New York State Register, which allowed parties until June 15, 1998, to comment on the SBC Plan, as well as all other aspects of SBC administration as parties may wish to address. Comments were received from the following parties: Natural Resources Defense Council and Pace Energy Project (NRDC/Pace), New York State Community Action Association and New York State Weatherization Directors’ Association (CAA/WDA), Independent Power Producers of New York, Inc. (IPPNY), Empire

State Electric Energy Research Corporation (ESEERCO), Consolidated Edison Company of New York, Inc. (Con Edison), Orange and Rockland Utilities, Inc. (O&R), Building Performance Contractors Association (BPCA), Decotex 2000, The E Cubed Company on behalf of the National Association of Energy Service Companies (NAESCO), The New York Energy Efficiency Council, Inc., (NYEEC), Couch, White, Brenner, Howard & Feigenbaum, LLP for Multiple Intervenors (MI), Huber, Lawrence and Abell for New York State Electric and Gas Corporation (NYSEG), Lighting Management Systems, Niagara Mohawk Power Corporation, N.Y. Energy Savers Group, Inc. (Energy Savers), and NYS Office of General Services (OGS). The discussion below may not attribute issues to all, or any, parties that have raised each issue. We have, however, considered all party comments.

AVAILABILITY OF SBC FUNDS

A total of $234.3 million in SBC funds will be collected by the six electric utilities for the three year period commencing July 1, 1998, under consideration in the SBC Plan. Programs would be conducted in three main areas: energy efficiency, research and development (R&D), and low income. Table 1 presents the proposed overall annual funding in these three areas, including the utility-run programs discussed later.

Table 1 Proposed Overall Annual SBC Funding

Program Area	Year 1 $ Million	Year 2 $ Million	Year 3 $ Million	Total $ Million
Energy Efficiency	57.7	58.3	58.4	174.4
R&D	11.7	11.7	11.7	35.1
Low Income	8.4	8.4	8.0	24.8
Total	77.8	78.4	78.1	234.3

DESCRIPTION OF THE SBC PLAN

The SBC Plan proposes that $174.5 million of the total SBC funds would be transmitted by the electric utilities to NYSERDA, to be spent on programs administered by NYSERDA. The remaining $59.8 million in SBC funds would be retained by the utilities to be spent on their own programs.

Competitive solicitations would be conducted for almost all programs administered by NYSERDA, and NYSERDA would manage the contracts awarded, although NYSERDA may choose to conduct some limited programs itself. While some technical assistance programs could be available immediately, NYSERDA intends to issue the first round of solicitations in Summer 1998, and award contracts and have programs start in Fall 1998. Other solicitations would follow in Fall 1998 and Winter 1999, with some additional ones thereafter. NYSERDA intends the SBC Plan to be flexible by allowing modifications to reflect changes in public benefit program needs over the three years of the SBC Plan.

Table 2 presents the proposed overall funding by category proposed for NYSERDA-administered programs over three years, including administrative costs.

Table 2 Proposed NYSERDA-Administered SBC Programs

$ Millions	Program Costs	Administrative Costs	Total Costs
Energy Efficiency	135.85	7.15	143.00
R&D	21.00	1.11	22.10
Low Income	8.93	0.47	9.40
Total	165.78	8.73	174.50

Proposed SBC Energy Efficiency Programs

NYSERDA’s proposed SBC Plan provides for Energy Efficiency Program net expenditures (after administrative

expenses) totaling $135.85 million for the three year period. Program activities are divided into three categories:
(1) transformation of markets for energy efficient products;
(2) encouragement of the energy services industry; and
(3) technical assistance and outreach activities. NYSERDA notes that the Plan has flexibility to either initiate new or enhanced programs during the term of the SBC Plan or to discontinue programs if ongoing evaluation and assessment indicate efforts are no longer warranted.

Market Transformation Programs

These programs are intended to transform markets for energy efficiency products by overcoming market barriers, such as access to information, risk aversion, lack of product availability, split incentives, organizational practices, and manufacturing production priorities. Market transformation programs are proposed to be conducted in the following areas:

Upstream Initiatives ($17M) to increase the availability, promotion, and sale of energy-efficient products and services for: High-Efficiency Non-Residential Lighting Retrofits; Packaged HVAC Initiatives; Motor Systems and Machine Drives Initiatives; and a Residential Appliance Initiative. NYSERDA will coordinate with the Northeast Energy Efficiency Partnership (NEEP), U.S. DOE, and other similar programs.

Financial Assistance ($11.5M) designed to maximize and assist private investments in energy efficient and renewable technologies and reduce the barriers to energy financing. This program is primarily targeted at projects that are small and not conducive to aggregation, and thus would not otherwise attract ESCOs.

New Construction ($18.44M) designed to produce a permanent improvement in the standard design practices utilized by building designers. The program will encourage the incorporation of energy efficiency into the design, construction, and operation of buildings, including new construction and major renovation and remodeling. The program will provide technical assistance and financial incentives to building designers and owners to encourage adoption of energy efficient equipment and design features.

Residential Building Performance Initiatives ($13.68M) designed to encourage the purchase of energy efficiency services and products by residential consumers in existing 1-4 family dwellings. Additionally, SBC funds will also support and strengthen the infrastructure for delivery of electric energy efficient products through a building performance services network. SBC funds will also be coupled with other funds to support pilot projects in the market transformation program, Building Performance Market Enhancement Pilot Program (BPME).

Energy Services Industry Programs

The Energy Services Industry Programs are designed to encourage energy service companies (ESCOs) to offer customers energy efficiency as a value-added service and to overcome market barriers to energy efficiency projects. Energy services industry programs are proposed to be conducted in the following areas:

The Standard Performance Contract ($52.12M) to offer fixed-price incentives for measured energy savings that are achieved by installing energy efficiency measures as specified under a standard agreement. The incentive payments to project sponsors are performance based and vary according to the actual savings achieved. For administrative cost reasons, NYSERDA proposes the minimum project size be 200,000 kWh of annual savings at a single site, but states that aggregation of multiple buildings at a single site and at dispersed sites might be allowed as a way to achieve that level.

The Financial Packaging Services ($2.25M) to offer financing for energy performance contracts to the institutional and governmental sectors. NYSERDA proposes to expand its existing program for K-12 schools and State facilities to cover colleges, hospitals, and government-owned facilities.

Technical Assistance and Outreach Programs

Technical assistance and outreach programs are proposed to be conducted in the following areas:

Technical Assistance ($13.8M) including engineering assistance, general energy audits, aggregation and rate analysis services, and comprehensive energy management services. These programs will support the implementation of cost-effective energy efficiency measures and capital construction projects.

Outreach ($6.59M) proposed to target all customer sectors and improve public awareness of energy efficiency benefits and understanding of utility restructuring and competition.

Proposed SBC Research and Development (R&D) Programs

NYSERDA proposes to spend about $21 million over the three years on R&D. R&D programs are proposed to be conducted in the following areas:

Renewable Energy ($10.5M) to fund renewable energy initiatives that include wind, photovoltaic and biomass projects. Pursuant to the Niagara Mohawk PowerChoice settlement, Staff, working with the Pace Energy Project, Niagara Mohawk and NYSERDA, has developed a proposal for conducting wind and photovoltaic research so that research in these critical areas will go forward, while recognizing the limited availability of SBC funds. The proposal provides funds toward the development of 10 MW of wind and 1.6 MW of photovoltaic projects; Niagara Mohawk will develop some wind and photovoltaic resources, and NYSERDA will issue competitive solicitations for the remainder. The proposal is summarized in a letter to Niagara Mohawk from Laurence B. DeWitt and Paul B. Powers, dated April 30, 1998. The letter is attached as Appendix A to this Order and is considered part of the SBC Plan.

Energy Efficiency Research ($4.2M) to develop innovative end-use energy-saving technologies and systems applicable to New York markets, focusing on those sectors that are least likely to be served by competitive markets.

Environmental, Monitoring, Evaluation and Protection ($4.2M) to address ecosystem monitoring, data collection and evaluation, environmental mitigation technologies and methods. The Plan proposes to issue solicitations for projects under this category in the summer of 1998.

Strategic Energy Research ($2.1M) to capture those public benefit research initiatives that do not readily fall into the categories above. Examples cited include electric energy storage, ultra-clean and high efficiency distributed technologies, and electric transportation technologies.

Proposed SBC Low Income Programs

NYSERDA proposes to spend nearly $9 million on low income programs over the three year period. Low income programs are designed to address and mitigate the energy affordability problems of low income households. NYSERDA proposes to launch a series of pilot programs designed to improve energy efficiency and energy management throughout the State's low income population in the following areas:

Weatherization ($4.7M) strategies to include efforts to reduce the usage and cost of all forms of energy in low income households through the direct installation of measures.

Aggregation ($2.35M) of low income customers in a statewide pilot program to increase the market power and self-sufficiency of this market segment.

Publicly-assisted Housing ($0.94M) to transform the design, procurement and implementation practices of publicly-assisted housing entities to ensure that life-cycle costing and energy-efficient products and services are incorporated into their routine business practices.

Public Awareness Campaign ($0.94M) aimed at low income consumers and service providers to educate and inform those groups of these and other services and options available to them in a restructured electric environment.

DISCUSSION

We will approve the SBC Plan prepared by NYSERDA, subject to certain clarifications and modifications discussed herein. The modifications include funding reallocations due to program modifications, eligibility criteria modifications, and a reservation of SBC funds in the amount of $3 million over three years for possible funding of environmental disclosure activities. We will also approve SBC funding for certain utility-run programs and deny petitions for rehearing and clarification of Opinion No. 98-3. The overall level of SBC funding questioned by NRDC/Pace was set in the individual utility settlements and will not be revisited here.

Funding Reallocations

Our reallocation of funds will increase overall spending on R&D programs by $5.33[1] million, increase overall spending on low income programs by $4.5 million, and reserve an overall $3 million in SBC funds for possible funding of environmental disclosure. The net result of these increases and set-asides will be a reduction in overall spending on energy efficiency programs, from that proposed in the SBC Plan, of $12.83 million.

Table 3 presents the overall use of SBC funds with these funding reallocations.

Table 3 Use of SBC Funds as Modified

$ Millions	Program Costs	Admin. Costs	Total NYSERDA	Utility Programs	TOTALS
Energy Efficiency	123.66	6.51	130.17	31.40	161.57
R&D	26.22	1.38	27.60	12.83	40.43
Low Income	13.21	0.70	13.90	15.40	29.30
Env Discl				3.00	3.00
Total	163.09	8.58	171.67	62.63	234.30

With these reallocations, the percentages of SBC funds devoted to the program categories become approximately: 69% energy efficiency, 17% R&D, 13% low income, and 1% environmental disclosure.

After sufficient experience with the operation of this spending plan, NYSERDA, after consultation with its Advisory Group, may propose to the Commission additional reallocations of funds administered by NYSERDA among the categories as it finds appropriate.

[1] RG&E’s $170,000 share of the $3 million for environmental disclosure should come from funds set aside in its Settlement for environmental/R&D programs funded by the SBC.

Party Program Proposals

Parties have proposed in their comments various specific programs, modifications, and program designs that either were not adopted herein or were too detailed for the intended scope of review. NYSERDA, in consultation with its Advisory Group, may consider these proposals in preparing solicitations, choosing programs for SBC funding, and implementing projects.

Energy Efficiency Program Modifications

The proposed SBC plan, including utility-run programs, allocates approximately 75% of SBC funding to energy efficiency programs. While some parties, such as NYEEC and NAESCO, support this allocation, other parties (e.g., IPPNY, CAA/WDA, NRDC/Pace) urge us to reallocate funds to other program areas. As indicated above, we agree that funds should be reallocated from energy efficiency to R&D and low-income programs.

NYSERDA should determine the best way to implement the $12.83 million reduction in overall spending on energy efficiency programs from that proposed in the SBC Plan. We will not reallocate specific funds among the energy efficiency programs as proposed by NRDC/Pace or Con Edison. We note, however, that the proposed energy efficiency Outreach Program ($6.6 million) appears too large, especially considering our own outreach program and the public awareness campaign proposed for the SBC low income program. As our own program will be providing consumers with information on competitive electric markets and the opportunities available to them in a restructured electric industry, SBC funds should not be used to "improve understanding of the complexities of utility restructuring." The budget for general energy efficiency outreach efforts might therefore be significantly reduced, as recommended by NRDC/Pace. Promotional efforts provided within the budget of specific programs may be more useful and should be considered. NYSERDA should consult with its Advisory Group before making any final decisions on the scope and content of any outreach program. Any outreach conducted by NYSERDA should be coordinated with our own program, as appropriate.

NYSERDA proposes to devote much of the funds allocated for energy efficiency programs to the Standard Performance Contract Program ($52 million). NAESCO, BPCA, and Lighting Management have noted that smaller customers may not be able to participate in this program. As proposed in the SBC Plan, the large minimum energy reduction (200,000 kWh annually) required to participate in the program would tend to exclude participation by residential and small commercial customers, or at least make it more difficult for them to participate. While the SBC Plan states that aggregation of load in order to meet the minimum reduction might be considered, we believe more aggressive measures should be taken to ensure that smaller customers are adequately served; NRDC/Pace and Lighting Management would seem to agree. Staff has discussed these concerns with NYSERDA, and they both agree that the Standard Performance Contract Program needs to attract participation by smaller customers.

The Standard Performance Contract Program should be modified to promote participation by smaller customers. This could be accomplished by either reducing the minimum savings required or, if this would present administrative difficulties, by assuring that small customers and their reductions would be aggregated. One method to encourage ESCOs to aggregate smaller customers would be to tie an ESCO’s ability to receive a payment for serving larger customers to the ESCO’s obtaining a certain amount of savings from smaller customers (below some specified electric consumption). Also, incentive levels for small customers could be higher than incentives for large customers, and/or a portion of the funds (perhaps 10%) could be set aside for small customers as suggested by NAESCO. We also note that aggregated low income customers could be served through the Standard Performance Contract Program, as suggested by NRDC/Pace.

Energy Savers would prefer efforts to promote financing for energy efficiency improvements rather than the Standard Performance Contract Program, but the SBC Plan includes both.

Some parties appear to favor greater incentive levels for the Standard Performance Contract Program, but there are limited funds. We are concerned that incentive levels not be excessive, but rather be set at levels that overcome market hurdles without creating windfalls for ESCOs and/or participants. For this reason, incentive payments for a project should be capped at 50% of the eligible project cost (although we expect that the incentives would ordinarily be much lower than 50% in any case). Furthermore, as the SBC Plan mentions, all measures that are already standard industry practices should be ineligible for incentives. The energy savings used to calculate incentives should include only the difference between the energy use of a device meeting code requirements or standard industry practices and the energy use of the high-efficiency device installed. NYSERDA and Staff agree that the International Measurement and Verification Protocols should be used to verify savings, while eliminating Option A as proposed by NAESCO and NYEEC.

The incentives would be a consistent percentage of the present dollar value (based on marginal generation costs) of each measure’s useful-lifetime energy savings. Therefore, they will vary among energy efficiency projects by the life of specific measures and by time-of-use pattern of the savings. The consistent percentage, which may vary by customer sector or for a specific class of emerging technologies, would be set at the minimum level needed to stimulate market activity. Con Edison believes it is inappropriate to use long run avoided costs (LRACs) in determining incentive levels and cost effectiveness, in light of electric industry restructuring, but does not suggest alternatives. The LRACs are appropriate for the SBC process; they were updated and include relevant societal resource costs.

The Standard Performance Contract Program is intended to encourage and help the developing retail ESCO[1] market to offer value-added services to customers in addition to the sale of electricity. This goal could be achieved by limiting payments under the Standard Performance Contract Program to ESCOs that are eligible to sell and are actively selling electricity in the retail market in New York. NAESCO and NYEEC oppose such a limitation. We recognize that such a requirement might adversely affect participation. In addition, as noted by NYEEC, it is not clear that customers want commodity and energy management services from the same provider. Therefore, instead of imposing such an ESCO eligibility requirement at this time, NYSERDA and Staff will monitor participation in the Standard Performance Contract Program to ensure it is meeting program objectives and develop changes as warranted. In any case, only ESCOs should be eligible for direct program payments; individual customers would not be eligible for direct incentives under the program. NYSERDA should develop the Standard Performance Contract Program details to satisfy the above concerns.

NYEEC and NAESCO are concerned that the proposed SBC plan would allow NYSERDA to retain emission credits derived from energy efficiency projects. We understand that Department of Environmental Conservation draft emission credit program regulations make it difficult if not impossible for individual customers to qualify for credits, and that the value of such individual credits would be low. NYSERDA should monitor the emission credit program and propose changes to the SBC plan as warranted, but we will not direct changes at this time.

O&R argues that energy audits are required to inform customers of the results of market transformation efforts, and

---

[1] The term "ESCO" has been defined previously in this proceeding as "an entity that can perform energy and customer service functions in any competitive environment, including provision of energy and assistance in the efficiency of its use." Case 94-E-0952, Restructuring New York’s Electric Industry: Alternative Models and Approaches - Glossary.

says that more funding for audits, especially for residential customers, is needed. We note, however, that the plan proposes technical assistance activities that should satisfy O&R's concerns.

Restrictions on affiliate transactions such as joint advertising, as recommended by NAESCO, were addressed in the individual utility settlements, and will not be revisited here.

R&D Program Modifications

NRDC/Pace, IPPNY, ESEERCO and the utilities urge that additional funds be allocated to R&D programs; some parties propose increasing (NRDC/Pace, IPPNY) and others propose decreasing (ESEERCO and Con Edison) the amounts devoted to renewables. The SBC Advisory Group also expressed the desire to have the SBC Plan devote additional funds to R&D.

We are concerned that the amount of SBC funds devoted to R&D may be too small. The amounts available in the second and third years of the Plan may not be sufficient to fund the continuation of critical projects from the first year, let alone the funding of new R&D. Therefore, the R&D budget will be augmented with an additional $5.5 million in funds over the three years, re-allocated from the energy efficiency budget. With regard to funding for renewables, we find that the proposal contained in the April 30, 1998 Staff letter strikes an appropriate balance among competing technologies, the interests of their proponents, the renewable goals in the PowerChoice agreement, and the availability of funds. This proposal will maintain momentum in renewables research while providing the incentive for obtaining additional co-funding.

The utilities and ESEERCO, as well as other parties including OGS[1/] and Decotex 2000, urge that programs[2/] that they propose be approved for SBC funding in this Plan. We understand

---

[1/] OGS programs should be considered only to the extent that they directly benefit customers that are not NYPA customers.

[2/] These programs include energy efficiency as well as R&D.

that NYSERDA intends to give careful consideration to all projects proposed in response to its competitive solicitations. We agree that most proposals should be considered through the competitive process where NYSERDA will include among its criteria the value of program continuity, especially with respect to funding the utility R&D projects that Staff recommended for interim SBC funding, when it evaluates the future mix of projects for SBC funding.

However, we want to emphasize that certain ongoing environmental monitoring projects are crucial to the development of state policy in such areas as acid deposition and the importance of reducing Midwest emissions. They require special consideration. Further, the Final Generic Environmental Impact Statement for Opinion No. 96-12 requires that Staff monitor the environmental impacts of competitive restructuring. We want to ensure that these long-term projects continue without impairment of valuable on-going research processes, data and personnel. Therefore, we are proposing that NYSERDA conduct an expedited budgetary, scheduling and technical review of the six ESEERCO Environmental Assessment and Science Projects proposed by ESEERCO for extended funding in 1999 and 2000. After that review, NYSERDA may determine if the solicitations for their continuation should be competitive or sole-source. In either case, NYSERDA should make available multi-year funding for the selected programs.

The SBC Plan contains two sets of criteria for identifying R&D projects that are "more appropriate" or "less appropriate" for SBC funding, given on pages 5-2 and 5-3 of the SBC Plan. Additional criteria should be used to identify projects that are "more appropriate":

1) Modify the fourth item to include the provision that research results will be available to the public without the exclusive claim of royalties by the project participants.

2) Add the following:

- R&D that will encourage competition or SBC seed money that will encourage market participants to takeover this area of R&D.

- The value of existing utility public benefit programs recommended by Staff for interim funding.

- R&D meeting other criteria in this table that could enhance economic development in New York State or has other New York State benefits.

Low Income Program Modifications

The low income program in the SBC Plan is described as a series of pilot programs designed to provide services to low income consumers and to test innovative approaches to serving these customers. The aggregation program is presented as a statewide initiative, and the weatherization program would target funds to a geographically diverse group of Weatherization Assistance Program (WAP) providers.

Several utilities are conducting their own low income programs, and the SBC Plan needs to consider coordination with the utility-run low income programs.[1] However, the SBC Plan does not describe how that will occur. In addition, the SBC Plan does not address the specific needs of areas not served by utility-run programs.[2] Also, the SBC Plan's proposed allocation of funds among the various program areas may not comport with certain provisions of the approved settlement agreement in the Con Edison case. That agreement requires that ten percent of energy efficiency spending provided through Con Edison's SBC funding amount be allocated to low income energy

[1] Niagara Mohawk, NYSEG, O&R and RG&E are conducting low income programs pursuant to their settlement agreements.

[2] Those areas include the territories of Con Edison, Central Hudson, and O&R, excluding the City of Port Jervis.

efficiency programs.[1] While we estimate that this will amount to approximately $3.0 million annually, the SBC Plan has allocated only about $3.0 million annually to all its low income programs, and would allocate only about $1.8 million annually to weatherization services. CAA/WDA and NRDC/Pace also urge that additional funds be allocated to low income programs.

We will modify the SBC Plan by redirecting $4.5 million ($1.5 million annually) from the energy efficiency program budget to the pilot weatherization direct installation program. In addition, the SBC Plan should be modified to target those geographic areas not served by utility-run low income programs. Such modification will serve to satisfy the provisions of the Con Edison agreement and to better match the planned distribution of SBC low income funds with their source, as suggested by Con Edison and O&R. Of course, SBC funds will be used primarily to achieve electric savings, but will not be used to serve low income NYPA customers.

Environmental Disclosure

MI recommends that the SBC be used to fund environmental disclosure. Environmental disclosure has been discussed as an important means of customer information about sources of electric generation. If other sources of funding are not available, it would be appropriate for the SBC to fund environmental disclosure. However, it is premature to decide that the SBC will be used for this purpose. Therefore, the electric utilities should set aside in reserve from their SBC collections an overall amount of $3 million ($1 million annually) commencing July 1, 1998. The reserved funds should be set aside and earn interest pending a determination by the Commission regarding a funding mechanism for environmental disclosure.

[1] Case 96-E-0897, Con Edison Agreement and Settlement, issued September 19, 1997, p.24.

Table 4 provides a breakdown of the use of SBC funds by electric utility, including the set-aside of environmental disclosure funds.

Table 4 SBC Fund Breakdown by Electric Utility

$ Millions	NYSERDA	Utility	Env. Discl.	GRAND TOTALS
CHG&E	12.90	0.50	0.10	13.50
Con Ed	92.62	17.00	1.38	111.00
NMPC	32.29	11.90	0.81	45.00
NYSEG	26.06	13.70	0.44	40.20
O&R	7.90	1.90	0.10	9.90
RG&E	0.00	14.53	0.17	14.70
Total	171.77	59.53	3.00	234.30

NOTE: RG&E's share should come from the $200,000 per year set aside in its Settlement for Environmental/R&D programs funded by the SBC. The allocation of environmental disclosure funds by utility was made on the basis of 1997 electric operating revenues. See Appendix B for amounts by year.

UTILITY-RUN PROGRAMS

Opinion No. 98-3 contemplated that certain ongoing utility programs might continue under short-term SBC funding until NYSERDA assumed administration of the SBC program, and directed Staff to consult with the utilities to determine which programs might continue with such bridging funds. The energy efficiency programs that Staff recommends receive SBC funding include DSM bidding commitments, which generally continue through the three year SBC period, previous rebate and contractual commitments, and programs to continue valuable services to customers through June 30, 1998. Several R&D projects that Staff recommends are near completion, or involve long-term monitoring and valuable information that would be lost if these projects are not completed.

Appendix E of the SBC Plan lists the utility programs that Staff recommends continue to receive SBC funding. Funding for R&D projects is recommended only for 1998; several may be completed in 1998. NYSEG is mistaken about the amount of funding approved for 1999 and 2000: Staff has not recommended funding approval for ESEERCO or EPRI projects for 1999 and 2000, and we are not approving the funding beyond 1998. NYSERDA will consider further continuation of those utility R&D programs submitted in response to its program solicitations. However, the six ESEERCO Environmental Assessment and Science Projects will receive an expedited budgetary, scheduling and technical review as previously discussed. If and when those projects are approved, they would be funded by NYSERDA with the SBC. In addition, the utilities will continue to receive SBC funds of about $31 million over the three year period, as identified in Appendix E of the SBC Plan, to cover their continuing contractual commitments for bidding, rebate, and curtailable load programs. The utilities may submit their other energy efficiency programs in response to NYSERDA’s program solicitations, where NYSERDA will consider the value of continuity, experience and cost-effectiveness relative to other offerings. Therefore, we will approve SBC funding for utility-run programs as described above. The utilities will be directed to return to NYSERDA any approved SBC funds not expended on these programs, unless their individual restructuring settlement provides for some other specific disposition of such unexpended funds.

TRANSFER OF SBC FUNDS TO NYSERDA BY UTILITIES

The utilities are to enter into SBC funding agreements with NYSERDA. These agreements should be kept simple, and need only set forth the amounts to be transferred from the respective utility to NYSERDA for each of the three years, a schedule of payments, which should be no less frequent than quarterly, and commitments by NYSERDA to keep the SBC funds segregated and accounted for separately from all its other funds and to use those funds only for the purposes of the public benefit programs funded by the SBC and in accordance with the approved Program plan, the MOU, and our directions. The first payment shall be due within 30 days of the date of this Order. For late payments, interest at the utility's discount rate will be charged against any unpaid balance for the period during which the funds are overdue. Attached hereto as Appendix B is a table showing the amount of SBC funds to be transferred to NYSERDA by SBC program year, by utility.

We will address the disposition of NYSERDA's unexpended SBC funds when we consider extension of the SBC program beyond its three-year term.

PETITIONS FOR REHEARING AND CLARIFICATION

Petition of PII

Public Interest Intervenors (PII)[1] requested rehearing and clarification of Opinion No. 98-3 asserting that we have erred as a matter of law[2] in authorizing the use of SBC funds for going-forward costs of multi-year bid programs. PII asserts that such spending, for any single utility, may preclude new energy efficient initiatives and therefore not provide the mitigative effects "promised" by the Commission in Opinion No. 96-12.[3] PII also seeks clarification of the appropriateness of funding "going forward costs of multi-year bidding programs" to the extent that such costs include deferred equipment and installation costs, and asks us to limit SBC funding for going forward bid payments to contemporaneous services rather than deferred costs.

The arguments raised by PII are substantially the same as those it already raised in Case 96-E-0898, the Rochester Gas and Electric Corporation (RG&E) restructuring proceeding. Therein, we:

---

[1] PII is composed of Natural Resources Defense Council, Pace Energy Project, New York Public Interest Research Group, Environmental Advocates, New York Rivers United, American Lung Association, and Citizens Action of New York.

[2] PII asserts that the State Environmental Quality Review Act (SEQRA), N.Y. Env. Cons. Law, Article 8, would be violated.

[3] Opinion No. 96-12, mimeo pp. 76-81.

> expressly recognized that there may be adverse environmental impacts on air quality. Consequently, PII's demonstration that RG&E's funding for such programs is lower than its 1995 expenditures and may not support incremental programs, which it contends will lead to adverse impacts, does not constitute a valid basis for finding that we have not complied with SEQRA or the FGEIS. In addition, RG&E's total SBC spending level over the five-year period will approximately equal the 1995 expenditure levels capped at one mill per kWh, which we generally concluded was reasonable in Opinion Nos. 96-12 and 98-3. Also, as explained in Opinion No. 98-1, we specifically directed the parties to renegotiate a number of items and establish minimum spending limits for the SBC. We confirmed the reasonableness of the new levels of SBC spending at the time of our decision [Opinion No. 98-1, mimeo pp. 4 and 45]. PII's petition, therefore, is denied.[1/]

As PII has not raised any substantially new argument, the petition herein will also be denied for the reasons previously stated.

Petition of Con Edison

Consolidated Edison Company of New York, Inc. (Con Edison) requested that we clarify Opinion No. 98-3 to require that a utility's non-participation in the third-party administration of SBC funds preclude the use in that utility's service territory of SBC revenues administered by the third-party administrator. Con Edison believes that to do otherwise would be unfair and inequitable to Con Edison's ratepayers that are likely to be the largest contributors to the SBC fund and have characteristics and SBC program needs that are very different than those of consumers in the rest of the State.

Con Edison's requested requirement is both impractical and unnecessary and will be denied. In Opinion No. 98-3, we noted we will adhere to the principle that ratepayer funds should

---

[1/] Case 96-E-0898, In the Matter of Rochester Gas and Electric Corporation's Plans for Electric Rate/Restructuring Pursuant to Opinion No. 96-12, Order Denying Petitions for Rehearing and Clarification (issued May 22, 1998), mimeo p. 6.

benefit the ratepayers who provide them, while realizing that the nature of public benefit programs tends to be general and societal and that such programs will deliver greater benefits and operate more effectively when implemented on a statewide basis.[1/] Con Edison's proposed restriction on the use of SBC funds would hamper the activities of the statewide administrator to a degree that is unnecessary to ensure an equitable distribution of the funds.

CONCLUSION

We will approve NYSERDA's proposed SBC Plan with the clarifications and modifications discussed herein. With these clarifications and modifications, including the Staff letter of April 30, 1998 (Appendix A), regarding wind and photovoltaic R&D projects, NYSERDA's Plan can achieve our goal of assistance in the development of a competitive market for these services. We will also approve SBC funding for certain utility-run programs, as contained in the SBC Plan. In addition, SBC funds in the amount of $3 million will be set aside and reserved for possible funding of environmental disclosure. Finally, we will deny the petitions for rehearing and clarification of Opinion No. 98-3.

The Commission orders:

1. Central Hudson Gas and Electric Corporation, Consolidated Edison Company of New York, Inc., Niagara Mohawk Power Corporation, New York State Electric and Gas Corporation, and Orange and Rockland Utilities, Inc., shall transfer the amounts shown in Appendix B of this order to NYSERDA, and set a schedule of payments with NYSERDA, which shall be no less frequent than quarterly.

2. SBC funds retained by these utilities shall be used for only the SBC programs approved by this order, and any unexpended funds shall be turned over to, and be administered by, NYSERDA for SBC programs, unless their individual restructuring

[1/] Opinion No. 98-3, mimeo p. 7.

settlement provides for some other specific disposition of such unexpended funds.

3. Commencing on July 1, 1998, funds shall be set aside for environmental disclosure, as identified in Table 4, of this order, by the utilities, including Rochester Gas & Electric Corporation, and earn interest, pending a determination by the Commission regarding a funding mechanism for environmental disclosure.

4. The petitions for rehearing and clarification of Public Interest Intervenors and Consolidated Edison Company of New York, Inc., are denied.

5. The May 8, 1998 Proposed Plan for Public Benefit Programs Funded by System Benefits Charge prepared by New York State Energy Research and Development Authority is approved, subject to the clarifications and modifications discussed herein.

6. This proceeding is continued.

By the Commission,

(SIGNED)

JOHN C. CRARY
Secretary

APPENDIX A

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE
THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350
Internet Address: http://www.dps.state.ny.us

April 30, 1998

David H. Devendorf
Director, Research and Development
Niagara Mohawk Power Corporation
300 Erie Boulevard West
Syracuse, NY 13202

Dear Mr. Devendorf:

We discussed Niagara Mohawk's proposed wind and solar projects at our meeting on April 8, 1998. We agreed to parameters for these programs that would be funded by the system benefits charge (SBC).

Niagara Mohawk is authorized to proceed with its wind and solar renewable energy projects as specified in the agreed on parameters, below.

Wind and Solar Parameters Agreed to on April 8

The SBC could fund wind generation at about $8 million and PV at about $7 million over the three year SBC plan period; some parties reserve the right to explore additional renewables funding from the SBC.

The Goal is to maximize the wind MW and PV MW obtained with the available SBC funding; competitive solicitations and co-funding will be pursued. With adequate co-funding, 10 MW or more of wind and 1.6 MW of solar photovoltaic energy can be achieved with the proposed budget.

Areas of Agreement on Wind Energy

NYSERDA and DPS staff will work with Niagara Mohawk toward the objective of beginning construction of wind energy projects in NY through the SBC and associated co-funding, or co-investment.

Niagara Mohawk is authorized to proceed, in consultation with NYSERDA and DPS staff, to develop two western NY wind sites (Tug Hill and Wyoming), including land acquisition, data collection, transmission interface and connection planning, with costs to be covered by SBC, subject to efforts to attract private sector partners. The intent is to have construction begin on one or more sites by the fall of 1999.

At least 7 MW of wind energy should be obtained with the proposed budget. Unanticipated cost increases might result in achievement of less than 7 MW.

Niagara Mohawk in consultation with NYSERDA is authorized to begin procurement of 3 MW of wind turbines for one of the two western NY wind sites.

NYSERDA will immediately develop a detailed wind energy development plan. This plan will include competitive procurement and efforts to attract co-funding and private investment. Budgets and timelines for each activity will be developed and included in the plan.

It is intended that NYSERDA will develop and issue a PON solicitation for additional wind energy. The proposal for this PON will be included in the SBC plan submitted to the Commission by NYSERDA. This PON would solicit at least 4 MW, while 7 MW or more will result if there is adequate co-funding. Niagara Mohawk could bid. The PON will seek co-funding as a major objective in order to maximize the wind resources which can be developed. To the extent practicable, the PON should include provisions for New York content. NYSERDA intends to issue this PON in July 1998.

Niagara Mohawk might order an additional 4 MW of wind turbines, (beyond the 3 MW authorized above), contingent on building flexibility into the procurement contract to provide the ability to cancel and/or modify this order, based on the results of the PON. Turbine ordering issues, such as lead times, site specificity, and flexibility should be explicitly addressed.

Areas of Agreement on Photovoltaic Development

Niagara Mohawk is authorized to proceed with the New Scotland PV project; project costs of operating the site will be covered by either SBC or T&D RD&D funds. If funded through the SBC, costs would be offset by any revenues from the sale of the power generated from the site and/or eventual sale of the unit.

Niagara Mohawk staff are authorized to continue (with SBC support) to work with NYSERDA and other state agencies to develop plans for integration of Photovoltaics into the proposed NYSDEC building, with a decision regarding use of SBC funds for hardware to be determined later after aggressive search for other funding sources. Niagara Mohawk and NYSERDA will work cooperatively to determine optimum size of the PV equipment and to ensure a long term commitment for O&M costs.

Niagara Mohawk is authorized to proceed with planning, design, and prototypes for the Canal ("Linear Park") PV project, in conjunction with NYSERDA; $200,000 is authorized for these activities. Niagara Mohawk will pursue co-funding with municipalities and others. If sufficient co-funding is not obtained, Niagara Mohawk might pursue only high visibility projects. Decisions on hardware procurement will be addressed by Fall 1998.

It is intended that NYSERDA will develop and issue a PON solicitation for additional PV energy from funds of the proposed budget not allocated above. The proposal for this PON will be included in the SBC plan submitted to the Commission by NYSERDA. Niagara Mohawk could bid. The PON will seek co-funding as a major objective in order to maximize the PV resources which can be developed. To the extent practicable, the PON should include provisions for New York content.

Deferral Accounting

Staff intends that Niagara Mohawk's costs for these activities will be covered by SBC funds. Until a SBC funding mechanism is worked out, we intend to allow Niagara Mohawk to accumulate costs in an account for later recovery from SBC collections. Subject to approval by the Office of Accounting and Finance, costs for the activities described above are authorized to be accumulated in the deferral account until other collection mechanisms are in place or until January 1999, for the purpose of continuing progress on these projects without interruption. This approach is intended to address differences in the timing of occurring costs and collecting the SBC. There will be no deferral amount remaining at the end of the three year SBC collection period.

Please contact us if you have any questions.

Sincerely,

LAURENCE B. DEWITT
Director, Office of Energy
Efficiency and Environment

PAUL B. POWERS
Deputy Director
Electric Division

XC: Parker Mathusa, NYSERDA
David Wooley, Pace Energy Project

APPENDIX B

SBC Transfer Payments to NYSERDA
by Electric Utility and SBC Program Year

	Year 1	Year 2	Year 3	Total
CHG&E	$3,966,083	$4,466,083	$4,466,083	$12,898,248
Con Ed	$23,040,068	$34,540,068	$35,040,068	$92,620,203
NMPC	$11,430,451	$10,530,451	$10,330,451	$32,291,354
NYSEG	$5,954,031	$9,954,031	$10,154,031	$26,062,093
O&R	$1,666,408	$2,966,408	$3,266,408	$7,899,224
RG&E	$0	$0	$0	$0
Total	$46,057,041	$62,457,041	$63,257,041	$171,771,122

SBC Funds to be reserved for Environmental Disclosure
by Electric Utility and SBC Program Year

	Year 1	Year 2	Year 3	Total
CHG&E	$33,917	$33,917	$33,917	$101,752
Con Ed	$459,932	$459,932	$459,932	$1,379,797
NMPC	$269,549	$269,549	$269,549	$808,646
NYSEG	$145,969	$145,969	$145,969	$437,907
O&R	$33,592	$33,592	$33,592	$100,776
RG&E	$57,041	$57,041	$57,041	$171,122
Total	$1,000,000	$1,000,000	$1,000,000	$3,000,000