

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on May 16, 2007

COMMISSIONERS PRESENT:

Patricia L. Acampora, Chairwoman
Maureen F. Harris
Robert E. Curry, Jr.
Cheryl A. Buley

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

ORDER GRANTING PETITION

(Issued and Effective June 5, 2007)

BY THE COMMISSION:

INTRODUCTION

The New York State Energy Research and Development Authority (NYSERDA) as third-party administrator for the New York's System Benefits Charge (SBC), petitioned the Public Service Commission for permission to reallocate \$8,733,288 from the SBC program's Research and Development category to the Energy Efficiency category; to apply any unexpended SBC II funds to their corresponding SBC III funding categories; and to use \$24,742,163 of unexpended SBC II dollars for incentives for increased generation from renewable resources. In this Order, we grant NYSEDA's petition and direct NYSEDA to update the goals and objectives it established for SBC III in its five-year Operating Plan to reflect the approved reallocations and the unexpended SBC II funds as of June 30, 2006, to be carried forward.

BACKGROUND

In December 2005, the Commission issued its Order Continuing the System Benefits Charge (SBC) and the SBC-Funded Public Benefit Programs (SBC III Order).¹ The Commission originally established the SBC in Opinion No. 96-12 in Case No. 94-E-0952. There, the Commission explained that the SBC was intended to address the need to fund certain public benefit programs unlikely to be assumed by the energy marketplace during the transition to full electric retail competition. In Opinion No. 98-3, the Commission named NYSERDA as third-party administrator of the SBC and placed NYSERDA's administration of statewide SBC-funded programs under the direct oversight of the Department of Public Service Staff (Staff).

In the SBC III Order, we extended funding for the SBC program from July 1, 2006, through June 30, 2011 and provided for an annual funding level of \$175 million. We also ordered NYSERDA to submit annual and quarterly status reports for all programs.² The purpose of such reports is to facilitate Commission review, and Department oversight, of NYSERDA's administration of the SBC program.

On or about March 2, 2006, NYSERDA submitted its five-year Operating Plan which was then approved by Staff on March 3, 2006, as properly reflecting the Commission's SBC III Order. NYSERDA's Operating Plan contains its program goals, objectives and budgets for the life of SBC III. Such goals, objectives and budgets are based on the Commission prescribed annual funding level of \$175 million.

On January 11, 2007, the Commission issued a notice seeking comment on NYSERDA's petition. Only one party, Multiple Intervenors (MI), responded to the Commission's notice with comments.

¹ Case 05-M-0090, In the Matter of System Benefits Charge III, Order Continuing the System Benefits Charge (SBC) and the SBC-Funded Public Benefit Programs (issued December 21, 2005).

² Further background on the SBC can be found in the Commission's December 21, 2005, SBC III Order.

DISCUSSION

In the SBC III Order, the Commission recognized the achievements in energy efficiency attained by the SBC program since its 1998 inception, and the benefits gained by the consumers who have funded the program.

For the most part, NYSERDA's petition concerns accounting practices related to the transition of SBC II to SBC III. As collection of SBC funds continued throughout the life of SBC II, it could be expected that certain funds might be collected toward the end of the funding allocation that could not be fully committed and expended by the expiration of SBC II. NYSERDA's petition indicates that in the interests of accounting efficiency, NYSERDA would rather account for SBC funds by the contiguous programs' expiration and inception dates, rather than maintaining two separate accounts until the last dollar attributable to SBC II has been spent.

MI comments that it has no objection to NYSERDA's proposal to reallocate \$8,733,288 of SBC II Research and Development funds to cover NYSERDA's overspending within the Energy Efficiency subprograms, but does express concern that NYSERDA committed to such overspending without notifying the Commission when it initially found that such overspending was likely. MI does oppose NYSERDA's proposed reallocation of unexpended and uncommitted funds from SBC II to SBC III arguing that because such funds were not even committed by the expiration of SBC II, it demonstrates that SBC II collected more money than was necessary, and therefore the funds should be returned to the ratepayers as a credit against collection of SBC III funds. MI states that NYSERDA has provided no basis in its petition for transferring such uncommitted and unexpended SBC II funds to SBC III, and that NYSERDA does not allege that SBC III has been under-funded. Finally, MI opposes NYSERDA's request to use \$24,742,163 of unexpended SBC II dollars for incentives for increased generation from renewable resources. MI maintains that because SBC III was approved without funding for renewable incentive programs, NYSERDA's request is not appropriate and that those funds also should be returned to customers as a credit.

We do not agree with MI's position. We find that NYSERDA's petition is reasonable. Many SBC III programs are continuations of programs begun prior to the

expiration of SBC II. As the results of SBC for the consumers funding the programs are paramount, it should be of no great concern whether the dollar spent to achieve those results is accounted for as an SBC II dollar or an SBC III dollar, so long as the Commission and Staff are provided with the most complete and correct information necessary to facilitate their oversight and review of the SBC and its funded programs.

As to MI's objections, the Commission does not agree that simply because some funds were still uncommitted and unexpended as of June 30, 2006, that it indicates that the SBC II program was over-collected. While the achievements made in SBC II before June 30, 2006, were admirable, they certainly did not signal that there were no further gains to be made in energy efficiency, peak load reduction or research and development. Indeed, the Commission explicitly found that more work could be done to achieve even greater benefits for New York's energy consumers when we renewed the SBC program in the SBC III Order. Accordingly, we do not agree that it is in the consumers' best interests to use such funds, properly collected under SBC II, to supplant the collection of the further authorized funding for SBC III.

Instead, we expect that the availability of the additional unexpended SBC II funds may bring even greater benefits than those envisioned by the current SBC III program as reflected in NYSERDA's Operating Plan. We are concerned, however, that the addition of such funds into SBC III will make it difficult for Staff to complete an accurate and thorough assessment of the SBC III program going forward unless the current goals and objectives in NYSERDA's Operating Plan are adequately updated to account for this additional funding. Therefore, the Commission directs NYSERDA to update its Operating Plan to account for the influx of SBC II funds referenced in its petition. The revised plan should also clearly identify and explain the updates that NYSERDA makes to the current plan as a result of this Order.

Finally, the Commission acknowledges that, in the SBC III Order, we adopted Staff's recommendation eliminating in SBC III incentives for increased generation from renewable resources due to the complementary emergence of the Commission's Renewable Portfolio Standards (RPS). Here, however, NYSERDA seeks to use funds collected under the SBC II program where such funding already was being

used for the same or similar purposes to that proposed by NYSERDA in its petition. In essence, we are granting the reallocation of funds within SBC II to allow for the continuation of this SBC II program, but allowing for NYSERDA to do its accounting under the SBC III books. Additionally, we note that the amount NYSERDA requests to allocate, \$24,742,163, is relatively small when compared to both the amounts being reallocated, and those being collected under SBC III. Thus, we do not object to this specific reallocation for small behind the meter Renewable generation resources (i.e. wind, solar, etc.).³

Finally, we note that NYSERDA's request for Commission approval of the SBC II fund reallocations was not made until after the June 30, 2006, end of the SBC II initiative. While we agree that maintaining program funding continuity can be an important objective, future funding reallocation requests should be made formally to the Commission well in advance of such time that NYSERDA anticipates making programmatic commitments that exceed funding levels previously approved by the Commission.

The Commission orders:

1. New York State Energy Research and Development Authority's (NYSERDA) petition seeking reallocation of System Benefits Charge II funds is granted and NYSERDA is directed to update its operating plan accordingly.
2. This proceeding is closed.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary

³ We do note, however, that such a reallocation request to a similar renewable incentive program for funds collected pursuant to our SBC III Order would cause us to consider factors not necessarily relevant to a reallocation of funds collected under SBC II.