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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 07-M-0548 - Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio Standard.

ORDER ESTABLISHING ENERGY EFFICIENCY PORTFOLIO STANDARD AND APPROVING PROGRAMS

(Issued and Effective June 23, 2008)

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on June 18, 2008

COMMISSIONERS PRESENT:

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

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BY THE COMMISSION:

INTRODUCTION

Before the Commission are the threshold issues necessary in order to put in place an Energy Efficiency Portfolio Standard (EEPS) for New York State and to begin achieving energy savings under this program. One of New York State's highest energy priorities is to develop and encourage cost-effective energy efficiency over the long term, and immediately to commence or augment near-term efficiency measures. The determinations in this Order establish the framework for ensuring that energy efficiency becomes an integral part of the New York energy industry. This initiative is in the context of the broader State policies for the

development of the clean energy industry and economy in the State: policies including Executive Order No. 2 of Governor David Paterson, the Renewable Portfolio Standard, the Regional Greenhouse Gas Initiative (RGGI), and improvements in State energy building codes and appliance efficiency standards.

We reaffirm our support for the long term goals and purposes set forth in the Initiating Order. Most important, we adopt the goal of reducing electricity usage by 15% statewide by 2015.[1] The objectives of the EEPS are to realize New York's untapped potential for energy efficiency and make this a high priority energy resource. This potential was described in a 2003 report on the development of New York State's energy efficiency program.[2] Working toward and ultimately attaining this aggressive goal will moderate expected increases in average bills and the State's energy costs over time; enhance system reliability; ease wholesale prices and transmission and distribution congestion; reduce greenhouse gas emissions and local air pollution from the energy sector; improve New York's energy security and create clean energy jobs for New Yorkers. In attaining these objectives, careful attention to program benefit cost ratios is very important as there is a need to achieve the maximum return on each incremental energy efficiency investment

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[1] "The purpose of the proceeding is to design an EPS to meet the targets for energy efficiency which, along with additional renewable resource development, and other programs, decreases the State's dependence on fossil fuel-based generation and imported fuels, and reduces its greenhouse gas emissions. An EPS should be designed ultimately to reduce customer bills, stimulate State economic development, and create jobs for New Yorkers." Case 07-M-0548 – Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio Standard, Order Instituting Proceeding (issued May 16, 2007) (Instituting Order).

[2] Energy Efficiency and Renewable Energy Resource Development Potential in New York State, prepared for New York State Energy Research and Development Authority (NYSERDA), by Optimal Energy, et al., August 2003 (2003 Optimal Report).

in the context of also achieving other public interest policy objectives and to reduce rate impacts on customers.

In this Order, several foundational issues are addressed, resulting in an expanded energy efficiency program capable of attaining the goal adopted in the Instituting Order: a 15% reduction in forecast electricity usage by the year 2015 (15 x 15). First is the adoption of specific, interim, three-year targets for MWh reduction, with a forecast trajectory that will achieve the efficiency goal of this proceeding. Second is the approval of specific energy efficiency programs for immediate implementation (the "fast track" programs). Third is the direction to New York's investor-owned utilities to commence collection, through the System Benefits Charge (SBC), of additional funds to support the EEPS through 2011. Fourth is the adoption of a requirement that utilities file energy efficiency programs consistent with the policies and benefit/cost factors adopted herein. Fifth is the adoption of findings under the State Environmental Quality Review Act.

PROCEDURAL HISTORY

On May 16, 2007, the Commission issued its Order Instituting Proceeding, establishing the goals for this proceeding. On June 1, 2007, Department of Public Service Staff (Staff) submitted a Preliminary Staff Analysis Regarding the Benefits and Costs and Bill Impacts of Energy Efficiency Program for 15% Reduction in Electricity Usage by 2015. On June 4, 2007, an initial procedural conference was held. On June 13, 2007, a Notice of Proposed Rulemaking was published in the State Register pursuant to the State Administrative Procedure Act.[3] On June 15, 2007, a Ruling on Scope and Schedule was issued. Questions to parties were proposed by Staff and by the ALJ. On July 16, 2007, parties responded to Staff questions and on July 30, 2007, parties responded to ALJ questions. On July 19 and 20, 2007, an overview forum was conducted in which

[3] SAPA I.D. No. PSC-24-07-00014-P.

presentations were made and discussion was encouraged regarding the scope of the proceeding and fundamental approaches.

On August 24, 2007, the ALJ presented a letter to parties establishing a collaborative process centered around four working groups. Working Group I was to address overall EEPS structure (respective roles of NYSERDA, utilities, other energy services and efficiency providers). Working Group II was to address energy efficiency resource acquisition: market transformation, end-use customer, and peak load reduction/load management. Working Group III was to establish targets and benchmarks and address measurement and verification issues. Working Group IV was to address emerging technologies, next generation resources for network management, and customer load management.

On August 28, 2007, Staff filed its Preliminary Proposal for Energy Efficiency Program Design and Delivery. The Staff preliminary proposal included a proposal to bifurcate the proceeding into a fast track and a multi-year planning process.

On September 10, 2007, proposals were issued by New York City (NYC), the Dormitory Authority of the State of New York (DASNY), Joint Utilities, Long Island Power Authority (LIPA), Natural Resources Defense Council (NRDC), and the New York State Energy Research and Development Authority (NYSERDA).

On September 17, 2007, a collaborative meeting of all the parties was held in which Staff's proposal and the collaborative process were discussed and working groups conducted initial meetings.

A comment date of October 15, 2007 was established for parties to comment on Staff's fast track proposal. On October 1, 2007, the ALJs, in a letter to parties, requested that fast track proposals consist of not more than five existing programs that can be implemented within the nearest possible timeframe. The letter also requested that any fast track program be discussed in terms of the following: whether, and to what extent, such program is presently oversubscribed; demonstrated effectiveness of such program; incremental benefits

expected from such program if funding levels were increased in the near term; cost of putting such program on fast track; sources of funds that can be accessed on a fast track basis; and administrative barriers, if any, to prompt expansion of the program. On October 15, 2007, 23 parties submitted comments on Staff's fast track proposal.

On October 17, 2007, a series of regional roundtable discussions was initiated by Staff. Nine regional roundtables were held between October 17, 2007 and November 30, 2007. Over 160 participants representing a wide variety of customer and industry interests attended.

On October 31, 2007, the ALJs issued a ruling on fast track procedures and schedule, providing Staff an opportunity to file reply comments in response to the parties' filings, and announcing an intention to issue a recommended decision on fast track issues.

On November 5, 2007, a plenary session of the collaborative was conducted during which working groups presented preliminary reports. On November 26, 2007, Staff issued its Revised Proposal for Energy Efficiency Design and Delivery and Reply Comments.

On December 1, 2007, NYSERDA submitted a Report of the Clean Energy Collaborative, a group of nine State agencies and authorities,[4] presenting a proposal for State agencies' and authorities' collective contribution to the 15 x 15 goal.

On December 3, 2007, Joint Utilities filed a motion requesting permission for all parties to file responses to the Staff revised proposal that had been submitted November 26,

[4] NYSERDA, New York Power Authority, Long Island Power Authority, New York Department of State, New York State Division of Housing and Community Renewal and Housing Trust Fund Corporation, Dormitory Authority State of New York, New York State Department of Environmental Conservation, New York State Foundation for Science, Technology and Innovation, and Office of General Services.

2007. The Joint Utilities motion was subsequently supported by Multiple Intervenors (MI) and NUCOR Auburn Steel, Inc.

On December 5, 2007, the four working groups submitted their reports. On December 7 and 14, respectively, Staff and NYC responded to the Joint Utilities motion. On December 14, 2007, a plenary meeting of the collaborative was held, during which the Working Group reports were discussed. On December 17, 2007, Staff published its Regional Roundtable Final Report.

On December 20, 2007, Joint Utilities filed a motion requesting that fast track issues and issues regarding the fundamental structure of the proceeding be considered on the same schedule. Several parties filed comments regarding the Joint Utilities motion.

On January 11, 2008, an EEPS Administration Consensus Recommendation was filed by a coalition of parties consisting of NRDC/Pace, NYC, Association for Energy Affordability, New York Power Authority, and eight utilities. The proposal would establish a New York City partnership and other regional partnerships for the planning and implementation of efficiency programs, and would delineate the respective roles of NYSERDA and utilities.

On January 19, 2008, Central Hudson, which was not a signatory to the January 11 filing, submitted a Statewide Plan for EEPS Implementation. On January 25, 2008, comments were received from 25 parties on the January 11 "Consensus Recommendation."

On January 24, 2008, the ALJs issued a Ruling on the Status of the Record and on Schedule. This ruling considered the various filings of parties from the November 26, 2007 Revised Staff Proposal through the January 19, 2008 Central Hudson Statewide Plan, and reconsidered the schedule announced in the October 31, 2007 ruling. The January 24, 2008 ruling expressed a determination that the record did not support committing a substantial portion of EEPS funding to a fast track outside the context of determinations regarding the larger structural issues surrounding the case. The ruling established

a new schedule designed to bring all of the major issues in the case before the Commission within the nearest possible timeframe. The schedule provided for the issuance by the ALJs of a Straw Proposal, and briefs and reply briefs by the parties on all issues.

On February 11 and 13, 2008, the ALJs issued a Straw Proposal and Technical Appendix. On February 21, 2008, Staff filed a Motion for Expedited Action on Its Request for Reconsideration of the Schedule and to Bifurcate the Proceeding Into Two Phases. In its motion, Staff urged that a fast track be reinstated and presented to the Commission at the earliest possible time. On February 22, 2008, parties submitted questions for clarification of the Straw Proposal. On February 28, 2008, 10 parties commented on Staff's motion.

On March 5, 2008, a technical conference was conducted to examine the factual underpinnings of the Technical Appendix to the Straw Proposal. At that conference, presentations were also made by Staff, by proponents of the January 11, 2008 "Consensus Recommendation," and by Assemblymember Andrew Hevesi.

On March 20, 2008, the ALJs issued a Ruling on Staff Motion for Reconsideration and Revising Schedule. The ruling determined that a fast track proposal would be presented to the Commission, in the context of the record as developed to that time. The proposal would be informed by further comments of the parties on four issues: the fast track proposals of Staff, NYSERDA, and other parties; the policy rationale for authorizing utility administration of energy efficiency programs; whether the program costs and bill impact figures presented in the Technical Appendix to the Straw Proposal represent reasonable estimates; and the advisability of allocating energy efficiency targets and funding among NYSERDA and each utility as per the Straw Proposal. The ruling denied Staff's motion to reinstitute a collaborative process for all aspects of the EEPS program. The ruling stated that collaborative processes would continue on discreet issues.

On March 25, 2008, Staff filed an update of its Report on Recommendations for the EEPS Proceeding. Also on March 25, 2008, Central Hudson filed with the Secretary a motion for expedited interlocutory review, requesting that the Commission set aside the March 20, 2008 ruling. On March 28, 2008, the Secretary, in a letter, advised Central Hudson that the relief it sought in its March 25, 2008 motion - consideration of its own fast track proposal - was provided for in the March 20, 2008 ruling, and that the Commission need not consider Central Hudson's motion.

On April 10, 2008, 25 parties filed briefs, and on April 18, 2008, 20 parties filed replies. On May 21, 2008 the Commission in public session considered and discussed numerous issues concerning this proceeding, in anticipation of further action resulting in this Order.

PROGRAM GOAL, COSTS AND BENEFITS

A. The Commission's Jurisdictional Goal

In order to assess the options for immediate action, an estimate of overall program costs must be established. This requires, at the outset, a determination of the portion of the State's 15 x 15 goal to be undertaken by entities subject to the jurisdiction of the Commission. References to the "jurisdictional gap" are to that portion of the State's 15 x 15 goal that is within the control of the Commission.[5] This includes all utility activities as well as programs funded through utility rate surcharges and administered by other entities such as NYSERDA. With the exception of the role of building codes and appliance standards (codes and standards), the question of the jurisdictional gap has not generated a large amount of controversy among the parties.

[5] Potential transmission and distribution (T&D) efficiencies also within the Commission's jurisdiction will be considered separately.

The jurisdictional gap is calculated by forecasting electricity usage through 2015 (the baseline), calculating 15% of the baseline, and subtracting expected contributions of entities outside the Commission's jurisdiction and the effect of improvements in building codes and appliance standards. The baseline forecast was largely developed by Working Group III. The efficiency contributions of other State entities were largely identified in the filing of the Clean Energy Collaborative.[6] The baseline excludes some efficiency gains to be achieved after January 1, 2007, from existing programs. Interim targets for the years 2008-2011, adopted here, are arrived at through a straight-line slope or ramp-up commencing October 1, 2008 and continuing through 2015.[7] The results of these calculations are set forth in Appendix 1.

In addition to the near-term efficiency targets adopted in this Order, we emphasize the importance of demand reduction as a critical objective of this proceeding. Reducing peak demand will moderate commodity prices, improve system reliability, and potentially reduce – or at least defer - the need for construction of generation, transmission and distribution facilities. We will require that impact on demand, particularly in constrained areas, be an important criterion in

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[6] New York State Agencies and Authorities Energy Efficiency Programs (filed November 30, 2007). Other State entities outside the Commission's jurisdiction share the responsibility for meeting the statewide 15 x 15 goal. These include LIPA and NYPA, which have established efficiency goals, the Department of State, which is responsible for building codes and appliance standards, and other State agencies that have identified efficiency programs.

[7] At this time, targets are established for the State's investor-owned utilities. Whether targets should be established for municipally owned utilities within our jurisdiction will be addressed in a later phase of this proceeding.

selecting efficiency programs.[8] EEPS funding, as well as the existing funding of SBC programs, should be managed to the maximum extent possible in a manner consistent with other public interest policy objectives to defer or eliminate the need for utility infrastructure investments. In some territories achieving energy demand reduction may be as important as achieving energy savings because energy demand drives costly infrastructure investments. Establishing program targets on a utility service territory specific basis will allow utilities to factor the demand reductions from the efficiency programs into their infrastructure planning.

Several parties have commented that estimating the near term impact of enhanced codes and standards is inherently difficult. These objections, however, do not support ignoring the significant role of codes and standards in achieving the State's goal. Estimates presented by Staff, NRDC/Pace and other parties demonstrate that the benefit/cost ratio and the

[8] Although the role of demand response programs - versus permanent energy efficiency programs - remains an issue, it is clear that this proceeding will not encompass demand response that substitutes one generation source for another without regard to efficiency or emissions.

potential energy savings associated with enhancing codes and standards exceeds that of most, if not all, efficiency programs.[9]

At this time we are adopting program targets for the period ending December 31, 2011. Because the estimated savings attributable to codes and standards accelerate markedly after that time, the uncertainty surrounding the estimates does not substantially affect the three-year targets being adopted in this Order.

B. Estimated Benefits and Costs

Establishing a reasonable working estimate of the overall costs of filling the jurisdictional gap allows us to assess the portion of the overall program represented by fast track program commitments. As a reference point, parties were asked to assess the estimates of the overall costs contained in the Technical Appendix presented in the ALJs' Straw Proposal.

The Technical Appendix estimates were derived from the reported costs of NYSERDA programs, with a 25% escalator added to reflect the potential increase in per/MWh cost that may

[9] The precise method of accounting for Codes and Standards in establishing the jurisdictional gap will require further consideration in subsequent stages of this proceeding. New federal legislation regarding lighting has substantially increased the likely contribution of Codes and Standards. Some parties may argue that federal efforts should not be counted toward the State's goal but rather, that the federal efforts should be reflected in a reduced estimate of total system usage in 2015. Against this argument stands the concern that the federal lighting standards may displace a substantial amount of lighting-based efficiency that would have been accomplished through EEPS programs. Because lighting programs tend to be among the most cost-effective, this development would add substantially to the long-term costs of the EEPS program. Moreover, the cost of complying with the federal standards will be borne by customers who purchase the more efficient lighting equipment. For those reasons, we are inclined to include the savings from the federal lighting standards within the Codes and Standards "wedge" rather than within the baseline. Further development of this issue is necessary prior to a final determination.

result from expanding the reach of programs toward more difficult-to-attain energy efficiency measures and a higher level of program evaluation than has been conducted in the past. This method produced an estimated average program cost of $305/MWh.[10] Multiplying that figure by the jurisdictional MWh goal, and subtracting a set-aside of 6.25% to be achieved through on-bill financing,[11] results in total program costs averaging approximately $318.6 million per year.

1. Positions of the Parties

CPB argues that the program cost estimates are larger than necessary because a more optimal portfolio of NYSERDA and utility programs will result in a better selection of benefit/ cost ratios. CPB also notes its concern regarding the accuracy of estimates given that the projected bill impacts associated with the Renewable Portfolio Standard turned out to be too low. CPB expresses concern that the 25% escalation factor assumed in the Straw Proposal may be inadequate.

New York City claims that the estimated increases in customer bills are overstated for the early years and reductions in customer bills in later years may be understated. The City claims that the computation understates reduction in customer bills because it omits a number of benefits that can be expected, including: reduction in energy use; reduction in capacity price; reduction in required capacity acquisition; reduction in line losses; and reduction in T&D investment. The City also notes that the Straw Proposal does not reflect any gas savings or other customer savings associated with the electric

[10] $305 is the cost of a program that produces one MWh per year, for the multi-year life of a program. Thus, for example, if a program lasted 10 years, it would save 10 MWh over its life, and the cost per MWh would be $305/10 = $30.50 per MWh saved.

[11] On-bill financing is a method that allows customers to pay for efficiency measures through their utility bills. It is discussed in more detail below.

programs. The City presents calculations of bill impacts that are significantly reduced compared with the Straw Proposal.

Joint Supporters caution not to rely on codes and standards because for some types of equipment, turnover is very slow and benefits will be experienced well outside the 2015 schedule.

Multiple Intervenors argue that bill impact figures that include estimates of commodity charge reductions mask the impact on delivery rates of the programs. MI argues that a total exceeding $300 million annually is too expensive and would be detrimental to the State's economy. MI notes that the benefit/cost analyses do not reflect the cost of utility incentives.

NYSERDA believes the cost estimates are reasonable, but cautions that there are many factors that could significantly alter that conclusion, including the portfolio of programs, choice of administrative infrastructure, external State and national economic forces, over-reliance on rebates or "shallow savings," or the introduction of confusing competitive messages.

NRDC, like New York City, argues that the bill impact assumptions do not adequately reflect the benefits of energy efficiency programs, including the great potential for reductions in T&D infrastructure investment in the Con Edison territory.

National Grid argues that the funding levels proposed for utilities in the Straw Proposal appear to be too low to achieve the targets. National Grid claims that although its experience in Massachusetts of average annual first year costs was $0.274/kWh as compared to $0.267 /kWh in the Straw Proposal, the more appropriate comparison is to the $0.418/kWh experienced by National Grid when residential lighting programs are excluded. National Grid also questions the cost savings available from on-bill financing in the near term, cautioning that implementation of on-bill financing will need to be

developed according to realistic timeframes addressing utility-specific needs.

Con Edison and O&R claim that the overall program cost figures are reasonable to use as early placeholders for the outset of this program, exclusive of the on-bill financing component. The companies caution that costs cannot be assumed to remain the same. Like National Grid, they state they are willing to enter into discussions concerning on-bill financing, but that it is premature to endorse any estimate as to any cost savings to be achieved.

Central Hudson argues that estimates based on NYSERDA experience are not a reasonable proxy for overall program costs, because NYSERDA has not served all local markets, and because the NYSERDA costs may not be properly escalated.

Staff argues that the estimates are not reasonable because it is not known what the costs of utility-administered programs will be and what the potential cost savings of on-bill financing are.

NYSEG/RGE identify a range of estimates that have been presented in the proceeding from $244/MWh through $427/MWh. NYSEG/RGE claim that none of these estimates has been systematically examined, in comparison with the goals of the EEPS, and identify a number of factors that could influence the overall program costs including: variation in achievements from codes and standards; portfolio balance; internalization of costs associated with co-benefits; more stringent measurement and verification requirements; the potential for skilled personnel being unavailable; the effect of economies of scale; potential alternate sources of funding; and changes in the level of support activities. Given the number of unresolved factors, NYSEG/RGE conclude that overall costs cannot be reliably or accurately determined at this time.

NYC notes that estimated savings from codes and standards are a "somewhat elastic category" and should not be used simply to fill any potential shortfall in projected achievement of efficiency targets. The City describes the

difficulties and inherent time lags in achieving savings from updated codes and standards. The City notes that its PlaNYC timeline runs to 2030, rather than 2015, which allows more time for a full development and implementation of improved codes and standards.

2. Discussion

The Technical Appendix estimates were subject to examination during the March 5, 2008 technical conference. The majority of the parties' criticisms pertain to the precision of the figures in the Technical Appendix, or to the manner in which they would be applied, not to the question of whether they represent a reasonable estimate. Staff, for example, states that the Technical Appendix figure of $314 million per year is not reasonable, while Staff's proposal identifies 2009 costs for electric programs of $268 million. The Technical Appendix figure is higher, in part, because it reflects an average that accounts for an increase in costs over the life of the program beyond 2009. Staff's estimates also assume an increase in costs following 2009, reflecting increased customer participation. Considering that, and given the wide range of potential costs identified by NYSEG/RGE and other parties, the estimates contained in the Technical Appendix and Staff's proposal are reasonably close for purposes of placing fast track proposals into perspective.

Parties are correct in identifying the numerous factors that could influence overall program costs. In particular, program selection and portfolio balance will have a direct impact on total cost. Parties are also correct that it is impossible to identify final costs with precision at this time, unless program budgets are determined from the outset in a top-down manner. Even acknowledging these limitations, however, parties with disparate interests such as Con Edison/O&R and NYSERDA agree that the reference program cost figure of $305/MWh used in the Technical Appendix is a reasonable estimate. Multiplying that figure by the size of the jurisdictional gap,

and accounting for a small portion of the goal to be accomplished through on-bill financing, results in an estimate of approximately $318.6 million in annual costs.[12] To this estimate we add approximately $5.25 million to account for enhanced evaluation for the existing SBC III programs and $6 million in general outreach and education costs, resulting in an estimate of approximately $330 million in average annual costs. We will require periodic review in order to ensure that program decisions are informed by the most current cost estimates available.

Overall program benefits, identified in the Final Generic Environmental Impact Statement, in Staff's Revised Proposal dated March 25, 2008, and in the Straw Proposal, are compelling. Because, with minor exceptions, programs will not be considered for approval unless they have a score of at least 1.0 on the Total Resource Cost test, system-wide program benefits are expected to exceed costs. Staff projects for its fast track proposals, excluding codes and standards, that benefits over a diversified portfolio of programs would average approximately 2.5 times program costs. The Straw Proposal utilized an estimate of a 1.83 benefit/cost ratio, assuming an alternative mix of programs. Applying the more conservative ratio to total costs of $2.3 billion, results in customer benefits exceeding $4 billion, or net benefits of $1.8 billion for the program through 2015,[13] at a lifetime program cost of approximately $0.02 per kWh saved.

3. Conclusion

We adopt interim targets for electric energy efficiency savings, to be accomplished through ratepayer-funded

[12] There is a slight timing difference between the assumptions that went into the Technical Appendix and those used in this Order. When applied to the Technical Appendix, its $314 million cost figure becomes $318.6 million.

[13] This benefit estimate is conservative because it applies the benefit/cost ratio only to program costs, not to participant costs.

programs, for the years 2008 through 2011. These targets, enumerated in Appendix 1, will place the EEPS on a trajectory to achieve its portion of the statewide 15 x 15 goal. A total annual cost of $330 million for electric efficiency programs is a reasonable estimate for purposes of deciding the scope of a set of fast track programs.

FAST TRACK PROGRAMS

1. Staff's Proposal

Staff proposed a suite of programs for immediate approval. Funding for Staff's fast track programs would be committed for 18 months through the end of 2009. Annual statewide costs in 2009 would be $308.5 million. If the portfolio of programs that Staff has identified were extended through 2015, Staff claims that the projected energy savings levels would be sufficient to meet the Commission's jurisdictional portion of the 15 x 15 goal. Staff proposes, however, a process by which utilities and other parties may propose programs to replace some of the fast track programs, if their proponents can demonstrate that the proposed programs possess clear advantages over the fast track programs. Staff recommends 11 programs, three of which would be implemented by utilities. Budgets for utility-administered programs would be approximately 20% of the total. Staff also recommends funding for marketing, workforce development, and enhancement of codes and standards.

Because the two proposed utility-administered electric programs do not presently exist in New York, Staff recommends that implementation plans be submitted within 30 days of the issuance of an order, and that a lead utility be designated to convene collaborative meetings of all interested parties to discuss the parameters of each program. Staff also recommends that existing NYSERDA programs be the subject of collaborative meetings to discuss potential improvements, to be submitted in a compliance filing within 60 days of this Order.

With respect to evaluation and reporting, Staff recommends that for expanded NYSERDA programs, existing mechanisms for program evaluation should be used, with the exception that expenditures of up to 5% of funding for the program can be used for measurement and analysis. Staff notes that where utilities may recover lost revenues, other than through the use of a revenue decoupling mechanism, a higher level of precision than is currently employed may be necessary. Staff proposes that measurement and verification of utility programs be directly overseen by DPS Staff.

2. Positions of the Parties

Numerous parties support Staff's fast track proposal, with varying degrees of qualification.

NYSERDA supports the Staff proposal, but maintains that 18 months is too short a period for effective implementation. According to NYSERDA, contractors and energy service providers may hesitate to commit resources to ramp up levels of staffing, equipment, and marketing without the assurance of program continuity beyond 18 months. NYSERDA urges a commitment to the fast track programs of at least an additional year.

NYSERDA is concerned that the fast track portfolio does not fully integrate electric and gas efficiency programs. NYSERDA also recommends that $8.8 million allocated for market development is insufficient and that NYSERDA should be authorized to reprogram funds from other program areas into the market development program if needed. Staff agrees with NYSERDA that reprogramming of uncommitted SBC funds into marketing should be examined.

The Northeast Energy Efficiency Council - New York Chapter (NEEC-NY), a coalition of efficiency service providers, agrees with NYSERDA that 18 months is too short a commitment, but otherwise supports Staff's proposed portfolio. Staff does not object to 30-month commitments for fast track programs, with the proviso that other programs could be proposed and approved

prior to the end of the 30-month period. NEEC-NY also argues that unspent portions of annual budgets should be rolled over rather than trued up.

New York City argues against extending fast track commitments to 2½ years, arguing that the practical effect of such an extension would be to institutionalize such interim programs over the long term. Combined with the fact that utilities are assigned a relatively minor role, the City argues that these two positions, taken together, would in practice lead to the exclusion of the utilities from significant efficiency efforts.

Con Edison interprets NYSERDA's request that the fast track commitments be extended by a year as an admission that NYSERDA is not capable of ramping up quickly.

The Alliance for Clean Energy (ACE NY) supports the Staff recommendations insofar as they apply to NYSERDA-administered programs. ACE NY does not support utility implementation at this time, because of unresolved issues with regard to utility-administered programs in general. ACE NY argues that utilities should be allowed to present programs of their own development, in order to encourage their involvement. Staff responds that its proposed utility-administered programs would help develop capability, while details on additional utility efforts are developed.

The Consumer Protection Board (CPB) supports the fast track portfolio, and argues that it will take several years for utilities to provide energy efficiency services on a larger scale. CPB supports the proposal that evaluation for utility-administered programs should be conducted by DPS Staff, but recommends that that principle also apply to NYSERDA programs. CPB also supports the defined allocation of energy efficiency spending for low-income programs.

The Department of Environmental Conservation (DEC) supports the fast track proposal, particularly as it pertains to low-income customers. DEC recommends that addressing

environmental justice issues presented by peaking power plants should be performed in the context of a fast track.

The National Association of Energy Service Companies (NAESCO) urges adoption of the full suite of fast track programs as quickly as possible. NAESCO agrees with CPB that the development and implementation of new utility programs may take at least two years. NAESCO argues that the proposed market development budget is inadequate to achieve significant penetration in hard-to-reach customer segments such as Class A Office Buildings.

The Community Environmental Center and TRC Energy Services also support immediate implementation of the fast track portfolio.

EnerNoc supports Staff's broader vision of the proceeding, beyond the narrow fast track issues, particularly Staff's recommendations regarding potential contributions of demand response.

Several other parties generally support the fast track proposal, but with greater specific reservations.

NRDC, Pace Energy and Climate Center, and the Association for Energy Affordability, Inc. argue that fast track efforts should focus on expanding existing successful programs. These parties disagree with the recommendation to initiate new utility-administered programs as part of a fast track. They do not, however, advocate delay of utility programs, but rather recommend that utilities should be ordered to submit comprehensive efficiency plans within 45 days and that an expedited process be established for integrating utility programs with existing NYSERDA programs. National Fuel Gas agrees with NRDC that utilities should be directed to file tariff leaves within 45 days to implement energy efficiency programs. Staff responds that there is a need for a disciplined process to assess new program proposals and evaluate needs.

NRDC argues that Staff's approach to utility programs is top down. Staff responds that its proposed programs are

designed to focus on specific market segments that have identified needs.

NRDC argues that targets for natural gas efficiency programs should be established at the same time. Staff responds that an update to the 2006 Natural Gas Efficiency Potential Study is being performed, and that Staff plans to develop a proposal based on that update.

National Grid takes a position similar to NRDC, supporting a limited enhancement of NYSERDA's portfolio contemporaneous with consideration of a broader array of utility programs than is contemplated under Staff's fast track proposal. National Grid emphasizes that it has experience in administering programs in Massachusetts, Rhode Island, and New Hampshire and states that it can act rapidly to develop and deploy new programs that will complement existing NYSERDA programs. National Grid argues that NYSERDA is not the only logical entity to deliver fast track programs and that utilities' capabilities deserve to be evaluated on their own merits by the Commission.

With regard to lost revenues, National Grid argues that in the absence of a revenue decoupling mechanism, a lost revenue recovery mechanism should be approved. Staff agrees with this approach, with the proviso that evaluation protocols must be proposed that would be sufficient to support lost revenue recovery.

New York City generally supports Staff's portfolio of fast track programs, but disputes whether the portfolio taken as a whole would meet the Commission's entire jurisdictional share of the 15 x 15 goal. Staff replies that program budget levels can be reviewed and adjusted if needed, as indicated by an on-going program review and evaluation process. The City questions Staff's forecast regarding the contribution that can be expected from revision of codes and standards. The City also emphasizes that utilities eventually will be in the best position to administer retrofit programs for existing commercial and industrial (C&I) customers, and that more utility programs should be included in the portfolio within the fast track time

period. Staff responds that utilities and NYSERDA need to work in very close coordination and that Staff supports the utilities' proposal to recommend new programs.

The City recommends that funding for NYSERDA's workforce development and market development programs be increased from the level recommended by Staff.

The City is also concerned that given the savings projected by Staff, costs may be underestimated by 20% to 30% because of the diminishing marginal returns of programs seeking to achieve greater savings. The City also questions the incentive program for large and medium C&I customer retrofits, arguing that it encourages cream-skimming. The City recommends changing the approach from a fixed-price per kWh saved to a capital buy-down approach. Staff replies that it does not object to changing the manner in which customer incentives are provided for large and medium C&I retrofits.

The Dormitory Authority of the State of New York (DASNY) argues that many of the fast track initiatives will not be successfully implemented unless utility customers are willing to make capital investments to implement the initiatives. DASNY recommends that its proposed on-bill financing mechanism be adopted as part of a fast track. DASNY further recommends that more utility initiatives should be included in the fast track. Utility parties state that it is premature to plan on savings from on-bill financing. DASNY observes that none of the objections raised to on-bill financing involve the legality or wisdom of such program, but only raise implementation issues. DASNY urges consideration of on-bill financing programs as rapidly as possible.

Joint Supporters recommend that the fast track portfolio be implemented as soon as possible, and observe that the main benefit of the fast track is that it takes advantage of the fact that there are already many successful NYSERDA programs in place. Joint Supporters, however, favor higher allocations for existing buildings because these programs offer potentially greater participation of demand-response measures and combined

heat and power measures. Joint Supporters present evidence of customer willingness to invest in CHP and demand response, and argue that the Enhanced Commercial Industrial Performance Program should receive increased funding. Joint Supporters also argue that programs utilizing Energy Star as a strict criterion may preclude the participation of innovative technologies such as micro-CHP.

Joint Supporters also recommend that the impact of fast track programs on system load factor should be analyzed and that the correct balance between efficiency savings and peak demand savings might not be obtained. Joint Supporters support Staff's recommendation that regional load factors should not be allowed to be decreased and that any fast track measures related to existing commercial buildings should emphasize peak load reduction. Joint Supporters observe that the State of New Jersey recently released a Draft Energy Master Plan that is more aggressive with respect to demand response and combined heat and power (CHP) than is the EEPS fast track proposal.

Multiple Intervenors generally agree with the approach of expanding existing programs rather than implementing new programs in the near term. MI expresses concern that the total cost of the program is excessive and needs to be reduced, and that the relative ease of relying on customer-funded programs must be tempered by the need to mitigate energy prices. MI suggests that, because Staff anticipates the fast track programs being replaced by better programs, the total funding for 2009 should represent the maximum annual cost and total annual expenditures for future years should be capped at that level, or at a lower level.

The bulk of MI's recommendations relate to cost allocation. With respect to the utility-administered programs in Staff's fast track proposal, MI notes that they are targeted solely at residential and small C&I customers and argues that costs should be recovered from those customers.

MI notes that customers that do not participate in efficiency programs will experience higher energy bills, despite

savings experienced by participating customers. MI also urges that total program costs be considered in the aggregate with other initiatives, including the existing SBC programs, the Renewable Portfolio Standard, and the impending Regional Greenhouse Gas Initiative (RGGI). MI suggests relying on improved codes and standards to the maximum extent possible. Regarding the program portfolio, MI observes that though funding levels are roughly comparable between residential and C&I programs, the bulk of the savings come from C&I programs. MI recommends that, given the uncertainty associated with benefit/cost analyses, the Commission should refrain from approving programs with marginal benefit/cost ratios. In the alternative, MI argues that if costs are allocated by class, then it has no position with respect to the design or selection of residential or small C&I efficiency programs.

MI supports Staff's recommendation to continue existing customer exemptions from SBC payments, with respect to NYPA allocations, but urges that the exemption should be expanded to encompass flex-rate contracts. MI points to the importance of NYPA and flex-rate contracts for the economic livelihood of the State. MI also observes that NYPA customers with long-term contracts would not benefit from any declines in market price experienced as a result of EEPS-related consumption or peak demand reductions. MI also argues that because these tend to be large energy consumers, many routinely implement energy efficiency projects on their own, and most have already undergone comprehensive energy audits at their facilities. With regard to flex-rate contract customers, MI argues that many made commitments to their New York operations based on energy rates fixed in negotiations.

MI urges rejection of the principle that inter-class equity will be achieved through program distribution and design, rather than cost allocation. MI observes that designing programs to cover various customer classes because a simple volumetric surcharge is the source of funding is contrary to the principle of designing and budgeting efficiency programs based

on their merits. Given the overall size of the program, MI argues that a more sophisticated approach to cost allocation is necessary. MI observes that EEPS program costs may be easier to allocate to particular customer classes than other types of utility costs that are routinely allocated in rate proceedings.

MI makes a similar argument regarding intra-class equity. Recovering charges solely on a volumetric basis, according to MI, would penalize large, high-load factor customers. Staff responds to MI that all customers benefit from efficiency programs, and that achieving equity through program design rather than through cost allocation would result in ease of administration. Staff also notes that no definitions for "small C&I" and "large C&I" customers have been proposed.

With respect to inter-regional equity, MI concedes that perfect matching need not be pursued, but that collections and benefits should be evaluated, by region, on an annual basis, with inequities addressed in future collections. Staff argues that NYSERDA should make efforts to match expenditures to service territories, but must have flexibility in its operations across the State.

MI strongly urges that programs be designed to take into account the needs of large C&I customers. MI proposes several mechanisms to accomplish this, notably an option for individual customers to "bank" their EEPS surcharges and recoup them to fund their own efficiency projects. According to MI, customers subject to EEPS surcharges should be accorded the opportunity to fund their own energy efficiency projects. MI cites a program established in New Mexico[14] which provides an exemption to customers who have self-directed programs. MI also cites a Texas program allowing large customers to participate in a market-based standard offer[15] and also urges consideration of an opt-out provision for large customers.

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[14] N.M.Stat. §62-17-9 (2007).

[15] Texas Utilities Code §39.905(a)(3) (2007).

Nucor Steel Auburn, Inc. argues that because the size of State efficiency spending is expanding, fundamental cost recovery issues must be addressed and all flex rate and NYPA contract customers should be exempt from surcharges. Nucor also recommends that large manufacturing customers should be exempt from charges if they commit to invest in energy efficiency improvements in their own facilities that cost at least as much as they would have been charged under the EEPS.

NYSEG/RGE argue that Staff's proposal does not adequately consider demand impacts. NYSEG/RGE agree with other utilities that all program administrators should be subject to the same processes and evaluation procedures. NYSEG/RGE question whether oversight of efficiency programs may be delegated to an oversight board as recommended by Staff and Assemblymember Hevesi.

Three parties are strongly opposed to Staff's fast track proposal. Con Edison and Orange and Rockland state that the fast track should not be authorized in the absence of a Commission decision to begin a long-term plan to achieve the EEPS goal that provides for a more substantial role for utilities.

Con Edison/O&R argue that Staff's vision of the fast track views utilities primarily as entities that will have the role of recruiting customers for NYSERDA. According to the Con Edison/O&R, Staff's proposal would pre-determine how the State would achieve its 15 x 15 goal and virtually foreclose utility participation. CPB responds that the two utility electric programs in Staff's proposal would receive an annual allocation of $54 million, which provides an important role for utilities. CPB argues that the alternative to adopting Staff's proposal would be a lengthy process of approving new efficiency programs that would delay utilities' involvement.

Con Edison/O&R propose that a fast track period should be used for: (i) implementation of programs that can be put in place quickly by program administrators who will deliver such programs in the future; (ii) development of infrastructure to

support the State's long-term efficiency goals; and (iii) learning and testing. Con Edison/O&R quote the recent Con Edison electric rate order stating the Commission's assessment that "it is likely the proceeding will result in substantial utility involvement in delivering efficiency programs." [16]

Con Edison/O&R propose a suite of programs that they claim were developed based on relationships with customers and geared toward company system-planning efforts. Con Edison/O&R further argue that 8 of the 11 programs proposed by Staff should be implemented by Con Edison/O&R rather than by NYSERDA. Con Edison/O& propose that the Commission should issue an order authorizing implementation. Following this Order, Con Edison/O&R would conduct meetings of stakeholders and would file a final implementation plan within 60 days. The implementation plan would include details of cost recovery and incentives.

With respect to Staff's fast track proposal, Con Edison/O&R argue there is no evidence that the programs are over-subscribed in their service territories. Con Edison/O&R argue that while Con Edison has provided 50% of SBC funds to NYSERDA, only 40% of the funds have been spent in its territory, and that O&R's proportional share of SBC funds is even lower. Con Edison/O&R argue that NYSERDA would have been able to achieve regional parity in its allocation of SBC funds if its programs were over-subscribed in Con Edison/O&R's service territories. NYSERDA replies that the initiating order for the System Benefits Charge (SBC) program rejected a strict geographic allocation.[17] NYSERDA states that it is presently studying ways to increase participation in its programs in New York City and Westchester County. NYSERDA observes that the

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[16] Case 07-E-0523, Consolidated Edison Company of New York, Inc. -- Electric Rates, Order Establishing Rates for Electric Service (issued March 25, 2008).

[17] Case 05-M-0090, In the Matter of the System Benefits Charge III, Order Continuing the System Benefits Charge (SBC) and the SBC-funded Public Benefits Programs (issued December 21, 2005), at pp. 8-9.

EmPowerNY low-income program works most successfully in regions where the utility refers payment-troubled customers, and that Con Edison has thus far declined to provide such referrals. Regarding inter- and intra-class equity, NYSERDA agrees that equity is a goal, but that an overly prescriptive approach would be disruptive to program administration.

Con Edison/O&R also argue that NYSERDA programs should not be funded through ratepayer surcharges because of the likelihood that the proceeds of RGGI auctions will be available to pay for NYSERDA energy efficiency programs. Con Edison/O&R claim that based on a $7/ton price at which allowances were traded in a forward transaction, NYSERDA is likely to receive over $300 million annually. NYSERDA responds that RGGI rules have not yet been adopted, that the amount of funds that will be generated is inherently unpredictable, and that a program plan to guide the use of funds has not yet been developed. IPPNY objects that new forecasting may be needed in the RGGI program, and that RGGI monies, if available, should be used to supplement and not supplant monies made available under the PSC's jurisdiction. Staff states that the amount and use of potential RGGI funds is uncertain at this time and should not be relied upon. In the event that RGGI funds materialize, Staff's position is that the Commission can adjust the EEPS surcharge accordingly.

Con Edison/O&R question Staff's recommendation of a consistent statewide theme for energy efficiency programs. They refer to the experience of NYSERDA programs and also to a recent NYSERDA report indicating that end users in NYC/Westchester have different motivations for participating in energy and demand response programs compared to the rest of the State. Con Edison/O&R also question whether NYSERDA programs should be expanded at this time given the proposal to more than double the budget for measurement and verification. Con Edison/O&R cite a Commission order stating that NYSERDA's current measurement and valuation (M&V) may not be sufficiently accurate to calculate

lost revenues.[18] The Companies also argue that Staff proposes criteria for utility participation that it did not apply to NYSERDA.

Although Con Edison/O&R support increasing funding for low-income energy efficiency, they oppose support for the DHCR Weatherization Assistance Program (WAP) at this time, because it would establish a precedent for ratepayer funding of other State agencies. DHCR responds that there are no other effective delivery mechanisms to provide residential efficiency services to low-income households. DHCR also observes that the U.S. Department of Energy estimates that 52 new jobs are created for each $1 million invested in WAP. DHCR agrees with NYSERDA that a longer-duration program would be more effective than the current 18-month proposal. DHCR notes that none of the objections for inclusion of WAP as a fast track program are based on challenge to the benefits that will accrue to low-income households, or the wisdom of using the WAP to contribute to the goals of the EEPS proceeding.

Regarding cost allocation, Con Edison/O&R oppose continuation of existing customer exemptions and oppose the administrative burdens and restrictions on flexibility that would result from a requirement that costs be strictly allocated to the classes that receive program funding. NYPA objects to Con Edison's proposal to subject NYPA's customers to EEPS surcharges, emphasizing that this would frustrate achievement of NYPA's statutory objectives, and that NYPA's customers have contributed to energy efficiency in the State through their participation in NYPA's energy services program.

Regarding inter-regional equity, Con Edison/O&R argue that direct utility-sponsored programs would resolve that issue.

Concerning evaluation and reporting, Con Edison/O&R urge that any proposal for evaluation should be applied equally

[18] Case 04-E-0572, Consolidated Edison Company of New York, Inc. -- Electric Rates, Memorandum Order at 5 (issued July 2, 2005).

to all program administrators. Staff replies that NYSERDA already utilizes a competitively selected evaluation team, has a highly skilled internal evaluation staff, and does not have incentive payments contingent on its performance evaluation. Staff also notes that utilities, as members of the SBC Advisory Group, regularly sign off on NYSERDA's annual program evaluation and status reports.

Con Edison/O&R oppose funding for marketing unless it includes utility activities and argue that support for NYSERDA and DOS activities on codes and standards should be rejected as premature until the specific uses to which these funds would be dedicated are established. Staff replies that increased budgets for marketing and customer support services will result in higher levels of market penetration for NYSERDA programs.

Central Hudson opposes the Staff program and proposes that utility-administered programs be approved on a fast track basis instead.[19]

Central Hudson argues that Staff's fast track proposal does not create interim programs, but rather establishes a group of long-term "default" programs that would minimize the role of distribution utilities. Con Edison/O&R agree, adding that because Staff did not consult with the Companies before proposing the utility programs under its fast track proposal, the Companies should not be required to explain why their proposals differ from the Staff proposal. Staff responds that Central Hudson is incorrect in its characterization, and that fast track programs would become permanent only if there are no proposals for new and better programs.

Central Hudson argues that Staff has confused status with capability by favoring existing efficiency programs and

[19] Central Hudson and other parties submit that large portions of Staff's initial brief exceeded the scope of briefing authorized by the March 20 procedural ruling of the ALJs, including the discussions of incentives, governance, and a final state of the proceeding. These matters are not being decided in this order.

assuming that new programs would involve unacceptable implementation delays. Central Hudson argues that Staff should have considered the programs it proposed in September 2007 and compared their cost effectiveness to those of NYSERDA. Central Hudson points to information provided by NYSERDA indicating that there would be a lag period of three years before NYSERDA fast track programs could be fully implemented. NYSERDA responds that a three-year lag described by Central Hudson is not a lag in program implementation, but rather a lag in project installation or completion.

Central Hudson argues that its programs should be included in the fast track, because they are more detailed than Staff's, can be implemented more quickly, and are of equivalent or better benefit cost ratios. Staff responds that one of the Central Hudson programs scores below 1.0.

Central Hudson points to reported savings from programs of NYSERDA, NYPA, LIPA, and utilities over various timeframes from 1990 through 2006. Staff points out that the numbers presented for those various programs are not comparable.

Central Hudson challenges Staff's assumptions regarding the savings available from lighting programs, citing actual experience from a comparable New England program. Staff agrees that the estimated savings rate for lighting programs should be revised. Staff notes however that even if the substantially lower savings estimates are used, the TRC ratio for lighting programs remains higher than any other program other than codes and standards.

Central Hudson argues that rather than ramping up lighting market transformation programs, they should be ramped down in view of the impending federal phase-in of new lighting standards. Central Hudson argues that more cost-effective utility rebate programs should be implemented instead. NYSERDA notes that federal requirements will still allow incandescent products that use more energy than Energy Star CFLs and that NYSERDA programs are designed to encourage market development for Energy Star products.

Central Hudson argues that Staff contradicts itself by recommending immediate expansion of existing programs, while recommending enhancements of those programs as well. Central Hudson argues that NYSERDA's costs are not subject to the same scrutiny as utilities' costs in a rate case. Staff responds that even if the NYSERDA programs require enhancements, that can be more easily accomplished within the existing NYSERDA infrastructure than by utilities ramping up entirely new programs.

Central Hudson argues that its programs, which were the basis for its statewide plan, were developed by considering customer focus groups, market research, and successful industry program best practices.

Central Hudson argues that Staff has performed no analysis to demonstrate that it could not implement its energy efficiency programs as fast, or faster, than NYSERDA can ramp up its revised programs.

Central Hudson argues that, absent reliable information on NYSERDA's fully-allocated costs, it is unreasonable to expect utilities to demonstrate that they can be more cost effective than NYSERDA. Central Hudson argues that NYSERDA has never been audited by the Commission and that utilities are subject to higher scrutiny than NYSERDA. Therefore, according to Central Hudson, it is not reasonable to provide large increases in ratepayer funding to what it terms "the incumbent governmental monopoly energy efficiency supplier," while simultaneously establishing hurdles to customer choice of program administrators.

Central Hudson questions whether Staff performed the consideration of alternatives necessary to develop a "ground-up" approach to program development.

Dutchess County also opposes the fast track. The County argues that programs with lower benefit/cost ratios should not be placed on an expedited path, but should be reconsidered to be made more cost effective. The County also opposes funding DHCR with ratepayer funds, versus other

potential sources including RGGI. Staff responds that the availability of RGGI funds is speculative and the need for authorization of efficiency programs for low-income New Yorkers is imminent.

The County does not believe that the record in the case has been developed enough to support funding on the magnitude suggested by Staff, and a significant amount of work remains to be done. Staff responds to Dutchess County that a partial approach will mean missed opportunities to achieve efficiency savings which need to begin now to meet the 15 x 15 goal.

3. Discussion

Staff supported its fast track recommendations in its March 25, 2008 filing, and parties have had an opportunity to file briefs. We agree with Staff and other parties who urge that approval of programs is needed at this time to begin making immediate progress toward the 2015 goal. Implementing programs on a fast track basis will accelerate customer savings and avoid lost opportunities. Moreover, the number of long-term issues remaining to be resolved underscores the risk that waiting for complete resolution of all issues could undermine the achievement of the 2015 goal, by causing expensive and inefficient compression of programs into a narrower time span than is necessary.

Expansion and enhancement of existing, proven, NYSERDA programs is the most reasonable and expeditious way to accomplish the goal of accelerating savings while avoiding lost opportunities. NYSERDA's programs have been in place for a substantial period of time and have been evaluated and approved on multiple occasions by a Program Advisory Board that includes the utilities. Although NYSERDA's programs, like any programs, must be subject to continual reevaluation and improvement, they

are established as successful programs and there is a more than sufficient basis for expanding them.[20]

Con Edison/O&R argue that NYSERDA will be able to rely on RGGI funding so that no additional ratepayer-funded surcharges are needed at this time. Both the funding available to NYSERDA from RGGI, if any, and the uses of that funding, remain speculative. The Commission will take developments in the RGGI initiative into account as they occur, and, as appropriate, may consider the potential for RGGI-funded energy efficiency measures to be substituted for programs and expenditures authorized herein.

Regarding the duration of the fast track programs, NYSERDA and NEEC-NY are correct that program expansions under a fast track should involve commitments for a period longer than 18 months. This is necessary in order to encourage service providers to make business commitments including hiring, training, and equipment purchases. A longer term is also necessary in order to expand retail and manufacturing relationships, to enhance evaluation protocols, and to allow time for ramping up program administration functions including customer outreach. This conclusion is supported by Staff's workpapers showing increased customer participation rates in the second and third years of program expansion.

We agree with the utility companies' argument that Staff's proposal, taken as a whole, would go too far in predetermining the long-term makeup of the entire statewide program. This is particularly true if, as we have decided, program expansions are to be authorized for terms longer than 18 months. Staff's argument, that utilities are not foreclosed because they are encouraged to propose additional programs, is

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[20] Con Edison/O&R argue that NYSERDA's programs are not oversubscribed in their territories and have not delivered a level of savings proportional to their contributions. The balanced approach adopted in this Order is intended to address this issue.

not compatible with its proposal of a suite of fast track programs that would account for 100% of the jurisdictional gap. Staff has not explained how its model would accommodate additional programs except by supplanting existing programs. While that may become necessary if a program is not performing adequately, it would be disruptive and counterproductive to interrupt programs that are performing adequately, prior to the end of their funding commitment.

Central Hudson urges that a wide range of utility programs should be approved on a fast track basis; but Central Hudson's argument ignores the fact that no other utilities had filed specific program proposals prior to the most recent briefing period.[21] Central Hudson assumes a readiness on the part of utilities that is not realistic in the context of a fast track designed to achieve actual efficiency savings as quickly as possible.

Con Edison/O&R state that a fast track consisting primarily of NYSERDA programs should not be approved in the absence of a longer-term framework for the proceeding that includes a more substantial role for utilities. That framework is established in this Order. At this time, a subgroup of the proposed NYSERDA fast track programs will be approved, representing approximately 30% of the jurisdictional gap through 2011, when calculated on a levelized basis. As discussed further below, a process is established that provides utilities and others an opportunity to submit proposals to satisfy the remainder of the jurisdictional goal.

Staff's proposal includes two electric efficiency programs that would be administered by utilities: a small commercial/industrial retrofit program, and a residential Energy Star appliance program. The utilities have stated a strong preference to design their own programs. Utility programs that are not already operational will not be approved in this Order.

[21] Proposals were subsequently filed by Con Edison/O&R and National Grid.

However, we will provide for expedited approval of programs in these two categories, contingent on filing by utilities of detailed program designs, as discussed further below. The utility-administered programs accounted for approximately 20% of the fast track funding initially proposed by Staff in the electricity category. As contemplated in this Order, utility-administered programs account for slightly more than half of the fast track funding.

Multiple Intervenors and Nucor raise significant issues of cost allocation and inter-customer equity. These issues have been discussed and resolved in previous orders related to the System Benefits Charge[22] and we find the current method of allocating costs to be reasonable. For purposes of approving fast track programs, we will not change the determinations made in that proceeding. We do not, however, dismiss the arguments made by these parties, particularly in light of the increased overall size of the State's efficiency programs, and we will continue to consider these issues in subsequent phases of this proceeding. In particular, we will give consideration to the proposal that large customers be allowed to dedicate their cost allocation toward self-directed efficiency programs.

MI observes that the utility-administered programs proposed by Staff would serve only small C&I and residential customers. MI proposes that large customers be exempt from contributing toward the cost of these programs. For purposes of policy decisions regarding cost allocation, the portfolio of EEPS programs will be considered as a whole. The reasonableness of cost allocation is determined by reviewing the entire energy efficiency portfolio, not the specific programs of any particular administrator.

National Grid requests that utilities be allowed to recover any lost revenues associated with new program

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[22] Case 05-M-0900, supra, at pp. 8-9.

expenditures under the EEPS. Requests for lost revenue recovery will be entertained on a utility-specific basis, taking into account the quality of data available to support lost revenue calculations. We note that such an exercise could, in situations in which utilities are currently operating under long-term rate plans, have an impact on the balancing of issues which produced the rate plan.

a. Evaluation

As Con Edison/O&R observe, the Commission has previously expressed concern that the evaluation protocols used by NYSERDA for measurement and verification (M&V) of program benefits may not be rigorous enough to support calculation of lost revenues for utilities. That concern is heightened by the increased size of efficiency programs pursuant to the EEPS, and the possibility that utilities may earn incentives based on measurable performance.

Equally important is the need to upgrade evaluation measures to allow the New York Independent System Operator (NYISO) to rely on forecasts of efficiency savings in assessing resource adequacy, and to allow distribution utilities to rely on efficiency forecasts to reduce the need for costly demand-driven infrastructure improvements.

NYSERDA's evaluation process has been reasonable by industry standards and has been implemented by well-respected independent contractors. For the reasons stated above, however, NYSERDA's evaluation process should be enhanced. Staff proposes that the portion of program budgets allocated to evaluation be increased from 2% to 5%. We agree with this measure. We further require that, as a condition for the expenditure of funds authorized by this Order, the Memorandum of Understanding with NYSERDA, as applied to EEPS-funded programs as well as existing programs funded by the System Benefits Charge, must be revised within 45 days of this Order to accomplish, at a minimum, the following enhancements:

1. A uniform database allowing more comparable evaluation of programs
2. Increased detachment of NYSERDA from evaluation contractors, and increased involvement of Department Staff in oversight of evaluation.

The requirement to revise the MOU, as it pertains to existing SBC programs, is conditioned on compliance with the terms of existing contracts to the degree they cannot be cost-effectively altered. At a minimum, an acceptable consultant to be directed by Staff must be made available to advise Staff on the scope and methods of evaluations and to assist Staff in its independent critique of the evaluation activities of NYSERDA and other program administrators. NYSERDA should submit, within 60 days of the issuance of this Order, a transition plan developed in consultation with Staff identifying steps that will be taken to implement the new standards expressed in (1) and (2) above with respect to existing programs, including the incorporation of enhanced evaluation, measurement and verification into the SBC III programs.

All programs, including utility programs, will be subject to the same evaluation protocols as provided in the selection factors discussed below. The Director of the Office of Energy Efficiency and Environment is directed to establish an Evaluation Advisory Group, which will advise Staff in developing evaluation protocols and in other critical evaluation and reporting issues. The Evaluation Advisory Group should consist of program administrators, stakeholders, and other State entities.

Within 45 days following issuance of this Order, the Director of the Office of Energy Efficiency and Environment, following consultation with the Evaluation Advisory Group, will issue guidance to program administrators regarding the components of evaluation plans to be included in program proposals. The guidance will include specific data requirements necessary to ensure uniform evaluation of programs.

b. Fast Track Programs

Consistent with the findings above, we will authorize $79.8 million annually in funding to NYSERDA for a balanced group of fast track programs. The revision of the MOU with NYSERDA, referenced above, will establish a reasonable level of incremental administrative expenses attributable to the fast track programs. We further identify an estimated $74.2 million in funding for utility-administered electric programs and $16.8 million for utility-administered gas programs that will receive expedited approval if they meet conditions specified below. Funding for the fast track and expedited programs will be approved through December 31, 2011. Program funding is detailed in tables 15 and 17 of Appendix 1. Other program information is detailed in Appendix 2.

In selecting these programs, we have taken into consideration several factors that are unique to the fast track portion of this proceeding. First, our selection of fast track programs is designed not to foreclose longer-term decisions regarding which entities will administer certain major programs. This is reflected both in the overall size of the fast track as well as in the program selections themselves.

Second, in light of the pending enhancements to evaluation processes, for fast track purposes we have concentrated on programs that score well above 1.0 in the Total Resource Cost test,[23] thus ensuring that significant customer savings will result, even accounting for a reasonable margin of error in the existing evaluation process. Parties should not interpret the preponderance of higher-TRC programs in the fast track as an indication that lower-TRC programs will not receive full consideration in the next series of filings. As the selection criteria identified in Appendix 3 make clear, we will approve a balanced portfolio of programs.

[23] This consideration is tempered by the need to provide low-income services. The Total Resource Cost Test is defined in Appendix 3.

Fast track programs were selected first by identifying programs with a TRC ratio of 2.0 or higher. These programs were then analyzed for their rate impacts and their effect on peak demand, and were found satisfactory with respect to those criteria. Of programs with TRC ratios of 2.0 or higher, two were eliminated from fast track consideration. The CFL Fixture Expansion program was not approved due to a concern that the likely development of alternative lighting technologies in the near future could cause fixtures designed specifically for CFLs to become obsolete. At a minimum, further development of the record on that question is needed before approval of expanded CFL fixture programs. The Existing Commercial Buildings program was not approved for two reasons: first, because concerns were raised regarding the current program delivery mechanism, and second, because we reserve for the next round of approvals the question of which program administrators are best suited to deliver this type of program.

Finally, the Low Income EmPowerNY program was added at a funding level of $8 million per year. This reflects a policy decision that 20% of the residential fast track programs should be oriented toward low-income customers.[24] Energy costs are a higher percentage of household income for low-income customers and it is important that they be served by efficiency programs.

The fast track programs, including the utility expedited programs, represent slightly less than half of the estimated annual cost of filling the jurisdictional gap. This represents a balanced approach that begins to achieve efficiency savings as soon as possible while not predetermining the makeup of the EEPS as a whole.

[24] The determination that 20% of residential program costs should be directed to low-income customers applies to the fast track program only. The question of whether a definitive target should be established for low-income customers for the EEPS as a whole requires further development in the next phase of this proceeding.

Five of the fast track programs are administered by NYSERDA. These are either existing stand-alone programs or they are severable components of existing programs. Enhancements to the programs, as approved in this Order, are limited to those that can be easily implemented within the existing program framework. Enhancements are specified in Appendix 2, and revised program operating plans incorporating the enhancements must be submitted by NYSERDA to the Department within 60 days of the issuance of this Order. Any further modifications to programs, consistent with the terms of their approval, may be made by NYSERDA in consultation with Staff, provided that funding may not be reallocated among programs without further approval by the Commission.

We also contemplate expedited approval for utility-administered programs in the categories proposed by Staff. Funding for each utility under this authorization will be available through a pro rata allocation based on total sales. We will not require that utilities conform to a single program model in these categories; utilities may submit program designs pursuant to the terms described below.

Staff's fast track proposal includes a residential heating, ventilation and air conditioning (HVAC) program to be administered by gas utilities. We authorize gas utilities serving more than 14,000 customers to establish surcharges to collect revenue to cover the associated costs we contemplate as set forth in Appendix 1. The applicable gas utilities must submit program plans for our approval within 60 days of this Order, including detailed benefit/cost estimates using the Total Resource Cost methodology, and demonstrating that collaborative discussions have been held including participating utilities, NYSERDA, and other interested parties to establish uniformity, particularly with respect to eligible equipment and rebate levels, to the extent compatible with the needs of utilities to design programs that meet the needs of their service territories. To the extent that gas utilities already offer programs comparable to the residential HVAC program proposed by

Staff, the pro rata share of funding authorized here will not supplement existing programs. For purposes of cost allocation, utilities that presently offer no other gas efficiency programs will allocate costs to residential customers. Utilities offering an existing range of gas efficiency programs will allocate costs consistent with their current practice.[25]

c. Customer Outreach and Education/Marketing

Each fast track program approved in this Order will include a marketing and outreach component that is specific to the program. NYSERDA's compliance filing describing fast track program enhancements should include a detailed description of the enhancements to program marketing and outreach, including a revised budget itemizing this cost category.

In addition to program-specific marketing efforts, Staff has proposed that funding be made available for a new statewide customer outreach and education campaign to support the EEPS initiative. Numerous parties support the request, several claiming that the proposed additional funds were insufficient and that even more active customer outreach will be necessary to meet the more ambitious goal of the EEPS.

The success of fast track and long-term programs hinges in large part on public awareness, understanding, and willingness to participate. A new statewide outreach and education program must be an integral part of a successful EEPS strategy. We look forward to a dynamic, multifaceted statewide effort that harmonizes the need for a consistent program identity, identifiable by all customers, with the opportunities for full and active participation by all interested parties. This raises several significant issues. The respective roles of DPS and NYSERDA in managing statewide efforts must be clarified.

[25] We also note that the electric fast track programs incidentally create a significant amount of efficiency savings for gas customers. A further phase of this proceeding will address this issue and utilities will be encouraged to develop a means of allocating program costs to gas operations.

The participation of utilities in statewide efforts, and the extent to which statewide "branding" can or should be coordinated with individual companies' marketing efforts, must be established. Finally, community organizations that participated in Staff's regional roundtable discussions demonstrated a willingness to assist in outreach, in order to increase customer participation in their communities; a process for facilitating their participation should be established.

At this time we will order that an additional $6 million annually be collected through the SBC, dedicated to statewide customer outreach and education/marketing under Department of Public Service Staff's direction. Staff should immediately commence collaborative discussions among interested parties; convene an Advisory Group on customer outreach and education/marketing policy; and develop an implementation plan, as soon as practicable, for the statewide customer outreach and education/marketing program that addresses the issues discussed above. Prior to implementation, the plan must be approved by the Commission.

Staff should report back periodically to the Commission on the scope, design and implementation of the statewide customer outreach and education/marketing program.

4. Conclusion

We will (a) approve on a fast track basis a group of the NYSERDA-managed programs identified by Staff, as described in Appendix 2, for terms extending through 2011; and (b) authorize collection of funds and provide expedited process for utility programs within two electric categories, as described below, and one gas category; while (c) establishing the opportunity for additional programs to be proposed to fill the jurisdictional gap.

PROGRAM ADMINISTRATION

A. The Role of Utilities, NYSERDA, and Others

Parties were asked to brief the issues of utility administration of energy efficiency programs and the advisability of allocating in advance energy efficiency targets and funding among NYSERDA and each utility, as set forth in the Straw Proposal. The issues concerning utility administration of energy efficiency programs are, in the view of some parties, inextricably linked to the issues concerning fast track programs. However, the analysis concerning the approval of fast track programs, consistent with an overall view that only a portion of the first generation (three-year) energy efficiency budget should now be apportioned to those programs, leaves open all options for utility and other program administrators for both the balance of the first generation goal, and for the longer-term challenge of meeting New York's energy efficiency goals for 2015 and beyond.

In recent years New York's ratepayer-funded energy efficiency programs have been realized primarily through a single provider model. Notwithstanding the simplicity, economy and reliability of expanding this model, additional policy considerations have been put forward that support the addition of utilities and other entities as program administrators. These include aligning utility financial interests with energy efficiency in utility resource planning; development of on-bill financing as a means of reducing reliance on ratepayer-funded programs; benefiting from utility access to identify potential program participants among customers; and benefiting from competitive efficiency and diversity of approaches.[26]

1. Positions of the Parties

While Staff stated it recognized a role for utility administration, it commented that energy efficiency targets and

[26] Case 07-M-0548, Ruling Presenting Straw Proposal, p. 6 (February 11, 2008).

funding should not be allocated in advance and, instead, the Commission should require a biennial review of the overall EEPS program, given the uncertainty of the respective roles of the potential program administrators. Staff commented that utilities should be called upon to use their unique relationship with customers to develop outreach and education materials and further, to recommend EEPS programs through filings to the Commission. Staff states that utilities may be able to implement EEPS programs in time, but must be held accountable for the effectiveness of the programs.

The utilities offered several approaches to this question. Central Hudson placed its arguments in the context of a response to Staff's fast track proposal. Central Hudson believes that the proposal wrongly presumes a limited role for utilities and favors a centrally planned, State-run program. Central Hudson advocates for competition in the implementation of energy efficiency programs, comparable to the Commission's supply-side approach. The customer confusion feared by Staff, Central Hudson argues, would be avoided by locally oriented, bottom-up, market-driven utility programs.

Con Edison/O&R argue for utility administration, including of fast track programs, noting that the Commission has indicated an intention that the utilities should have a central role in the administration of the EEPS programs. Con Edison/O&R identify the principal policy reason for utility involvement as a combination of two factors: (1) the utilities' close communication with customers and detailed knowledge of customers' needs; and (2) the utilities' knowledge of their system needs. These two factors, according to Con Edison/O&R, argue strongly for utility involvement because utilities can use efficiency programs to address system needs. On reply, the companies further argued that they should be allowed to move forward with their efficiency programs since NYSERDA has been unable to successfully market its programs in their service territories.

National Grid's comments in support of utility participation rely primarily on the experience of National Grid in other territories, and the quality of the programs that National Grid intends to file with the Commission. National Grid states it stands ready to implement a suite of integrated energy efficiency programs for its customers that will complement existing NYSERDA programs. National Grid comments that each utility is unique and utilities should be evaluated on their own because a "one size fits all" approach to determining which entities should deliver EEPS programs is not appropriate. National Grid cautions that the funding levels proposed for the utilities in the Technical Appendix are too modest to support achievement of the corresponding desired results.

NFG supports the NRDC recommendation for utilities to file programs within 45 days. NFG recommends an approval process for utilities with existing conservation programs conforming to the fast track parameters submitting in advance proposed changes for future implementation, following collaboration.

NYSEG/RG&E, in light of the pending merger between Energy East and Iberdrola, took no position regarding these issues.

NRDC/Pace/AEA agree with the reasons for utility involvement set forth in the Straw Proposal, and advocate for the Commission to require utilities to submit comprehensive energy efficiency plans in such a way that would allow comparison to existing NYSERDA and NYPA programs. These parties advocate for target setting for each utility to ensure they are progressing towards their share of the overall target, urging the Commission also to set gas efficiency targets.

NYPA, as a signatory to the New York City Consensus Recommendation, supports significant utility administration of energy efficient programs.

NYSERDA cautions against allowing utilities to administer energy efficiency programs, for two reasons: first, because the utilities have not done so before and therefore are

not properly prepared, and second, because providing utilities incentives for these programs would increase the cost of the EEPS and be a disincentive for market transformation.

NYC prefers the New York City Partnership, modified by the Straw Proposal, as a model for utility participation. Consistent with that proposal, NYC stresses that utilities enjoy comparative advantages, including access to, and knowledge of, their customers. Also, while encouraging NYSERDA/utility cooperation in the critical multifamily market, NYC states that the utility workforce in NYC gives the utilities the advantage over the small number of NYSERDA staff in NYC. On reply, the City comments that some utilities had submitted detailed efficiency program initiatives, and that competition among efficiency program administrators will benefit the customers.

CPB comments that utilities should be provided the opportunity to play a significant role in the EEPS and should submit proposals for program administration. As to allocating specific goals for NYSERDA and each utility, the CPB asserts that instead of allocating these goals up front, funding and energy efficiency responsibility should be allocated depending on the specific energy efficiency programs proposed for each entity.

CEC concurs that utilities should be allowed to coordinate in administration of EEPS programs; however it warns of the danger of duplication if each utility were allowed to develop and implement its own programs.

Dutchess County opines that Staff's proposal suggests the utilities are incapable of developing, delivering, and managing energy efficiency programs, characterizing the Staff approach as command and control, and advocates for the development of energy efficiency programs by utilities, local to each region and with established relationships with customers. IPPNY comments that competition is necessary for EEPS success; competitive procurement of energy efficiency programs would be successful just as the competitive approach helped the RPS and SBC programs succeed.

Joint Supporters comments that utilities should be authorized and directed to administer energy efficiency programs. Joint Supporters urges that utilities be ordered to immediately develop outlines of those programs in such a format that they can be compared to NYSERDA programs.

MI advocates that the extent to which regulated utilities are authorized to administer energy efficiency programs should be periodically reviewed, based on the relative merits of each utility's proposed contributions. MI comments that the Commission should not allocate, in advance, energy efficiency targets and funding among NYSERDA and utilities.

NAESCO supports utility delivery of EEPS programs; however, the utilities must be able to demonstrate that their organizational strengths would serve the 15 x 15 goal effectively.

NEEC-NY supports utility involvement in the EEPS and agrees with Staff's suggestions that utilities should administer programs primarily involving small C&I customers as well as incentive programs for gas and HVAC equipment.

TRC Energy Services support the inclusion of utilities in the EEPS, but most importantly to this party, the utilities must make their customers' data available if the M&V of the EEPS is to be accurate and reliable.

DASNY urges that all parties that wish to design and implement energy efficiency programs should be allowed to do so, including utilities. Utilities, DASNY argues, have a unique relationship with customers and are therefore well-positioned to administer EEPS programs; however it urges the Commission to remove the economic disincentives for utilities to do so.

EnerNOC urges that attaining the 15 x 15 goal is going to require efforts by all parties, including the utilities. EnerNOC comments that both utilities and NYSERDA must play a major role in administering the EEPS programs.

2. Discussion

The State has, in NYSERDA, a nationally recognized administrator of energy efficiency programs. NYSERDA offers a number of advantages, including: years of experience administering programs; the ability to offer statewide coordinated programs and statewide market transformation programs; no need for shareholder incentives; and the ability to integrate gas and electric programs.

There are numerous reasons, however, for establishing investor-owned utilities as program administrators. Utilities have direct access to customers and customer usage information. They offer a diversity of approaches that may lead to a wider offering of programs than would occur under a centralized administrator. They can be held directly accountable to the Commission through a system of performance-related incentives and disincentives. Because energy efficiency is often the most cost-effective means of addressing demand, utilities should be encouraged to look to efficiency measures as their first option in addressing system needs. Through on-bill financing, utilities can serve a long-term strategy of reducing the need for ratepayer-funded programs and increasing the percentage of financial contributions from direct program participants.

Independent program administrators or service providers may potentially offer the possibility of additional diversity and competitive pricing. Program portfolios should have the flexibility to accommodate innovative proposals brought forward by competitive providers.

NYSERDA and others argue that utilities are less cost-effective administrators because they demand shareholder incentives. Whether this is true depends on the manner in which incentives and overall budgets are constructed. A clearer disadvantage to the utility option is the difficulty that non-combination utilities may have in offering integrated gas/electric whole-customer programs.

These concerns must be balanced carefully. A hybrid approach, constructed and administered properly, can take advantage of the attributes of NYSERDA, utilities, and independent administrators and provide the optimal combination of programs at the least cost to ratepayers. Combining administrators, however, presents several challenges: unnecessary program overlap may cause confusion among customers and contractors; programs must be coordinated to establish a balanced portfolio that takes advantage of the most cost-effective opportunities while serving all customer classes and geographic areas in an equitable manner. Roles of the respective program administrators must be delineated, and an administrative structure for making these decisions must be established.

Central Hudson advocates a competitive market for the provision of efficiency services, and decries NYSERDA as a government monopoly. Central Hudson does not, however, propose that any other market participants be funded through the EEPS other than distribution utilities. Because the EEPS will be funded by ratepayers, and because utilities as program administrators will not bear the same level of risk as fully competitive enterprises, the Commission has the responsibility to ensure that EEPS programs not only serve ratepayers in a balanced manner, but are also well-planned, and well-executed.

There is great potential value in on-bill financing. It can eliminate a major barrier to participation in efficiency programs for customers that lack ready access to capital; and it can, in the long run, reduce reliance on ratepayer-funded programs to achieve the State's efficiency goals, thereby mitigating any disparities between total bills of participants and non-participants. Several parties have described the numerous issues that must be resolved before on-bill financing can be implemented. We expect that these issues will be addressed in an expeditious manner, as they are an important part of our policy rationale for utility involvement as program administrators.

We find that NYSERDA and utilities should be engaged as program administrators, and that the program design and resource acquisition processes should also be constructed to include opportunities for independent administrators that are capable of administering and delivering programs and that can be held accountable for results. The policy reasons that support a hybrid approach outweigh the potential administrative difficulties.

We note that some utilities have filed their efficiency programs with requests for trade secret protection, while others have not. In weighing the policy issues involved in selecting programs and program administrators, the openness of the program selection and evaluation process is an important factor. We make this determination for two reasons. First, because EEPS programs are funded through ratepayers, their details should be open to public scrutiny to the extent possible. This is true not only of the data supporting program proposals, but also for measurement and verification. Second, the development of energy efficiency programs is a national effort. Commodity prices and environmental impacts are not limited by state boundaries. New York's program administrators should be informed, to the extent possible, by successes and failures in other jurisdictions, and lessons learned in New York should be available to administrators in other states. At this time, we will not make any specific ruling regarding trade secret status, but we adopt a policy that, in screening proposed programs, the public availability of information related to the program will be a significant factor. We further require that any proposals seeking trade secret protection must be accompanied by a redacted copy and must show in detail the items for which protection is sought and demonstrate the need for protection for each item.

B. Targets for Program Administrators

Parties were asked to comment on the allocation of program targets and associated funding for reaching the final

goal.[27] The approach suggested in the Straw Proposal is to allocate energy efficiency targets to all program administrators, with associated budgets, to ensure that the ultimate program goal will be met; but at the same time allowing flexibility for reevaluation and, where indicated, reallocation over the course of a program. Recognizing the respective strengths of NYSERDA and utility administration of energy efficiency programs, the approach suggested an equal division of responsibility with the accompanying concomitant funding to establish an equal partnership position for utilities in the overall effort, and to ensure that interim energy savings targets are met.

1. Positions of the Parties

Many parties express concern with a division of targets and funding in advance, warning of establishing unrealistic goals, and expressing preferences for expanding programs based on program administrators identifying energy efficiency opportunities.

While NRDC/Pace agree that the Commission should set periodic MWh targets for utilities, to ensure that the 15 x 15 goal is ultimately reached, and National Grid supports Commission-set utility targets, other parties raised concerns about the possible unintended effects of setting such specific targets for program administrators, arguing that greater program design flexibility is essential. Staff opposes setting targets and funding in advance, asserting the difficulty in determining in advance the best allocation of program responsibilities. Staff proposes biennial review because of these uncertainties.

This view is put forward in the report of Working Group III, which states that allocating the statewide goal to

[27] We use the term "goal" to denote savings to be achieved regardless of the territory, the program or the identity of the program administrator, and "targets" to denote savings assigned to specific territories, programs and/or administrators.

each program administrator based only on current usage within the relevant geographic area "might lead to unrealistic goals," and that regional goals may need to be adjusted for shifts in the local and State economies as well as changes in utility customer bases.[28] Many parties oppose overly specific target and funding allocation in advance to program administrators.

Some parties argue that each program administrator should propose energy savings targets, with associated budgets; the Commission would then fund programs incrementally until they collectively reach milestones or interim targets.

Joint Supporters and LIPA, for example, support establishing initial savings targets and multi-year budgets, but only if funding is released to administrators when they meet their targets, and if targets are updated as the energy efficiency market develops. CPB urges allocation of funding and targets based on the merit of specific energy efficiency programs proposed. MI and IPPNY favor, instead of setting targets and budgets in advance, funding of least-cost energy efficiency programs from all providers, setting targets and providing funding based on specific proposals. NYSERDA agrees, asserting that efficiency targets and funding should be set based upon approved programs. Con Edison/O&R see setting annual targets as premature, preferring that administrators estimate their own realistic targets now, with long-term targets to be set two to three years on, fearing insufficient funding for utilities.

2. Discussion

The chief value of establishing interim targets lies in providing utilities and other program administrators specific direction and associated funding. Fixed targets and associated budgets would encourage cooperation among program administrators, and establish the regulatory commitment to ensure resources are available to reach the program goal. In

[28] Working Group III Report, p. 4.

addition, interim targets provide a glide path to the goal, giving program administrators clear direction as to scale and scope.

The importance of developing programs based on local need and potential, however, is clear. Fixed targets and budgets, though they would ease administrative burdens and encourage cooperative efforts, may not result in an optimal selection of programs.

One concern is that fixed targets and budgets will not stimulate program administrators to develop the most cost-competitive proposals. Another is that assigning energy efficiency targets in advance to program administrators, without providing for reapportionment by the Commission, carries with it a risk that program proposals could fall short of their targets, leaving the Commission no opportunity to reallocate among available program administrators.

On balance, a preferable framework is to require program administrators to propose a suite of programs intended and designed to attain or exceed certain minimum targeted levels of savings. The Commission, in determining which programs to approve, will assign funding to those programs most likely, in its judgment, to achieve the greatest savings in the relevant time period, consistent with our policies for selection of a balanced portfolio of programs.

Commission approval will not be based upon the identity of the proposing entity, but on the merits of the programs and an assessment of the optimum program mix. In other words, no program administrator has a guarantee in advance of any particular percentage of the energy efficiency funding per service territory, or, for that matter, of approval of any of its proposals.

The EEPS will be a joint effort by NYSERDA, the utilities, and other entities that are capable of administering and delivering programs and are willing and able to be accountable for results. The Commission is not now approving a budget to reach the entire EEPS long-term goal, in light of

issues remaining for decision following this Order, and the wide range of program design possibilities. However, an estimate of the costs of the fast track programs approved in this Order and of the balance of the first three years of expected energy efficiency measures, is necessary to demonstrate financial commitment for a three-year period, and to sufficiently increase SBC funding for that period.

In order for any entity to receive or continue to receive ratepayer funding, its energy efficiency programs will be scrutinized using the working metrics and selection criteria detailed in Appendix 3. We further expect costs to be minimized to the degree possible by requiring that program administrators use a competitive procurement process for program delivery.

EEPS efficiency targets will be allocated, initially, to jurisdictional service territories based upon sales. After an assessment of the programs most likely to be successful in individual service territories, the Commission will consider whether certain service territories may have greater potential for energy efficiency benefits and the initial territorial assignments may be altered to reflect those benefits.[29] Funding for specific territory-centric programs should be provided directly rather than through a statewide mechanism.

Upon receipt of proposed utility, NYSERDA, and other energy efficiency programs, the Commission will approve a portfolio of programs for each service territory based upon its assessment of each proposal measured by the working selection criteria adopted herein.

While the territory-specific targets assigned to utilities do not strictly apply to NYSERDA, whose programs are

[29] This approach leaves open, for future PSC decision, the policy question of whether, in the end, each territory should receive an equivalent share of utility-administered services; or whether the overall statewide portfolio can equitably be weighted toward one or more territories where the need or potential for the most cost-effective energy efficiency is greatest.

statewide, NYSERDA's goal is to achieve rough geographic equity between the source of EEPS funding and the delivery of programs. NYSERDA is expected to demonstrate that its statewide portfolio is designed to achieve savings that are geographically aligned with the sources of funds. NYSERDA may propose programs that have a disproportionate impact in one territory, but overall its portfolio must be balanced.

C. Program Filing by Administrators

1. Process for Utilities and NYSERDA

Consistent with the discussion above, we will require that each utility submit program proposals not later than 90 days following the issuance of this Order. We will also require NYSERDA, in order to be eligible for program funding prior to 2011 in addition to the funding approved in this Order, to submit proposals within the same time frame. An extension of time may be granted by the Secretary upon a specific request made by a program administrator.

To assist in the uniformity of review of proposed programs, we are specifying a list of criteria that must be described in program proposals, which will be used by the Commission in choosing among efficiency programs. These criteria will apply to all proposals regardless of the program administrator making the proposal. They are derived from our review of the record in this proceeding and from our own initiative in establishing policy for selection of efficiency programs.

The criteria include numerical metrics as well as a list of narrative factors that identify important policy concerns. They are enumerated in Appendix 3. Each proposal must include a discussion of each of the factors identified in Appendix 3 as applied to each measure contained within the proposal. Proposals submitted prior to this Order may be revised and resubmitted or may be supplemented to include such discussion.

Minimum targets for utilities and NYSERDA, for the period from October 1, 2008 through 2011, are established as 50% of the jurisdictional gap for each service territory, after deduction respectively of a set-aside for utility on-bill financing programs and NYSERDA fast track programs. The targets are identified in Tables 10 and 11 of Appendix 1. The targets are presented on a levelized basis. We recognize that new programs are not likely to achieve their full potential in 2008-09; therefore program proposals may reflect a reasonable ramp-up period so long as the pace of annual savings is sufficient to achieve the cumulative savings targeted for 2011. Each utility proposal must provide in the aggregate for efficiency savings not lower than its Cumulative Through 2011 target identified in column 6 of Table 11. NYSERDA, in order to be eligible for additional funding, must also propose programs that provide in the aggregate for efficiency savings not lower than the NYSERDA Cumulative Through 2011 target identified in Column 6 of Table 10. Proposals may provide for savings greater than the targets. The targets establish a minimum for purposes of proposals, but do not guarantee any amount for purposes of adoption.

The targets toward which utilities must file proposals are reduced by the amount of MWhs set aside for on-bill financing programs, as discussed below. At this time, utilities may, but are not required to, submit proposals to achieve the set aside on-bill financing MWhs.

NYSERDA and any utility may, acting cooperatively, submit a joint proposal that satisfies all or a portion of the utility's and/or NYSERDA's targets.

As provided in the discussion of fast track programs, above, utilities may submit program proposals for expedited consideration, in two areas:

1. Small Business Direct Installation: Programs that deliver hardware retrofits for electric customers with monthly peak demand less than 100 kilowatts.[30]
2. Residential HVAC: Programs that offer financial incentives for air conditioning equipment that reaches ENERGY STAR performance levels.

Staff has demonstrated that these programs will advance the objectives of this proceeding in a cost-effective manner and will complement programs administered by NYSERDA. Proposals in each of these categories will be deemed to satisfy the numerical and narrative requirements identified in Appendix 3, upon submittal of filings within 60 days of this Order that contain the following:

- TRC ratios, which should include any proposed utility incentives; in providing expedited consideration, we will take into account the TRC ratios for these categories that are provided in Staff's March 25, 2008 recommendation.
- A demonstration that collaborative discussions have been conducted among utilities, NYSERDA and other interested parties, and that good faith efforts have been made to accomplish statewide uniformity, particularly with respect to qualifying equipment and rebate levels, to the extent compatible with the needs of individual utilities to design programs that meet the needs of their territories.
- A detailed protocol for measurement and verification of results, taking into account the guidelines to be issued by the Director of the Office of Energy Efficiency and Environment.[31]

2. Independent Administrators

In order to further expand the range of program proposals, and to encourage innovation, we will establish a process for independent program administrators to submit

[30] The maximum customer size may be increased if the utility demonstrates the effectiveness of such a revision with respect to the specific needs of its service territory.

[31] Such guidelines, until they are formally adopted by the Commission, will not have full force. The Commission will, however, take them into consideration in approving programs.

proposals. Independent program administrators may submit proposals for programs, to be implemented within the 2009-2011 time period, to utilities and/or to NYSERDA within 45 days of the issuance of this Order. Such proponents should use best efforts to include the information required in Appendix 3. Any such proposal received by a utility or NYSERDA must be considered for inclusion in that entity's proposal to the Commission, and its inclusion or omission from the proposal to the Commission must be explained. If a utility and/or NYSERDA receives an independent proposal that is incomplete but warrants further examination, the utility and/or NYSERDA may petition the Secretary for additional time to submit its proposal.

An independent program administrator that has submitted such a proposal within the 45-day period may also submit, within the 90-day period applicable to utilities and NYSERDA, its proposal updated to include the information required in Appendix 3, to the extent the proponent is capable of developing the information.[32] Such an updated proposal must be submitted to the utility and/or NYSERDA that was the recipient of the original proposal, and may be submitted to the Commission as well. The Commission will take the updated proposal into account in its consideration of utility and NYSERDA proposals, provided that the updated proposal is consistent with the earlier proposal made to the utility and/or NYSERDA.

3. Incentives

Parties have expressed differing views regarding utility incentives. Properly-structured incentives for utilities have the potential to encourage the achievement of cost-effective efficiency savings, as well as encouraging utilities to pursue efficiency measures as a cost-effective alternative to construction. Among the outstanding issues is

[32] We do not expect, for example, that an independent program administrator would be capable of developing bill impact figures.

whether incentives should be indexed to program costs or to program benefits. We will not establish a long-term policy regarding utility incentives until parties have had more opportunity to comment on the issue. For purposes of the program proposals required in this section, the 90-day time period will be tolled until 30 days following an order adopting a policy regarding incentives.[33]

4. On-Bill Financing

One of the barriers to participation in energy efficiency programs is lack of capital, or reluctance to commit capital, on the part of customers. This is particularly true of low-and-moderate income customers. On-bill financing of energy efficiency projects, or "Conservation TIP",[34] is a potentially valuable tool that may overcome this barrier by allowing a customer to finance its share of program costs directly through utility bills without any cash outlay. Because efficiency measures should reduce a customer's bill by more than the customer's share of program costs, Conservation TIP may allow efficiency measures to be paid for over time without any near-term increase in customers' bills, and with a long-term decrease in bills.

Conservation TIP also offers a method for reducing reliance on ratepayer-funded efficiency programs and increasing reliance on customer participation. Efficiency measures that are economical for customers, but for which no monetary incentive program exists, may be undertaken by customers if Conservation TIP is available. The long-term potential of

[33] The tolling will not apply to programs filed for expedited approval.

[34] "Conservation TIP" is shorthand for Conservation Tariffed Installation Program. Under Conservation TIP, a utility or a third party finances the installation of efficiency improvements on a customer's premises and the customer pays its share of costs for the improvements through its utility bills, which are no higher than before the installation because the energy savings offset the capital costs.

Conservation TIP is an important reason for including utilities as program administrators.

Utilities in their comments and in program filings have indicated that on-bill financing is feasible, but legal and technical issues have been raised. For example, the manner in which customer non-payment would be treated must be resolved, and utilities' existing billing systems will vary in their capability to implement Conservation TIP.

At this time, Conservation TIP will not be required. Utilities are, however, encouraged to include on-bill financing in the efficiency program filings that are required in this Order. Reduced ratepayer-funded program costs that result from on-bill financing will be considered favorably in the selection of programs.

Issues related to on-bill financing should be identified and resolved on an expedited basis as part of the next phase of this proceeding. We intend that a favorable resolution of the legal and technical issues concerning on-bill financing would be followed by a requirement for utilities to submit programs to attain the portion of utility targets assigned to Conservation TIP.[35] We may, however, reassess the targets assigned to Conservation TIP as deliberation on the technical and legal issues proceeds, and as experience is gained.

ELECTRIC TRANSMISSION AND DISTRIBUTION SYSTEM OPTIMIZATION

A potential source of savings that has been identified in this proceeding is the reduction of losses in the transmission and distribution (T&D) system. Losses throughout the system may account for 6%-10% of the power generated to meet customer demand.

[35] The targets in Table 7 of Appendix 1 are levelized; on-bill financing savings not achieved in 2008 or 2009 can be attained in later years of the program.

Identifying the sources of system losses and the means of reducing them involves technical and engineering analyses, and potential rate design changes, that are substantially different from other issues presented in this proceeding. Moreover, because system losses relate to the utilities' traditional supply-side function, funding for solutions is best provided through individual rate cases rather than through the EEPS.[36]

For those reasons, the issue of system losses will be treated in a separate proceeding. We direct Staff, within 30 days of the issuance of this Order, to convene a meeting with utilities and interested parties to define the scope of this effort. We direct each electric utility to submit a report, within six months of this Order, identifying measures to reduce system losses and/or optimize system operations. The report should include an analysis of reactive power provisions and charges contained in utilities' tariffs, and recommendations for any changes to the rates charged and the classes to which the rates should apply. The analysis should consider the cost to the utility of installing reactive power compensation on its system and, using this information, the report should include a cost analysis justifying reactive power charge conclusions and recommendations.

As part of this process, Staff should work with the New York Independent System Operator and the transmission owners to examine the potential loss reduction that could result from utilizing Optimal Power Flow technology in dispatching the bulk electric system in New York.

[36] It is possible that some system loss solutions may involve customer-owned end-use equipment; in that event, we will entertain proposals for EEPS funding.

STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA)

A. The Environmental Impact Statement Process

By Order issued March 24, 2008, the Commission adopted and approved a Final Generic Environmental Impact Statement (FGEIS).[37] This concluded the environmental review pursuant to SEQRA that began with the issuance of a Notice Inviting Comments on a proposed Environmental Assessment Form prepared by Staff.[38] A Draft Generic Environmental Impact Assessment prepared by Commission Staff was issued for public comment, serving as an EAF for the Commission to determine whether the proposed action may have a significant adverse effect on the environment, requiring the preparation of an environmental impact statement.[39] Parties were afforded a 30-day comment period.

Comments were received from the Joint Utilities and from DEC. These comments were addressed in the FGEIS. The FGEIS also reflects recommendations from the collaborative process; proposals by NYSERDA (dated September 10, 2007 and November 1, 2007) and by Central Hudson (dated January 19, 2008). The FGEIS also includes consideration of recommendations contained in the Judges' February 2008 Straw Proposal. In light of these additions to the record in this proceeding, the FGEIS reflects certain substantive changes from to the DGEIS. These were: the addition of updated information concerning costs, benefits, and emission reduction effects (Executive Summary), updated and clarified 2006 electricity consumption figures, clarified RGGI and EEPS expected emission reductions, expanded

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[37] Order Adopting and Approving Issuance of Final Generic Environmental Impact Statement (issued March 24, 2008).

[38] Notice Inviting Comments (issued June 11, 2007).

[39] Order Concerning Determination of Significance and Draft Generic Environmental Impact Statement (issued November 9, 2007). A Notice of Completion of Draft Environmental Impact Statement was published in the NYS Environmental Notice Bulletin, November 14, 2007, and comments were accepted until December 14, 2007.

description of benefits of emission reductions, expanded net metering rationale, reported 2005-6 accomplishments related to Executive Order 111, description of major new filings in the EEPS proceeding, and updated cost, benefit, and emissions reductions information (2.0, Description of the Proposed Action); clarification of distributed generation discussion, clarification of ongoing proceedings to evaluate long term contracts (5.0, Statements and Evaluation of Significant Environmental Impacts of Proposed Action); and clarification of employment estimates and addition of explanation of socioeconomic impacts (9.0, Growth-Inducing Aspects and Socio-Economic Impacts of the Proposed Action).

Although the action of adopting and implementing an EEPS is designed in part to realize environmental benefits, it will affect energy usage and implicates changes in policy and practices. The DGEIS did not indicate direct adverse environmental impacts of the EEPS policy on specific locations; however, the EEPS may have possible secondary environmental impacts and therefore preparation of a Final GEIS was warranted. Preparation of the FGEIS allows the Commission to consider, generally, impacts that may occur as a result of the institution of an EEPS.

In addition to the preparation and issuance of the DGEIS for comment, the substance of concurrent collaborative meetings of the parties to the proceeding, proposals, briefing and comments contributed to the consideration of issues discussed in the DGEIS.

B. SEQRA Findings

We determined that the Final GEIS was a complete and comprehensive assessment of the potentially significant adverse impacts, as well as the benefits associated with the development and implementation of an EEPS; that it was in conformance with the requirements of SEQRA; and that it properly responds to all comments provided on the Draft GEIS. Therefore on March 24, 2008, we accepted and approved it as the Final GEIS for the

proposed action of adoption and commencing implementation of an EEPS policy; and declared the FGEIS complete; and directed that the notice of the completion of the FGEIS shall be published in the Environmental Notice Bulletin in accordance with 6 NYCRR Part 617.

The Final GEIS identified certain environmental impacts, facts and conclusions considered here. The action to be undertaken by the Commission does not include direct approval of the siting or construction of any facilities, nor does it involve, now or in the future, any specific permit approval, modification or funding from any other government agency. The objective of the action is to decrease the State's energy use through increased conservation and efficiency. This objective can be attained in a number of ways, including – drawing on other states' experience – a centrally administered statewide program through NYSERDA; a resource purchase requirement for electric and gas companies; by competitive load-serving entities; or through creation of a State efficiency utility. The EEPS is designed to meet targets and goals for energy efficiency to contribute to the reduction of the State's dependence upon imported and fossil fuel-based generation; reduce its greenhouse gas emissions, reduce average customer bills, stimulate economic development and create jobs in the clean energy sector for New Yorkers.

According to the FGEIS, if the program objectives for electric energy efficiency are achieved, multiple benefits will accrue to customers. For measures implemented from 2008 through 2015, with certain benefits continuing until 2025, the benefits of attaining the statewide 15 x 15 goal were estimated in the FGEIS to be approximately $12 billion (present value in 2008 dollars), including in the calculation estimates of the benefits of improvements in building codes and appliance standards. Excluding codes and standards, participating customers are expected to save $4 billion, with net system wide benefits of over $1.7 billion. These estimates include savings of $6.5 billion in payments for energy no longer needed; reduced

capacity charges of $3 billion; emission reductions of 6,741 tons of NOx, 7,346 tons of SO2; and 8,891,602 tons of CO_2 in 2015. Increased economic development associated with the growth in energy efficiency is estimated to create thousands of jobs including jobs in program delivery, retrofitting, energy efficient construction and manufacturing.

The development of a concomitant goal for the natural gas industry will provide the basis for estimates of additional benefits. To date, studies on the record in this proceeding, including reports by Staff and a 2006 Optimal Energy, Inc. Study (Optimal Gas Study), provide estimates of the scope of the benefits expected from a natural gas EEPS. According to the Optimal Gas Study, investments of $80 million per year in a five-year natural gas energy efficiency program would result in a net benefit to New York's economy of $1.1 billion; every dollar invested in natural gas energy efficiency is expected to return $2.48. Customer bill savings through 2016 were estimated at $293 million; under the program scenario studied, lifetime reductions of 16 million metric tons of CO_2, 2000 metric tons of SO2, and 1800 metric tons of NOx would be realized.

The action is expected to result in economic, environmental and customer benefits. Its benefits correlate to the level of funding and degree of implementation of energy efficiency programs, as well as to specifics of program design. Direct adverse environmental impacts are not expected from implementation of energy efficiency policies. However, potential secondary impacts are possible.

Certain energy efficiency programs involve new and retrofit building construction; others entail lighting and equipment retrofits. In general, disposal of replaced equipment is not a new or additional impact. However, disposal of materials may be accelerated relative to their normal life expectancy. Since most equipment and lighting is eventually replaced, energy efficiency incentives would only lead to early disposal of inefficient equipment. Similarly, retrofit building construction could add to solid waste disposal, but this would

accelerate disposal that would eventually occur in the absence of the action. Implementation of an EEPS will not directly cause any new construction, disturbance of land, or result in any significant adverse environmental impacts.

In its evaluation of significant adverse environmental impacts of the proposed action (EEPS), the FGEIS specifically analyzed the consequences of programs that promote the use of compact fluorescent lights (CFLs) as an energy efficient lighting measure. CFLs contain trace amounts of airborne mercury; these can be released into the environment upon breakage or disposal. Mercury, including in airborne form, has been identified as a source of nervous system damage in humans. Fluorescent light bulbs contain trace amounts of mercury, approximately 4-5 milligrams per bulb. The amounts in this release, however, are not considered to be significant; and New York's environmental regulation addresses this issue. New York has played a leading role in reducing the entry of mercury into the waste stream and to minimize its release into the environment.

The secondary impacts – increase in waste materials such as obsolete and inefficient appliances and equipment, or construction and demolition debris, are already closely regulated. Therefore no additional regulation or mitigation is necessary. If increased costs result from adoption of the EEPS, some customers – primarily those with on-site generators – may exercise their option to use alternative fuels. These customers are under regulation by the NYS Department of Environmental Conservation (DEC).

Overall the analysis of the action indicates that increasing energy efficiency in both the electric and natural gas sectors will be beneficial. The Final GEIS identified no significant likely direct adverse environmental impacts; secondary adverse environmental impacts appear insignificant and, in any event, are already the subject of state regulation.

With respect to air quality impacts on oxides of nitrogen and sulfur, and on carbon dioxide, energy efficiency

programs will have a greater favorable impact than the no action alternative. It is likely that realizing New York's energy efficiency potential will avoid environmental harms, and eventually will reduce the State's need for new installed capacity. As illustrated in the Staff Report and the Administrative Law Judges' Technical Appendix, the 15 x 15 program would reduce New York's 2015 electric energy requirement by approximately 27,000 GWh per year, corresponding to substantial peak load reduction. By reducing peak load, New York could moderate the need for additional installed capacity. Natural gas reduction targets have not been specified, but initial studies indicate gas savings could be 15,204 MDth and peak day load reductions could be 100 MDth by 2016.

Statewide emission reductions resulting from increased energy efficiency pose no significant adverse impact. Mitigation of impacts is not applicable to an action that results in benefits. In addition, although the adoption of the EEPS should result in construction retrofits and appliance and equipment replacement, site-specific impacts and benefits cannot be identified or mitigated at this time, and this may not be necessary beyond existing regulations.

Given the likely positive benefits of the increased realization of New York's energy efficiency potential, we conclude that implementing the proposed action is desirable. The Commission's policy is to stimulate the increased availability of energy efficiency measures throughout the State, and to make these measures a permanent feature of the energy industries. This policy should diversify our energy resources, improve energy security, enhance system reliability, attract energy efficiency providers to New York, improve the State and global environment by reducing air emissions, and develop an EEPS that is cost effective and subject to regular and verifiable evaluation.

On the basis of this discussion and the discussion set forth in the Final GEIS, we make the findings stated above regarding the environmental impacts of the proposed action and

certify that: (1) the requirements of the State Environmental Quality Review Act, as implemented by 6 NYCRR Part 617, have been met; and (2) consistent with social, economic, and other essential considerations, from among the reasonable alternatives available, the action being undertaken is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable.

CONCLUSION

With this Order we adopt, and commence the implementation of the EEPS with the adoption and approval of fast track programs meeting certain criteria, and the requirement that electric utilities, NYSERDA and others file proposals to meet certain targets, while policy and the record continue to be developed on additional issues of program design. Included among these are issues of creation of a full natural gas energy efficiency program; cost allocation and customer exemptions; utility performance incentives; on-bill financing; the roles of demand response, distributed generation, and research and development; rental customers; low-income customers, environmental justice, and governance processes.

In addition to the ongoing evaluation of programs, we will institute a comprehensive review of the EEPS initiatives, to be carried out sufficiently in advance of the December 31, 2011 expiration of program authorization, to be available to inform our decisions as to subsequent phases of the EEPS.

The Commission orders:

1. The electric System Benefits Charge (SBC) is augmented such that beginning on October 1, 2008, the annual level of overall SBC electric revenue collections is increased from $175 million, as previously established, to $334,307,002, as approved herein. These incremental annual collections of $159,307,002 shall be made by the applicable electric utilities and continue in effect until December 31, 2011 regardless of whether the previously established SBC electric revenue

collections expire on June 30, 2011, the current limit of their authorization.

2. The annual incremental amount to be collected by each specific electric utility is set forth in Table 16 of Appendix 1 of this Order. Each utility shall establish its specific SBC collection rate on an annual basis to correspond to its collection allocation and year-by- year projections of the following year's electric sales, with any over- or under-collections reconciled on an annual basis. Each utility shall maintain adequate records to justify its SBC rates and reconciliation. One-quarter of the annual amount shall be collected during the last quarter of 2008.

3. An incremental gas SBC is established such that beginning on October 1, 2008, the annual level of overall incremental SBC gas revenue collections is $13,190,693, as approved herein. These incremental annual collections of $13,190,693 shall be made by the applicable gas utilities and continue in effect until December 31, 2011.

4. The annual incremental amount to be collected by each specific gas utility is set forth in Table 18 of Appendix 1 of this Order. Each utility shall establish its specific SBC collection rate on an annual basis to correspond to its collection allocation and year-by- year projections of the following year's gas sales, with any over- or under-collections reconciled on an annual basis. Each utility shall maintain adequate records to justify its SBC rates and reconciliation. One-quarter of the annual amount shall be collected during the last quarter of 2008.

5. Beginning in year 2009, and on an annual basis thereafter, each utility shall perform an annual reconciliation of its SBC over- and under-collections and submit it to the Commission by June 1st (for the previous calendar year's activity).

6. Each utility affected by this Order shall file tariff amendments and/or statements on not less than 60 days' notice to

become effective October 1, 2008, incorporating the revisions described herein. The requirements of Section 66(12)(b) of the Public Service Law as to newspaper publication of the changes proposed by these filings is waived.

7. The utilities may retain SBC funds for utility-administered "expedited" programs as set forth in this Order and appendices. Any such SBC funds retained by the utilities shall be used only for the SBC programs contemplated by this Order and may not be used until the utility has received approval by the Commission for its programs. Any unexpended funds shall remain segregated on the books of the utility for the benefit of ratepayers and shall earn interest for the benefit of ratepayers. Beginning in year 2009, on an annual basis on or before June 1st of every year, each utility with utility-administered programs shall submit a report to the Commission detailing these programs and the amount of SBC funds expended on each of them during the previous year. After the utility programs are approved by the Commission, any further modifications to programs, consistent with the terms of their approval, may be made by utilities in consultation with Staff, provided that funding may not be reallocated among programs without further approval by the Commission.

8. Potential independent program administrators may within 45 days of the issuance of this Order submit proposals for programs to the electric utilities and the New York State Research and Development Authority (NYSERDA) consistent with the discussion in this Order. Potential independent program administrators that make such proposals may within 90 days of the issuance of this Order submit updated proposals for programs to the electric utilities, NYSERDA, and the Commission consistent with the discussion in this Order.

9. The electric utilities may within 60 days of the issuance of this Order submit program plans for our approval to implement the two fast track utility "Expedited" programs in the scope and manner described in this Order and appendices. The

program plans shall include detailed benefit/cost estimates using the Total Resource Cost methodology and demonstrate that collaborative discussions have been held including participating utilities, NYSERDA, and other interested parties to establish uniformity, particularly with respect to eligible equipment and rebate levels, to the extent compatible with the needs of utilities to design programs that meet the needs of their service territories. The program plans shall also include a detailed plan for evaluation of each individual program, including details on the scope and method of measurement and verification activities.

10. The electric utilities shall within 90 days of the issuance of this Order (unless tolled as provided herein) submit program plans for our approval to implement electric energy efficiency programs in the scope and manner described in this Order and appendices designed at a minimum to achieve their respective identified Cumulative Through 2011 targets. The program plans shall include detailed benefit/cost estimates using the Total Resource Cost methodology, and, except as provided in this Order with regard to expedited programs, all the other information identified in this Order and appendices as necessary to address the Program Selection Criteria. The program plans shall include a detailed discussion and analysis of any independent program administrator proposals timely received by the utility and an explanation of the utility's inclusion or omission of such proposals. The program plans shall also include a detailed plan for evaluation of each individual program, including details on the scope and method of measurement and verification activities.

11. The applicable gas utilities shall within 60 days of the issuance of this Order submit program plans for our approval to implement a residential gas heating, ventilation and air conditioning (HVAC) energy efficiency program in the scope and manner described in this Order and appendices. The program plans shall include detailed benefit/cost estimates using the

Total Resource Cost methodology, and demonstrate that collaborative discussions have been held among participating utilities, NYSERDA, and other interested parties to establish uniformity, particularly with respect to eligible equipment and rebate levels, to the extent compatible with the needs of utilities to design programs that meet the needs of their service territories.

12. Status reports shall be completed by the applicable utilities and submitted to the Commission for public and Staff review on an annual basis. Summary status reports shall be completed by the applicable utilities and submitted to the Commission for public and Staff review on a quarterly basis for all programs. The details of the requirements for the status reports and summary status reports shall be developed by the applicable utilities in cooperation with Staff and submitted as part of the program plans.

13. Program evaluations and reports shall be completed by the applicable utilities and submitted to the Commission for public and Staff review on a periodic basis. The details of the requirements for the program evaluations and reports shall be developed by the applicable utilities in cooperation with Staff and submitted as part of the program plans.

14. The utilities shall establish by contract with NYSERDA a schedule of payments, no less frequent than quarterly, to transfer SBC funds to NYSERDA for NYSERDA-administered programs as approved by and as set forth in this and subsequent Orders.

15. As a condition for the expenditure by NYSERDA of funds authorized by this Order, the Memorandum of Understanding with NYSERDA, as applied to EEPS-funded programs as well as existing programs funded by the SBC, must be revised within 45 days of the date of issuance of this Order, to accomplish, at a minimum, the following enhancements: (a) creation of a uniform database allowing more comparable evaluation of programs; and (b) increased detachment of NYSERDA from evaluation contractors,

and increased involvement of Department Staff in oversight of evaluation. Within 60 days of the issuance of this Order, NYSERDA shall file with the Secretary a transition plan developed in consultation with Staff identifying steps that will be taken to implement enhancements (a) and (b) above with respect to existing SBC III programs, including the incorporation of enhanced evaluation, measurement and verification into the SBC III programs.

16. SBC funding for fast track programs to be administered by NYSERDA is approved by program as set forth in the appendices of this Order. Any further modifications to fast track programs, consistent with the terms of their approval, may be made by NYSERDA in consultation with Staff, provided that funding may not be reallocated among programs without further approval by the Commission. This treatment is dissimilar to that afforded existing SBC programs where NYSERDA may reallocate funding between programs within program categories. NYSERDA shall within 60 days of the issuance of this Order, submit a supplemental revision to the SBC Operating Plan incorporating the fast track programs, including the enhancements to the fast track programs described in this Order and appendices and including the added programs for marketing outreach and education and enhanced measurement and verification, to be implemented as soon as Staff determines that it properly reflects this Order. The plan will include a budget delineating costs for marketing, outreach and education. A portion of the funding to NYSERDA for enhanced measurement and verification shall be used to fund an acceptable consultant to be directed by Staff and to be made available to advise Staff on the scope and methods of evaluations and to assist Staff in its independent critique of the evaluation activities of NYSERDA and other program administrators. The supplemental revision shall include a strategy to more closely track and by year 2011 align cumulative statewide SBC expenditures geographically with statewide SBC collections. The supplemental revision shall

include a strategy to more closely track and make apparent the expenditure of funds on marketing, outreach and education.

17. As a condition for eligibility to receive EEPS funding beyond that which is provided in this Order, NYSERDA shall within 90 days of the issuance of this Order submit program plans for our approval to implement electric energy efficiency programs in the scope and manner described in this Order and appendices designed at a minimum to achieve its identified Cumulative Through 2011 target. The program plans shall include detailed benefit/cost estimates using the Total Resource Cost methodology, and all the other information identified in this Order and appendices as necessary to address the Program Selection Criteria. The program plans shall include a detailed discussion and analysis of any independent program administrator proposals timely received by NYSERDA and an explanation of NYSERDA's inclusion or omission of such proposals. The program plans shall also include a detailed plan for evaluation of each individual program, including details on the scope and method of measurement and verification activities.

18. Status reports shall be completed by NYSERDA and submitted to the Commission for public and Staff review on an annual basis. Summary status reports shall be completed by NYSERDA and submitted to the Commission for public and Staff review on a quarterly basis for all programs. The details of the requirements for the status reports and summary status reports shall be developed by NYSERDA in cooperation with Staff and submitted as part of the program plans.

19. Program evaluations and reports shall be completed by NYSERDA and submitted to the Commission for public and Staff review on a periodic basis. Summary status reports shall be completed by NYSERDA and submitted to the Commission for public and Staff review on a quarterly basis for all programs. The details of the requirements for the program evaluations and reports shall be developed by NYSERDA in cooperation with Staff and submitted as part of the program plans.

20. Each electric utility shall, within six months of the issuance of this Order, submit a report identifying measures to reduce system losses and/or optimize system operations, as described herein.

21. The Secretary is authorized, in her sole discretion, to extend the scheduled deadlines.

22. This proceeding is continued.

By the Commission,

(SIGNED) JACLYN A. BRILLING
Secretary

Table 1

2007 Electricity Forecast by Service Territory (MWhs)

	2007	2008	2009	2010	2011
Central Hudson:					
2007 Forecast Sendout	6,032,387	6,027,609	6,097,436	6,203,846	6,299,619
2007 Forecast Losses	(452,429)	(452,071)	(457,308)	(465,288)	(472,471)
2007 Forecast Sales	5,579,958	5,575,538	5,640,128	5,738,558	5,827,148
Con Edison:					
2007 Forecast Sendout	50,633,621	51,583,153	52,487,013	52,919,006	54,309,783
2007 Forecast Losses	(3,645,621)	(3,817,153)	(3,989,013)	(3,916,006)	(4,344,783)
2007 Forecast Sales	46,988,000	47,766,000	48,498,000	49,003,000	49,965,000
NYSEG:					
2007 Forecast Sendout	16,255,422	16,295,732	16,406,395	16,512,238	16,613,438
2007 Forecast Losses	(921,682)	(923,968)	(930,243)	(936,244)	(941,982)
2007 Forecast Sales	15,333,740	15,371,764	15,476,152	15,575,994	15,671,456
Niagara Mohawk:					
2007 Forecast Sendout	37,985,518	38,264,518	38,524,518	38,896,518	39,291,518
2007 Forecast Losses	(3,453,047)	(3,479,047)	(3,502,047)	(3,536,047)	(3,572,047)
2007 Forecast Sales	34,532,471	34,785,471	35,022,471	35,360,471	35,719,471
O&R:					
2007 Forecast Sendout	4,334,932	4,405,121	4,467,685	4,539,723	4,609,323
2007 Forecast Losses	(246,988)	(216,224)	(303,672)	(254,673)	(289,311)
2007 Forecast Sales	4,087,944	4,188,897	4,164,013	4,285,050	4,320,012
RG&E:					
2007 Forecast Sendout	7,720,544	7,761,251	7,800,126	7,837,242	7,872,671
2007 Forecast Losses	(457,056)	(459,466)	(461,767)	(463,964)	(466,062)
2007 Forecast Sales	7,263,488	7,301,785	7,338,359	7,373,278	7,406,609
LIPA:					
2007 Forecast Sendout	21,772,079	22,151,045	22,470,033	22,853,283	23,230,796
2007 Forecast Losses	(1,530,880)	(1,557,021)	(1,578,766)	(1,605,005)	(1,630,823)
2007 Forecast Sales	20,241,199	20,594,024	20,891,267	21,248,278	21,599,973
NYPA:					
2007 Forecast Sendout	17,698,716	17,914,425	18,089,835	18,251,674	18,414,850
2007 Forecast Losses	(796,442)	(806,149)	(814,043)	(821,325)	(828,668)
2007 Forecast Sales	16,902,274	17,108,276	17,275,792	17,430,349	17,586,182

Table 1 (Continued)

2007 Electricity Forecast by Service Territory (MWhs)

	2012	2013	2014	2015
Central Hudson:				
2007 Forecast Sendout	6,387,998	6,474,874	6,559,555	6,645,792
2007 Forecast Losses	(479,100)	(485,616)	(491,967)	(498,434)
2007 Forecast Sales	5,908,898	5,989,258	6,067,588	6,147,358
Con Edison:				
2007 Forecast Sendout	55,084,599	56,164,309	56,954,397	57,818,872
2007 Forecast Losses	(4,296,599)	(4,549,309)	(4,499,397)	(4,509,872)
2007 Forecast Sales	50,788,000	51,615,000	52,455,000	53,309,000
NYSEG:				
2007 Forecast Sendout	16,710,167	16,802,594	16,890,886	16,975,204
2007 Forecast Losses	(947,467)	(952,707)	(957,713)	(962,494)
2007 Forecast Sales	15,762,700	15,849,887	15,933,173	16,012,710
Niagara Mohawk:				
2007 Forecast Sendout	39,650,518	40,015,518	40,365,518	40,751,518
2007 Forecast Losses	(3,605,047)	(3,638,047)	(3,670,047)	(3,705,047)
2007 Forecast Sales	36,045,471	36,377,471	36,695,471	37,046,471
O&R:				
2007 Forecast Sendout	4,684,746	4,763,081	4,840,294	4,917,507
2007 Forecast Losses	(291,500)	(295,150)	(296,408)	(296,375)
2007 Forecast Sales	4,393,246	4,467,931	4,543,886	4,621,132
RG&E:				
2007 Forecast Sendout	7,906,480	7,938,736	7,969,505	7,998,849
2007 Forecast Losses	(468,064)	(469,973)	(471,795)	(473,532)
2007 Forecast Sales	7,438,416	7,468,763	7,497,710	7,525,317
LIPA:				
2007 Forecast Sendout	23,718,396	24,082,946	24,520,239	24,965,096
2007 Forecast Losses	(1,664,222)	(1,688,975)	(1,718,804)	(1,749,139)
2007 Forecast Sales	22,054,174	22,393,971	22,801,435	23,215,957
NYPA:				
2007 Forecast Sendout	18,599,588	18,786,134	18,974,513	19,164,749
2007 Forecast Losses	(836,981)	(845,376)	(853,853)	(862,414)
2007 Forecast Sales	17,762,607	17,940,758	18,120,660	18,302,335

Table 2

2007 Electricity Statewide Forecast (MWhs)

	2007	2008	2009	2010	2011
TOTALS:					
2007 Forecast Sendout	**162,433,219**	**164,402,854**	**166,343,040**	**168,013,530**	**170,641,997**
2007 Forecast Losses	(11,504,145)	(11,711,099)	(12,036,858)	(11,998,553)	(12,546,146)
2007 Forecast Sales	**150,929,074**	**152,691,755**	**154,306,182**	**156,014,978**	**158,095,851**

	2012	2013	2014	2015
TOTALS:				
2007 Forecast Sendout	**172,742,491**	**175,028,192**	**177,074,908**	**179,237,586**
2007 Forecast Losses	(12,588,979)	(12,925,153)	(12,959,984)	(13,057,306)
2007 Forecast Sales	**160,153,512**	**162,103,039**	**164,114,923**	**166,180,280**

Table 3

15x15 Statewide Goal in "Sendout" Terms (MWhs)

	2007	2008	2009	2010	2011
2007 Forecast Sendout	**162,433,219**	**164,402,854**	**166,343,040**	**168,013,530**	**170,641,997**
Energy Efficiency "Gap"	0	(850,360)	(4,301,975)	(7,821,320)	(11,474,203)
15x15 Sendout Goal	**162,433,219**	**163,552,495**	**162,041,065**	**160,192,211**	**159,167,794**

	2012	2013	2014	2015
2007 Forecast Sendout	**172,742,491**	**175,028,192**	**177,074,908**	**179,237,586**
Energy Efficiency "Gap"	(15,189,426)	(19,011,683)	(22,897,617)	(26,885,638)
15x15 Sendout Goal	**157,553,065**	**156,016,509**	**154,177,290**	**152,351,948**

Table 4

15x15 Statewide Goal in "Sales" Terms (MWhs)

	2007	2008	2009	2010	2011
2007 Forecast Sales	**150,929,074**	**152,691,755**	**154,306,182**	**156,014,978**	**158,095,851**
Energy Efficiency "Gap"	0	(789,785)	(3,990,677)	(7,262,766)	(10,630,583)
15x15 Sales Goal	150,929,074	151,901,970	150,315,505	148,752,211	147,465,268

	2012	2013	2014	2015
2007 Forecast Sales	**160,153,512**	**162,103,039**	**164,114,923**	**166,180,280**
Energy Efficiency "Gap"	(14,082,464)	(17,607,744)	(21,221,757)	(24,927,042)
15x15 Sales Goal	**146,071,048**	**144,495,296**	**142,893,166**	**141,253,238**

Table 5

Calculation of Cumulative Jurisdictional "Gap" in "Sales" Terms (MWhs)

	2007	2008	2009	2010	2011
LIPA	0	52,641	403,744	831,679	1,212,213
NYPA	0	44,916	336,858	685,654	992,115
State Agencies	73,000	161,544	246,400	333,073	421,376
SBC III (NYSERDA)	401,000	738,500	1,076,000	1,413,500	1,751,000
Utilities	90,471	234,965	330,459	353,806	353,806
Codes & Standards	0	238,348	764,444	824,581	1,343,010
T&D	0	0	0	0	0
Jurisdictional GAP	**0**	**0**	**832,771**	**2,820,474**	**4,557,063**
TOTAL	564,471	1,470,914	3,990,677	7,262,766	10,630,583

	2012	2013	2014	2015
LIPA	1,488,880	1,642,605	1,829,422	2,167,035
NYPA	1,208,715	1,339,404	1,490,974	1,756,426
State Agencies	505,280	602,862	695,964	790,718
SBC III (NYSERDA)	2,188,250	2,625,500	3,062,750	3,499,995
Utilities	353,806	353,806	353,806	353,806
Codes & Standards	2,774,762	4,907,075	6,920,062	7,947,588
T&D	0	238,728	479,128	724,379
Jurisdictional GAP	**5,562,772**	**5,897,764**	**6,389,651**	**7,687,095**
TOTAL	14,082,464	17,607,744	21,221,757	24,927,042

Table 6

Annual Incremental Service Territory Targets
Including NYSERDA, Utilities & TIP in "Sales" Terms (MWhs)

Service Territory	4th Qtr 2008	2009	2010	2011
Central Hudson	16,014	64,056	64,056	64,056
Con Edison	101,007	404,029	404,029	404,029
NYSEG	38,679	154,717	154,717	154,717
Niagara Mohawk	88,330	353,318	353,318	353,318
O&R	11,844	47,378	47,378	47,378
RG&E	18,665	74,659	74,659	74,659
TOTAL	274,539	1,098,156	1,098,156	1,098,156

Service Territory	2012	2013	2014	2015	Cumulative Total
Central Hudson	64,056	64,056	64,056	48,042	
Con Edison	404,029	404,029	404,029	303,022	
NYSEG	154,717	154,717	154,717	116,038	
Niagara Mohawk	353,318	353,318	353,318	264,989	
O&R	47,378	47,378	47,378	35,533	
RG&E	74,659	74,659	74,659	55,994	
TOTAL	1,098,156	1,098,156	1,098,156	823,617	7,687,095

Table 7

Annual Incremental Utility Targets for Tariffed Installation Programs ("Conservation TIP" Programs) in "Sales" Terms (MWhs)

	4th Qtr 2008	2009	2010	2011
Central Hudson	1,001	4,003	4,003	4,003
Con Edison	6,313	25,252	25,252	25,252
NYSEG	2,417	9,670	9,670	9,670
Niagara Mohawk	5,521	22,082	22,082	22,082
O&R	740	2,961	2,961	2,961
RG&E	1,167	4,666	4,666	4,666
TOTAL	17,159	68,635	68,635	68,635

	2012	2013	2014	2015	Cumulative Total
Central Hudson	4,003	4,003	4,003	3,003	
Con Edison	25,252	25,252	25,252	18,939	
NYSEG	9,670	9,670	9,670	7,252	
Niagara Mohawk	22,082	22,082	22,082	16,562	
O&R	2,961	2,961	2,961	2,221	
RG&E	4,666	4,666	4,666	3,500	
TOTAL	68,635	68,635	68,635	51,476	480,443

Table 8

NYSERDA "Fast Track" Programs in Annual Incremental "Sales" Terms (MWhs)

	2008 (1/4 Yr)	2009	2010	2011	
CFL Expansion		241,560	322,080	380,640	
Low-income-expand EmPowerNY	1,630	7,334	8,167	9,803	
New Construction expansion	0	10,149	38,977	73,539	
Flex Tech expansion	3,710	33,390	57,505	83,475	
Flex Tech industrial process	13,125	118,125	193,594	252,656	
TOTAL	62,385	410,558	620,323	800,113	

	2012	2013	2014	2015	Cumulative Total
CFL Expansion	95,160	0	0	(149,772)	
Low-income-expand EmPowerNY	2,451	0	0	0	
New Construction expansion	89,551	55,762	10,921	0	
Flex Tech expansion	72,345	16,695	0	0	
Flex Tech industrial process	213,281	49,219	0	0	
TOTAL	472,788	121,676	10,921	(149,772)	2,348,992

Table 9

NYSERDA "Fast Track" Programs
In Annual Incremental "Sales" Terms (MWhs) -Levelized

Service Territory	4th Qtr 2008	2009	2010	2011
Central Hudson	4,893	19,574	19,574	19,574
Con Edison	30,865	123,462	123,462	123,462
NYSEG	11,819	47,278	47,278	47,278
Niagara Mohawk	26,991	107,966	107,966	107,966
O&R	3,619	14,477	14,477	14,477
RG&E	5,703	22,814	22,814	22,814
TOTAL	83,893	335,570	335,570	335,570

Service Territory	2012	2013	2014	2015	Cumulative Total
Central Hudson	19,574	19,574	19,574	14,680	
Con Edison	123,462	123,462	123,462	92,596	
NYSEG	47,278	47,278	47,278	35,458	
Niagara Mohawk	107,966	107,966	107,966	80,974	
O&R	14,477	14,477	14,477	10,858	
RG&E	22,814	22,814	22,814	17,110	
TOTAL	335,570	335,570	335,570	251,678	2,348,992

Table 10

NYSERDA Minimum Annual Incremental Targets
After deduction of "Fast Track" Programs in "Sales" Terms (MWhs)

Service Territory	4th Qtr 2008	2009	2010	2011	Cumulative Through 2011
Central Hudson	3,113	12,454	12,454	12,454	40,475
Con Edison	19,638	78,553	78,553	78,553	255,297
NYSEG	7,520	30,081	30,081	30,081	97,762
Niagara Mohawk	17,173	68,694	68,694	68,694	223,254
O&R	2,303	9,211	9,211	9,211	29,937
RG&E	3,629	14,515	14,515	14,515	47,175
TOTAL	53,377	213,508	213,508	213,508	693,901

Service Territory	2012	2013	2014	2015	Cumulative Total
Central Hudson	12,454	12,454	12,454	9,340	
Con Edison	78,553	78,553	78,553	58,915	
NYSEG	30,081	30,081	30,081	22,561	
Niagara Mohawk	68,694	68,694	68,694	51,520	
O&R	9,211	9,211	9,211	6,909	
RG&E	14,515	14,515	14,515	10,887	
TOTAL	213,508	213,508	213,508	160,131	1,494,556

Table 11

Utility Minimum Annual Incremental Targets
After deduction of "Conservation TIP" Programs in "Sales" Terms (MWhs)

	4th Qtr 2008	2009	2010	2011	Cumulative Through 2011
Central Hudson	7,006	28,024	28,024	28,024	91,079
Con Edison	44,191	176,763	176,763	176,763	574,479
NYSEG	16,922	67,689	67,689	67,689	219,988
Niagara Mohawk	38,644	154,577	154,577	154,577	502,374
O&R	5,182	20,728	20,728	20,728	67,365
RG&E	8,166	32,663	32,663	32,663	106,156
TOTAL	120,111	480,443	480,443	480,443	1,561,441

	2012	2013	2014	2015	Cumulative Total
Central Hudson	28,024	28,024	28,024	21,018	
Con Edison	176,763	176,763	176,763	132,572	
NYSEG	67,689	67,689	67,689	50,767	
Niagara Mohawk	154,577	154,577	154,577	115,932	
O&R	20,728	20,728	20,728	15,546	
RG&E	32,663	32,663	32,663	24,497	
TOTAL	480,443	480,443	480,443	360,333	3,363,104

Table 12

UTILITY "Expedited" Programs in Annual Cumulative "Sales" Terms (MWhs)

	2008 (1/4 Yr)	**2009**	**2010**	**2011**
Energy Star HVAC	1,812	10,076	19,503	33,869
Small C&I	39,262	215,940	471,143	785,238
TOTAL	41,074	226,016	490,645	819,108

Table 13

UTILITY "Expedited" Program Targets in Annual Cumulative "Sales" Terms (MWhs)

	2008 (1/4 Yr)	**2009**	**2010**	**2011**
Central Hudson	2,396	13,184	28,619	47,779
Con Edison	15,112	83,155	180,516	301,363
NYSEG	5,787	31,843	69,126	115,402
Niagara Mohawk	13,215	72,718	157,859	263,538
O&R	1,772	9,751	21,168	35,339
RG&E	2,792	15,366	33,357	55,688
TOTAL	41,074	226,016	490,645	819,108

Table 14

Combined NYSERDA & Utility
Minimum Annual Incremental Targets in "Sales" Terms (MWhs)

	4th Qtr 2008	2009	2010	2011	Cumulative Through 2011
Central Hudson	10,120	40,478	40,478	40,478	131,554
Con Edison	63,829	255,316	255,316	255,316	829,777
NYSEG	24,442	97,769	97,769	97,769	317,751
Niagara Mohawk	55,818	223,270	223,270	223,270	725,628
O&R	7,485	29,939	29,939	29,939	97,302
RG&E	11,795	47,179	47,179	47,179	153,331
TOTAL	173,488	693,951	693,951	693,951	2,255,342

	2012	2013	2014	2015	Cumulative Total
Central Hudson	40,478	40,478	40,478	30,359	
Con Edison	255,316	255,316	255,316	191,487	
NYSEG	97,769	97,769	97,769	73,327	
Niagara Mohawk	223,270	223,270	223,270	167,453	
O&R	29,939	29,939	29,939	22,454	
RG&E	47,179	47,179	47,179	35,384	
TOTAL	693,951	693,951	693,951	520,464	4,857,660

Table 15

Compilation of Estimated Annual Electric Energy Efficiency Program Costs

	2008 (1/4 Yr)	2009	2010	2011	Annual Average
Fast Track NYSERDA Programs					
CFL Expansion	$1,744,072	$5,421,804	$6,472,104	$5,321,970	
Low-income-expand EmPowerNY	$2,000,000	$8,000,000	$8,000,000	$8,000,000	
New Construction expansion	$4,121,983	$19,949,321	$25,727,910	$19,407,040	
Flex Tech expansion	$957,188	$3,889,053	$5,467,440	$6,081,162	
Flex Tech industrial process	$6,700,313	$27,223,370	$33,033,571	$35,473,446	
Subtotal	$15,523,556	$64,483,548	$78,701,025	$74,283,618	$71,689,768
Enhanced M&V	$465,707	$1,934,506	$2,361,031	$2,228,509	$2,150,693
Subtotal	$15,989,262	$66,418,054	$81,062,056	$76,512,126	$73,840,461
Outreach & Education	$1,500,000	$6,000,000	$6,000,000	$6,000,000	$6,000,000
Subtotal	$17,489,262	$72,418,054	$87,062,056	$82,512,126	$79,840,461
SBC III Enhanced M&V	$1,312,500	$5,250,000	$5,250,000	$5,250,000	$5,250,000
TOTAL	$18,801,762	$77,668,054	$92,312,056	$87,762,126	**$85,090,461**
Fast Track Utility "Expedited" Programs					
Energy Star HVAC	$1,815,338	$6,865,370	$8,937,543	$12,050,850	
Small C&I	$9,827,679	$39,929,861	$71,502,715	$83,249,048	
Subtotal	$11,643,017	$46,795,231	$80,440,258	$95,299,898	$72,054,894
Enhanced M&V	$349,291	$1,403,857	$2,413,208	$2,858,997	$2,161,647
TOTAL	$11,992,308	$48,199,088	$82,853,466	$98,158,895	$74,216,541
Combined All Fast Track Programs	$30,794,070	$125,867,143	$175,165,522	$185,921,022	**$159,307,002**
Jurisdictional GAP Programs					
TOTAL (already includes Enhanced M&V)	$51,697,645	$204,094,130	$154,649,538	$143,766,408	$170,525,453
Combined All Programs					
GRAND TOTAL (including Enhanced M&V)	$82,491,715	$329,961,273	$329,815,060	$329,687,430	**$329,832,455**

Note: These figures do not include the cost of utility incentives or reimbursement for net lost revenues.

Table 16

EEPS Annual Collections from Electric Ratepayers by Service Territory ("Fast Track" plus "Expedited")

	2008 (1/4 Yr)	2009	2010	2011
Central Hudson	$2,323,097	$9,292,386	$9,292,386	$9,292,386
Con Edison*	$14,652,901	$58,611,603	$58,611,603	$58,611,603
NYSEG	$5,611,110	$22,444,440	$22,444,440	$22,444,440
Niagara Mohawk	$12,813,756	$51,255,023	$51,255,023	$51,255,023
O&R	$1,718,242	$6,872,968	$6,872,968	$6,872,968
RG&E	$2,707,645	$10,830,581	$10,830,581	$10,830,581
TOTAL	$39,826,750	$159,307,002	$159,307,002	$159,307,002

*Note: The collections amount for Consolidated Edison Company of New York, Inc. (Con Edison) shall be adjusted downward to account for monies already collected and being collected from its ratepayers in anticipation of EEPS outlays. See, Case 07-E-0523, Consolidated Edison Company of New York, Inc. - Electric Rates, Order Establishing Rates for Electric Service, (issued March 25, 2008), at p. 160. Con Edison shall address this and provide a reconciliation of the collections amounts in conjunction with its tariff filing to implement the above collections.

Table 17

Compilation of Estimated Annual Gas Energy Efficiency Program Costs

	2008 (1/4 Yr)	2009	2010	2011	Annual Average
Fast Track Utility "Expedited" Programs					
Gas Equipment	$2,955,590	$12,008,564	$16,882,287	$21,136,627	$16,302,482
Enhanced M&V	$88,668	$360,257	$506,469	$634,099	$489,074
TOTAL	$3,044,258	$12,368,821	$17,388,755	$21,770,725	**$16,791,557**

Note: These figures do not include the cost of utility incentives or reimbursement for net lost revenues.

Table 18

EEPS Annual Collections from Gas Ratepayers by Service Territory
(Utility "Expedited" Programs)

	2007 Dts	Allocation Factor	Subtotal	Current Rebate Programs	Annual Collections
Central Hudson	8,786,830	1.86%	$312,193	$0	$312,193
Con Edison	122,091,842	25.83%	$4,337,887	$0	$4,337,887
NYSEG	29,812,839	6.31%	$1,059,241	$0	$1,059,241
Niagara Mohawk	56,001,621	11.85%	$1,989,721	$0	$1,989,721
O&R	13,345,082	2.82%	$474,147	$0	$474,147
RG&E	28,590,433	6.05%	$1,015,810	$0	$1,015,810
KEDLI	66,013,416	13.97%	$2,345,437	$747,538	$1,597,899
KEDNY	98,307,300	20.80%	$3,492,829	$1,089,035	$2,403,794
NFG	49,656,788	10.51%	$1,764,291	$3,300,000	$0
TOTAL	472,606,151	100.00%	$16,791,557	$5,136,573	$13,190,693

Summary of Fast Track Program Information

Fast Track Program Name	NYSERDA Program Name	Program Changes	Program Description	Key EM&V Indicators*
Statewide Residential Point-of-Sale Lighting	Energy Smart Products	Increase marketing and co-promotions with retail stores and lighting manufacturers Reach all significant channels for light bulbs with a wide variety of CFL options Provide inducements to retailers to increase the number of energy efficient bulbs sold and increase shelf space for these items. Increase use of in-store promotions and point-of-purchase information Consider use of time-limited coupons or in store rebates Consider development of a lighting catalog	This stand-alone lighting program, operated by NYSERDA, will complement the current Energy Smart program and provide additional funding to the upstream market for the promotion of sales of CFL bulbs. Currently, lighting is a large component of the Energy Smart program, which markets many ENERGY STAR® products. The updated program will provide payments to manufacturers to establish specific retail product price levels. The increased funding will allow significantly increased marketing efforts, creating openings to more retail channels and more market actors. The program will be closely coordinated with the Energy Smart Program since many of the retailers offer a variety of ENERGY STAR® products in addition to lighting. Potential Enhancements: Short-term use of discount coupons for CFL bulbs Issuance of a lighting catalog, either in hard copy and/or on-line	Survey retailers, wholesalers and consumers Estimate energy savings Projected TRC ratio: 6.1
Residential ENERGY STAR® HVAC	Energy Smart Products	Expand ENERGY STAR® promotion efforts involving central air conditioners Consider ways to promote quality installation of central air conditioners, building on ACCA quality installation specifications and on the success of programs run by LIPA and New Jersey	The program will promote use of ENERGY STAR® and even more energy efficient central air conditioners. Two mechanisms will be used to promote these measures: 1) upstream incentives for promotion of efficient air conditioners, and 2) additional training, education, and incentives on quality installation of central air conditioners.	Survey retailers, wholesalers, consumers and installers Evaluate effectiveness of training Estimate energy savings Projected TRC ratio: 3.9
Residential Efficient Gas Equipment	None	Not applicable	This program will promote efficient furnaces, boilers, water heaters, clothes washers, solar hot water technology, and hot water conservation measures. Three mechanisms will be used to promote these measures: 1) rebates for retail sale of efficient gas products, 2) marketing training for heating contractors and plumbers, and rebates to these trade allies for efficient gas equipment they sell, and 3) discounted sales of low-flow showerheads, faucet aerators and tank wraps via the Internet and mail order.	Survey retailers, wholesalers, consumers and installers Estimate energy savings Projected TRC ratio: 3.4

Fast Track Program Name	NYSERDA Program Name	Program Changes	Program Description	Key EM&V Indicators*
EmPower NY	EmPower NY	Meet with interested parties to determine how best to leverage additional funding for low income programs within the new program structure All utilities will be encouraged to refer customers to the program	This enhanced program will extend the availability of the EmPower NY program to more customers. Energy efficiency and weatherization services will be provided to eligible low-income households. Expansion of EmPower NY will also target payment-troubled customers and help them to pay their utility bills. Utility referrals will be the primary method for customer in-take into the program. A whole-house approach will be used with a goal of providing cost-effective energy saving measures. Service will be provided at no cost to participants.	Survey participants Evaluate effectiveness of referral system Estimate energy savings Projected TRC ratio: 1.6
New Commercial Buildings - Whole Building Design	High Performance New Buildings	Increase program marketing and outreach dramatically Increase the number of technical assistance providers Consider increases to incentive levels Provide increased compensation to enable building developers, architects, and engineers to participate in the analysis of design options Place more emphasis on a whole building approach Place special emphasis on achieving 30% savings relative to ASHRAE 90.1-2004 Expand the number of measures promoted by the program Review measures in the program periodically	The goal of the whole building design approach is to create a high-performance energy efficient building by applying an integrated team approach during the project planning, design and construction phases. The program will focus on achieving savings of around 30% per building. Opportunities for use of renewable technologies will be explored. NYSERDA's current program will be reviewed to evaluate the potential for increasing market penetration and the level of per unit savings. A program feature should be promoting the program early in the planning phase to key customers, especially those known to be contemplating construction of new buildings. Emphasis should be placed on offering energy efficiency design assistance as early in the project development process as possible.	Evaluate program marketing Evaluate effectiveness of the whole building design approach Estimate energy savings Survey participants Projected TRC ratio: 2.5
Small Business Direct Installation program	Mobile Energy Clinic	Essentially a new program since current effort is quite small Build on experience of best practice programs, especially National Grid's New England program	This program will deliver energy efficient retrofits for electric and gas customers, targeting small commercial/industrial customers with monthly peak demand or energy usage less than 100 KW. Eligible customers will be reached through a combination of direct outreach by contractors and utility customer representatives. Measures to be addressed include lighting, selected refrigeration maintenance, gas energy efficiency measures, and other measures deemed cost effective. The program will use a 70/30 cost split with 70% of funding provided by the utility.	Evaluate delivery mechanisms Survey participants Estimate energy savings by measure and the program overall Survey contractors Estimate benefit cost ratio Projected TRC ratio: 2.7

Fast Track Program Name	NYSERDA Program Name	Program Changes	Program Description	Key EM&V Indicators*
			The utilities will work with a set of approved contractors and third-party implementers who are empowered to promote, enroll, and audit qualified customers, as well as to install measures. To the extent feasible, on-bill financing or low cost loans should be used to help finance the customer share of upfront costs.	
Flex Tech Industrial Process	Flexible Technical Assistance (Flex Tech)	Increase the number of service providers, particularly providers who are experts in particular industrial processes Make incentives available for industrial process improve-ments. Expand marketing of this program substantially	NYSERDA's Flex Tech program provides customers with objective and customized information to facilitate wise energy efficiency, energy procurement, and financing decisions. Cost-shared technical assistance is provided for detailed energy efficiency studies from energy engineers and other experts. Small customers are eligible for quick walkthrough energy audits, with the cost reimbursed upon implementation of recommendations. Participants can use NYSERDA-contracted or customer-selected consultants. The enhanced program will significantly expand the industrial portion of the program with a larger budget, more technical assistance providers, and increased outreach. Industry typically requires "boutique" approaches to energy efficiency. Each production line is different, so a targeted approach is necessary to ensure that all energy efficiency improvement opportunities are identified and addressed. Credibility and quality of technical assistance will be essential.	Survey participants Survey audit firms Determine measures implemented Determine why some measures are not implemented Estimate energy savings by measure and the program overall Projected TRC ratio: 3.5
Flex Tech Expansion	Flexible Technical Assistance (Flex Tech)	Substantially increase the number of service providers Expand marketing of this program substantially	NYSERDA' Flex Tech program provides customers with objective and customized information to facilitate wise energy efficiency, energy procurement, and financing decisions. Cost-shared technical assistance is provided for detailed energy efficiency studies from energy engineers and other experts. Small customers are eligible for quick walkthrough energy audits, with the cost reimbursed upon implementation of recommendations. Participants may use NYSERDA-contracted or customer-selected consultants. In the enhanced version of the program, more customers will be able to take advantage of the program. Customers will be encouraged to implement a large proportion of the recommenda-tions, 70% at their own cost, which in the past has resulted in an average SBC cost for saved energy of less than 1/2 cent per kWh. Credibility and quality of technical assistance will be essential.	Projected TRC ratio: 2.4

* All programs will be required to submit a detailed evaluation plan and provide regular progress reports.

APPENDIX 3

Efficiency Program Selection Criteria

Screening Metrics: Minimum to be Filed

For each program:

1. **Total Resource Cost Test's Benefit-Cost Ratio**:

   The benefits calculated in the TRC Test are the avoided supply costs, including the reduction in costs of electric energy, generation, transmission, and distribution capacity, and natural gas, valued at marginal cost for the periods when there is a load reduction. The program costs are those paid by the program administrator and participants plus the increase in supply costs for any period when load is increased. To the extent practical, the filing should include the total cost and associated energy and demand savings for each measure contained within the program.

2. **Electric Rate Impact**:

   This metric provides the percentage increase in current delivery and overall rates associated with a particular program. The results should be provided on a levelized basis assuming a) the program continues to expand and extends through 2015 and b) the program functions only for as long as proposed by its sponsor. The rate impact effect of avoided transmission and distribution costs should be clearly presented. Thus, rate impacts should be presented both with, and without, avoided transmission and distribution costs.

3. **Electric Rate Impact per MWh Saved**:

   This metric provides the levelized rate impact per MWh saved, stated separately for delivery and overall rates, assuming a) the program continues to expand and extends through 2015 and b) the program functions only for as long as proposed by its sponsor.

4. **Electric Rate Impact per MW Saved**:

   Same as 3 above, except it is per MW saved at the time of system peak.

5. **MWh Saved in 2015**:

   This metric reflects the amount of MWhs saved in 2015 assuming a) the program continues to expand and extends through 2015 and b) the program functions only for as long as proposed by its sponsor.

6. **MW of Coincident NYISO Peak Saved in 2015**:

   This metric reflects savings in MWs at time of system peak. This metric should reflect MWs assuming a) the program continues to expand and extends through 2015 and b) the program functions only for as long as proposed by its sponsor.

7. **Peak Coincidence Factor of MWh Saved in 2015**:

This metric is a measure of the extent to which the MWhs saved for each program are concentrated at the time of system peak. The peak coincidence factor is a measure of the extent to which the MWhs saved are concentrated in peak hours versus distributed evenly across the 8760 hours a year. Peak coincidence factor is defined as:

$$\text{Peak coincidence factor} = \frac{\text{[annual MWh saved]}}{\text{[(MW saved on peak) x (8760 hours)]}}$$

8. **Total Resource Cost Test's Benefit-Cost Ratio, with Carbon Externality Added, Assuming a Carbon Value of $15 per ton (TRC plus C):**

This metric makes a single change to the Total Resource Cost Test by adding on an estimate of the benefit of carbon reduction. Parties are free to provide additional quantifications based on alternative $/ton values.

9. **Number of Participants as a Percentage of the Number of Customers in the Class as of 2015**.

10. **Gas Rate Impact**:

This metric provides the percentage increase in current delivery and overall rates associated with a particular program. The results should be provided on a levelized basis through 2015 and on the basis of the impact of the first full calendar of implementation.

11. **Gas Rate Impact per MBTU Saved, Levelized Over the Years Through 2015**:

This metric provides the levelized rate impact per MBTU saved over the years through 2015 separately for delivery and overall rates.

For the suite of programs as a whole:

1. **Electric Rate Impact as of Year 2015**:

This metric reflects the percentage increase in rates caused by the suite of programs, assuming that it remains in place through 2015 and assuming, hypothetically, that it is up-sized to constitute the Commission's entire jurisdictional share of the 15 x 15 goal.

2. **Gas Rate Impact as of the Year 2015**:

Same as (1) above.

Narrative Considerations. The following should be described fully to the extent that each is applicable to a specific proposal:

- **Demand Reduction and System Benefits**: impact on peak load and system load factor, including the extent to which metrics can be relied on by the New York Independent System Operator; and impact on T&D system needs, including the extent to which metrics can be relied on by T&D system planners.
- **Evaluation**: each proposal must contain a detailed protocol for measurement and verification of results, taking into account guidance provided by the Director of the Office of Energy Efficiency and Environment.
- **Market Segment Need**: the extent to which need or demand for the program has been identified within the targeted market segment.
- **Coordination**: the extent to which complementary resources of other program administrators are utilized; the extent to which similar programs are operating (or, if known, proposed) within the utility service territory and within the State; efforts made to eliminate or minimize conflicts, particularly with respect to eligibility standards and other program components that could lead to customer and contractor confusion.
- **Co-benefits**: benefits other than direct cost savings and demand reduction/system benefits, e.g. employment opportunities, effect on low-income customers, effect on housing stock, environmental justice implications, or environmental benefits other than those generally attributable to energy efficiency improvements.
- **Portfolio Balance**: the manner in which the proposed program complements other programs (either proposed or operational) of the program administrator and, if known, of other program administrators within the service territory, particularly with respect to the range of customer classes served.
- **Depth of Savings**: the extent to which the program avoids lost opportunities by maximizing the number of measures implemented per customer contact.
- **Underserved Markets**: the manner in which the portfolio addresses markets historically underserved by efficiency programs, such as rental customers.
- **Commitment**: the term of the program commitment should be discussed in the context of the time needed to develop participation by customers, contractors and workforce.
- **Customer Outreach**: the program's provisions for identifying customers and encouraging participation.
- **Collaborative approach**: the extent to which program development was informed by cooperative discussions with other program administrators, service providers, consumer representatives and community organizations.
- **Fuel integration**: the extent to which electricity and gas measures will be addressed in a complementary manner, such as through a single customer contact.

- **Transparency**: the extent to which information regarding the program, including program design, benefit/cost analysis, and supporting data, are available for public review and accessible to other program administrators.
- **Procurement**: each proposal must specify that program delivery functions will be procured through competitive processes except to the extent they are performed directly by the program administrator.