

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

OPINION NO. 98-3

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

OPINION AND ORDER CONCERNING
SYSTEM BENEFITS CHARGE ISSUES

Issued and Effective: January 30, 1998

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

COMMISSIONERS:

John F. O'Mara, Chairman
Eugene W. Zeltmann
Thomas J. Dunleavy
Maureen O. Helmer

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

OPINION NO. 98-3

OPINION AND ORDER CONCERNING
SYSTEM BENEFITS CHARGE ISSUES

(Issued and Effective January 30, 1998)

BY THE COMMISSION:

INTRODUCTION

Issues of funding for public policy programs in an increasingly competitive electric industry have been the subject of an investigation in this proceeding with the active participation of interested parties.^{1/} In Opinion 96-12, we noted that our responsibility to ensure that electric service be provided safely, cleanly, and efficiently may entail continuing specific measures to preserve certain programs, such as energy efficiency, research and development, environmental protections and low-income, beyond what competitive markets provide.^{2/} We concluded that a system benefits charge (SBC) provided a means to fund such necessary public programs.

^{1/} Cases 94-E-0952 et al., Order Modifying Procedure (issued February 6, 1997) (Order). The one-Commissioner order was approved and confirmed by the full Commission by Confirming Order issued February 13, 1997.

^{2/} Cases 94-E-0952 et al., Opinion No. 96-12 (issued May 20, 1996), mimeo, p. 27.

This Order establishes the necessary policies and administrative structures to ensure the continuation of needed public policy programs through the use of the SBC as we transition to a competitive market.

PROCEDURAL HISTORY

By Order issued February 6, 1997, parties were asked to attempt to resolve issues related to the SBC through negotiations.^{1/} Administrative Law Judge Judith A. Lee was assigned to preside over this matter.

After a series of informal meetings where interested parties had opportunities to informally discuss proposals,^{2/} formal position papers were exchanged to address issues specified by a ruling issued by Judge Lee on March 12, 1997.^{3/} Initial position papers were due on April 1, 1997, and replies were due April 17, 1997.^{4/} Initial position papers were received from 18 parties and replies were received from 16 parties.

The collaborative efforts of the parties were extremely helpful in narrowing the disputed issues and allowing parties to have ample opportunity to discuss among themselves areas of consensus and disagreement. They also served to focus the subject of the position papers and facilitate joinder of issues.

^{1/} The system benefits charge had been the subject of a prior Opinion and Order. Cases 94-E-0952 et al., Opinion No. 96-12 (Issued May 20, 1996), pp. 53-57.

^{2/} Meetings facilitated by Judge Lee were held in Albany on February 14, March 3, and March 6, 1997. Minutes highlighting the discussions were circulated to all parties promptly after each meeting.

^{3/} Case 94-E-0952, Procedural Ruling (issued March 12, 1997), Appendix A.

^{4/} Case 94-E-0952, Procedural Ruling (issued March 21, 1997), p. 2.

COMPOSITION OF THE SYSTEM BENEFITS CHARGE

Positions of the Parties^{1/}

Staff proposed a narrowly defined SBC, providing funding only for the following:

- PSC-approved energy efficiency programs and services;
- PSC-approved public benefit, research, development and demonstration projects related to energy service, generation or energy storage, the environment (including monitoring and assessment), and renewables;
- PSC-approved low income energy efficiency and energy management pilot programs; and
- environmental protection programs that go beyond compliance with law or permit requirements, as deemed necessary, including programs designed to monitor and mitigate environmental impacts of electric industry restructuring.

To refine this definition, Staff specified that the SBC should not fund T&D-related activities, recovery of stranded costs or deferred program costs, taxes, or recovery of the costs of compliance with state or federal laws.

The utilities, individually and as represented by the Energy Association (EA), argued for inclusion in the SBC of components such as government assessments, regulatory expenses, mandated economic development costs and transition costs.

A primary concern of independent power producers, as represented by American Ref-Fuel Company and the Independent Power Producers of New York (IPPNY) was that the development, demonstration, and commercialization of renewable resources be funded through the SBC.

The Association for Energy Affordability, the New York State Community Action Association and New York State Weatherization Directors Association, and the Public Utility Law

^{1/} This order only includes, for illustrative purposes, some of the major points raised. All comments, however, have been carefully considered in addressing these matters.

Project of New York (PULP) all focused on the needs of low income customers. These parties argued that SBC funding for low income programs should be directed to low income energy efficiency and energy management programs. PULP argued that other low income programs, such as rate discounts, should not be funded through this charge, but instead should be part of rates.

Discussion

Staff's definition will be adopted. It captures our intention that the public policy initiatives to be funded should only be those needed to transition to a competitive market as well as those that are not expected to be adequately addressed by competitive markets. It excludes programs or activities mandated by state or federal laws or permit requirements as well as those programs or activities the regulated utilities undertake as part of their ongoing obligation to meet T&D service requirements.

We further direct that plans for the expenditure of SBC funds shall include an evaluation component, which shall consist of activities designed to assess the quality and measure the achievements of SBC programs; and that the budgets for SBC programs shall include amounts sufficient to fund this requirement.

AMOUNT OF THE SYSTEM BENEFITS CHARGE

Positions of the Parties

Staff proposed that actual 1995 expenditure levels be used, subject to a one mill/kWh cap. The cap would moderate rate impacts and provide greater statewide uniformity. Staff further proposed that funding levels should be set for the entire initial period, which should be for a term of two years.

The New York Energy Efficiency Council proposed an expenditure level of approximately \$290 million annually over six years, emphasizing the need for a reasonable level and duration of SBC funding in order to stimulate the private market for energy efficiency. Public Interest Intervenors (PII) urged that

funding for public policy programs be funded at about \$150 million per year for three years. The New York State Consumer Protection Board generally endorsed the position of PII. The New York State Department of Environmental Conservation recommended a level equal to approximately \$138 million per year for two years.

Multiple Intervenors (MI), representing large industrial customers, argued that rates should not be adversely affected by funding for public policy programs. EA also emphasized their concern about any upward pressure on rates due to mandated funding for public policy programs. EA and MI suggest that SBC funding should be revisited after no more than two years, and should be capped at the level of most recent expenditures, with estimates of that level reaching as low as \$75 million.

Discussion

In Opinion 96-12, we emphasized that funding levels would be closely scrutinized with respect to their impacts on rates. It is apparent that this scrutiny can most effectively take place in the individual restructuring cases. We will not modify here the funding levels or spending limits established in the individual cases for each utility. However, we have used and will continue to use Staff's proposed criteria as one measure of the sufficiency of SBC funding levels when considering the individual utility cases.

We conclude that a three year initial period is an appropriate transition period. This will help to eliminate uncertainty regarding funding levels and will allow programs to be efficiently developed and implemented.

We will therefore establish a three year period for the implementation of SBC funded programs, which will commence by July 1, 1998. Participating utilities will collect monies to fund SBC programs for the three year period as specified in their individual rate plan. However, the timing of collection of funds from each utility may vary, and the collection period at each

utility may not necessarily coincide with the implementation period. We will defer to a future decision whether SBC programs should continue beyond the three year period.

ALLOCATION OF FUNDING FOR THE SYSTEM BENEFITS CHARGE

Positions of the Parties

Parties commented on allocation issues both from the perspective of how the SBC is collected in rates, and how SBC monies are distributed. Staff proposed that the SBC should be collected from each customer taking electric service, and that spending should be allocated between both statewide and local programs.

EA and MI argued that most, if not all, SBC funds should be spent in the service territory in which they were raised. NYEEC and others recommended that all or a significant portion of the funds should be used statewide to mitigate statewide impacts of restructuring. The National Association of Energy Service Companies (NAESCO) also believes that some programs should be implemented on a statewide basis.

While not opposed to funding for public policy programs, municipal utilities, through the Municipal Electric Utilities Association, stated their strong objection to having to pay for programs for customers of investor-owned utilities. The Power Authority of the State of New York (NYPA) stated that its customers should not have to pay for public policy programs that they were not able to benefit from.

Discussion

Concerning its collection in rates, in Opinion 96-12 we said that the SBC "would be designed to ensure that the cost of carrying out these public policy initiatives was fairly allocated across most, if not all, users of the power distribution system, and recovered in a competitively neutral manner."^{1/} We conclude

^{1/} id., p. 56.

that rate designs, while they should be guided by that principle, are also best addressed within the context of the individual utility proceedings. An SBC charge will be established for the investor-owned electric utilities in their respective rate or restructuring case.

At this time, we encourage the municipal utilities and NYPA to consider voluntarily participating in SBC program efforts, and contributing to SBC program funding. To the extent that program coordination and administrative efficiency can be enhanced by broader participation, the programs can provide greater benefits to all New Yorkers. Their partnership would be welcomed.

Concerning the distribution of SBC funds, we will adhere to the principle that ratepayer funds should benefit the ratepayers who provide them, while realizing that many of the benefits of public benefit programs, by their very nature, tend to be general and societal. Furthermore, we are convinced that many SBC programs, particularly as they relate to research and development and the transformation of markets for energy efficiency, will deliver greater benefits and operate more effectively when implemented on a statewide basis. We will direct that a transition occur, as described in more detail below, from utility territory-specific programs to programs that are implemented on a statewide basis. We expect that the benefits to all ratepayers will increase as a result of the implementation of such programs. It would be both impractical and unnecessary to assign or apportion the costs and benefits of statewide programs directly to individual service territories, but the source of the funds will be considered in the plan for their distribution.

Notwithstanding the transition to statewide programs, the utilities will be allowed sufficient funding to complete those territory-specific programs for which they have incurred contractual commitments; except that SBC funding will not be provided for any programs that include "tying" arrangements which

restrict participants' choice of electric supplier. In addition, we may allow to continue beyond the transition certain programs that, in our judgment, provide greater returns or are more effectively implemented by the utilities.

During the transition to SBC funded programs, the utilities should strive to maintain continuity of these services to the public and to affected customers. Existing utility programs in the SBC program areas should be reviewed by Staff. Those that are found to be highly cost-effective should be extended at least until June 30, 1998, or for as long as is permitted by the utilities' appropriated but unexpended funds for such programs.

ADMINISTRATION OF THE SYSTEM BENEFITS CHARGE

Positions of the Parties

Staff proposed a hybrid approach to program administration which uses the utilities but shifts certain responsibilities to other existing institutions. Staff also proposed to establish an advisory group as a vehicle to provide for public input. Staff would have had most, if not all, programs competitively bid. Staff acknowledged having concerns about utility administration of SBC programs and proposed that safeguards be implemented to allay anti-competitive concerns.

EA and MI strongly supported continued utility administration. EA was concerned about having a third party administer the funds they have traditionally collected for public policy programs, and suggested that there may be legal impediments to requiring such an arrangement.

Concern about improper, anti-competitive behavior by the utilities was the emphasis of NAESCO's comments, who propose that program funding awarded to the utilities be limited to 15% of the funds available. PII was very concerned that the fund be administered by a separate, third-party administrator to ensure fairness.

IPPNY suggested that a broad-based Advisory Board be established to ensure ample public input, among other functions. The Electric Power Research Institute recommended using existing research infrastructure and organizations to administer SBC R&D programs.

Discussion

The utilities have considerable expertise in administering a variety of public programs. A number of those programs continue to be actively implemented and, as mentioned above, there could be economic efficiencies in having the utilities continue some of these programs. However, the majority of SBC programs have the potential to provide greater ratepayer benefits and operate more effectively when administered on a statewide basis.

The utilities have little experience administering such statewide programs. In addition, many parties have expressed concerns regarding allowing the utilities to be SBC administrators. In consideration of the difficulties associated with utility administration, the parties to the individual utility settlements have negotiated stipulations to the use of a third party SBC fund administrator.

As of the effective date of this order, three rate and restructuring settlement agreements have been fully approved and are being implemented (Consolidated Edison, Orange and Rockland, and Rochester Gas and Electric). Two of those agreements include such a stipulation clause. We also approved New York State Electric & Gas Corporation's rate and restructuring agreement with a similar provision as Con Edison's. From the Con Edison agreement and NYSEG order:

The formation of a third-party administrator, appropriately implemented, would serve the objectives embodied in the Commission's May 20, 1996 order. Therefore, subject to the Commission's approval, there will be a third-party administrator, and the Commission will choose the administrator of the SBC-funded programs.^{1/}

From the Orange and Rockland agreement:

The parties agree that the Commission may appoint a third-party administrator to administer the SBC funded programs. All SBC funds will be allocated by the statewide administrator, although the establishment of such a statewide administrator shall not preempt program funding for commitments made prior to this plan.^{2/}

We expect that other utilities will also elect to use the third-party administrator.

We approved the RG&E agreement without the inclusion of a similar stipulation. However, RG&E's energy efficiency budget is encumbered, virtually in its entirety, by such prior contractual commitments, and its R&D and low income program funds are so small as to render the issue of a separate fund administrator for RG&E inconsequential.

^{1/} Case 96-E-0897 - In the Matter of Consolidated Edison Company of New York, Inc.'s Plans for (1) Electric Rate Restructuring Pursuant to Opinion No. 96-12 and (2) the Formation of a Holding Company Pursuant to PSL Sections 70, 108 and 110, and certain related transactions, "Amended and Restated Agreement and Settlement," dated September 19, 1997, p. 23.

Case 96-E-0891 - In the Matter of New York State Electric & Gas Corporation's Plans for Electric Rate/Restructuring Pursuant to Opinion 96-12, "Order Adopting Terms of Settlement Subject to Modification and Conditions," issued and effective January 27, 1998, Appendix B.

^{2/} Case 96-E-0900, In the Matter of Orange and Rockland Utilities, Inc.'s Plans for Electric Rate/Restructuring Pursuant to Opinion No. 96-12, Revised Settlement Agreement, p. 16.

We expect the use of a third party fund administrator will produce economies in fund management by eliminating duplicative tasks and cumbersome decision making and will ensure that the funds are administered in a competitively neutral manner. Administrative costs should further be reduced by using an entity that already has a structure in place for implementing such programs. New York State Energy Research and Development Authority (NYSERDA) stands foremost among existing entities in having an established organization that is experienced in delivering public benefit energy efficiency, environmental and R&D programs on a statewide basis. As a non-profit entity, NYSERDA can further maintain neutrality in administration of SBC funds. We therefore designate NYSERDA as the SBC fund administrator.

Each of the utilities is directed to enter into such contracts or agreements with NYSERDA as are necessary to fulfill its obligations, under the terms of its settlement agreement and this Order, to implement our choice of NYSERDA as the administrator of SBC funds. The terms of such contracts or agreements shall provide that SBC monies collected by the utility through its rates will be transferred to NYSERDA to fund SBC programs that we approve.

NYSERDA will be responsible for working closely with Staff to file a comprehensive plan for Commission approval. Before submitting its plan, NYSERDA will first solicit a broad representation of public input from all concerned parties, including the utilities, consumers and major consumer classes, ESCOs and the environmental, research and low income communities. Such input will provide advice and guidance on program designs and details, including how program services are procured.

We expect that contracts for implementation of the majority of SBC programs can be carried out on the basis of competitive solicitations for which all qualified parties will be eligible to compete, including the utilities and their affiliates. An exception would be programs for completion of the

utilities' existing commitments. NYSERDA shall plan to allow retention by the utilities of sufficient funding for the utilities to complete their existing program commitments, as well as for those programs that, in our judgment, would be more effectively implemented by the utilities. Input obtained from the parties during the planning process will be considered in our determination of which programs belong in this category.

We are sensitive to the concerns of many parties that the utilities may be tempted to use SBC funds anti-competitively. Given that we would like to see SBC programs begin to be implemented within a relatively short time frame, NYSERDA may have limited alternatives to continuing a great number of existing utility programs. For the "first year," therefore, we will impose no limit on the percentage of funds directed to utility programs, but we will need to be assured that the utility programs are the most cost-effective available and do not otherwise present substantial anti-competitive concerns. In light of the administrative structure that we have approved, we will monitor the planning process for further feedback from the parties on whether there is the need for a cap on utility programs for subsequent years.

NYSERDA will obtain the services of an independent program evaluator which shall evaluate the programs and submit a written report to Staff setting forth its findings. Staff is directed to periodically report to the Commission concerning program and market performance, and make recommendations regarding whether the level of these programs is sufficient and whether the continued use of the SBC is required.

We also reinforce our decision in Opinion No. 97-13, establishing regulatory policies for competitive metering,^{1/} to require that utilities provide access to up to 24 months usage

^{1/} Case 94-E-0952 - In the Matter of Competitive Opportunities Regarding Electric Service, Opinion and Order Establishing Regulatory Policies for Competitive Metering, Opinion No. 97-13, issued and effective August 1, 1997, p. 17.

and load profile data to customers or their designee, including to third party program providers of energy efficiency services. In order to ensure broad access to public R&D efforts, we will require that the results of any R&D projects funded by the SBC be immediately published.

The Commission orders:

1. The system benefits charge is established to provide a funding mechanism for the types of programs described in Appendix A of this order.

a. Plans for the expenditure of SBC programs will include an evaluation component, which shall consist of activities designed to assess the quality and measure the achievements of SBC programs. The budgets for SBC programs will include amounts sufficient to meet this requirement.

b. Funding for the system benefits charge will be for an initial period of three years. We will defer to a future decision whether these programs should continue beyond the three year period.

c. The annual level of funding for the system benefits charge and its collection in rates at each utility will be as established in the individual utility rate and restructuring proceedings.

d. A transition will occur from utility territory-specific programs to programs that are implemented on a statewide basis. Funds will be allocated for both local and statewide programs that we approve.

2. In consultation with staff, the utilities will extend their most cost-effective existing programs until programs funded by the system benefits charge are operational, or for as long as is permitted by their appropriated but unexpended funds for such programs.

3. The New York State Energy Research and Development Authority is designated as the system benefits charge fund administrator.

a. The utilities will enter into such contracts or agreements with the New York State Energy Research and Development Authority as are necessary to fulfill its obligations, under the terms of its settlement agreement and this Order, to implement our choice of the New York State Energy Research and Development Authority as the administrator of system benefits charge funds.

b. Before submitting its plan, the New York State Energy Research and Development Authority will first solicit a broad representation of public input from all concerned parties, including the utilities, consumers and major consumer classes, energy service companies and the environmental, research and low income communities.

c. The New York State Energy Research and Development Authority will plan to allow retention by the utilities of sufficient funding for the utilities to complete their existing program commitments, as well as for those programs that, in our judgment, would be more effectively implemented by the utilities.

d. The New York State Energy Research and Development Authority will obtain the services of an independent program evaluator which will evaluate the programs and submit a written report to staff setting forth its findings.

e. The New York State Energy Research and Development Authority will ensure that the results of any research and development projects funded by the system benefits charge are immediately published.

4. This proceeding is continued.

By the Commission,

(SIGNED)

JOHN C. CRARY
Secretary

COMPOSITION OF THE SYSTEM BENEFITS CHARGE

The SBC is a funding mechanism to support the following categories of activities that may not be "adequately addressed by competitive markets:"

- 1) energy efficiency programs and services approved by the Commission;
- 2) public benefit research, development and demonstration projects related to energy service, generation or energy storage, the environment (including monitoring and assessment), and renewables approved by the Commission;
- 3) low income energy efficiency and energy management pilot programs approved by the Commission;
- 4) environmental protection programs that go beyond compliance with law or permit requirements, as deemed necessary by the Commission, including programs designed to monitor and mitigate environmental impacts of electric industry restructuring.

Funds for the four SBC categories should be expended on new or ongoing programs and should not be used to cover deferred costs from previous years.

Energy Efficiency Services Programs

To promote competitive markets for energy efficiency services, SBC funds should be used for the following:

- (1) Programs that encourage energy service companies to offer customers energy efficiency as a value-added service.
- (2) Programs that inform or educate the public or the markets on energy efficiency options and on assessing service options and prices offered by ESCOs.
- (3) Programs that emphasize permanently transforming the market for energy-efficient products and services or reducing market barriers, rather than achieving immediate or customer-specific savings.
- (4) Programs to ensure the quality or measure the achievements of SBC activities.

During the transition to full retail competition, the list of activities funded through the SBC could be broader, including some customer-specific assistance activities such as financing, energy audits and design assistance. Efforts to arrange manufacturer's rebates and other programs that employ joint funding or coordinated activities with trade allies and manufacturers could also continue to be funded by the SBC. The SBC fund could be used to continue to pay rebates or offer other forms of direct customer incentives over the next year or so for customer projects started but not yet completed, for new technologies, and for lost opportunity situations. Finally, it would be used to pay going forward costs of multi-year bidding programs.

Research and Development Programs

In the long run, generation companies (GENCOs), ESCOs and their major suppliers are expected to perform generation and end-use research. It may be necessary, however, to support through the SBC some of this research during the transition as the regulated utilities decrease their involvement in these areas and the new GENCOs and ESCOs begin to increase theirs.

Energy efficiency, environmental, renewable resource and other types of public benefit research are also unlikely to be continued through the transition to competition unless funded by the SBC. It may include research with a long payback period in a broad portfolio of R&D programs and some collaborative research.

R&D that is to be funded through the SBC should focus on pollution monitoring and control and the introduction of innovative technologies in the production and consumption of electricity (including renewables). The programs should directly benefit the ratepayers or be of clear economic or environmental

benefit to the people of New York on a statewide basis, and would not otherwise be accomplished.

Low-Income Pilot Programs

The SBC should be used to support innovative approaches to addressing the energy affordability problems of low income households, including programs that are designed to:

- 1) leverage other dollars, such as federal low-income weatherization and HEAP dollars;
- 2) coordinate with related programs operated by State agencies such as SOFA, DSS and DHCR;
- 3) create local partnerships among utilities, weatherization providers, community action agencies, services for the aging, social services, and housing programs;
- 4) include consumer/energy education and credit/budget counseling components;
- 5) respond to regional differences and remain flexible in order to target diverse low-income households, including owners and renters of both multi-family buildings and one- to four-unit houses; and
- 6) utilize energy efficiency and energy management strategies which give high priority to eligible low-income households whose energy bills and energy burden are high and where savings opportunities and need may be the greatest.

To the extent that T&D utility programs prove successful in reducing rates and are implemented on a large scale, funding should be moved from the SBC into base rates.

Environmental Protections

The SBC should be used to fund programs, including environmental monitoring and assessment activities, that are approved by the Commission and not otherwise required by law. In the future, the SBC should be used to fund not only these activities but also those measures undertaken to monitor and

perhaps mitigate adverse environmental impacts of restructuring the electric industry.

Activities Not Supported by the SBC

The following categories of activities should not be supported through the SBC:

- 1) Any activities that are or should be undertaken as part of the regulated T&D utility's obligation to meet service requirements, such as:
 - a. energy efficiency, renewable energy or distributed generation undertaken by the T&D company in lieu of more expensive construction, maintenance or extension of T&D systems or in mitigation of market power or load pocket situations;
 - b. R&D related to the transmission and distribution function;
 - c. cost-effective programs to reduce uncollectibles of the T&D utility;
 - d. environmental protection programs associated with the regulated T&D function.

These activities would remain regulated as in the past by the Commission, and should be funded through the revenue requirement of the regulated T&D utility.

- 2) A collection mechanism for the recovery of stranded costs, above-market generation taxes, state and federal agency assessments, other costs of complying with regulation, and uncollectibles and other "obligation to serve" costs. These costs were not identified by the Commission for collection in the SBC, and therefore should not be included in the SBC.
- 3) Programs or activities in non-T&D sectors undertaken to comply with state or federal environmental laws or permit requirements. These programs or activities would survive in a competitive electric market, e.g., the generation owners would still be responsible for environmental compliance and its costs.