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April 8, 2005

Ms. Jaclyn Brilling  
Secretary  
New York State Public Service Commission  
Three Empire State Plaza  
Albany, NY 12223-1350

**Re: Case 05-M-0090 – In the Matter of the Systems Benefit Charge**

Dear Secretary Brilling:

Please find attached comments of the City of New York on the matter regarding the legislative oversight of the System Benefits Charge.

Very Truly Yours,

*/s/ Michael J. Delaney*

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**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

**Case 05-M-0090 – In the Matter of the Systems Benefit Charge**

**Comments Submitted By:  
The City of New York**

**April 8, 2005**

The City of New York ("City") hereby submits its Comments in response to the New York State Public Service Commission Notice of April 1, 2005 in this matter, which solicits views on the impact of the recently passed New York State budget amendments' that would institute annual legislative oversight of non-appropriated funds received by the New York State Energy Research and Development Authority ("NYSERDA"), effective in fiscal year 2006-2007. In particular, the Commission requests comments concerning the impact of the legislation on the continuation and scope of the Systems Benefit Charge ("SBC") program.

**I. New York City Has a Vital Interest in the Continuation of a Viable, Long-Term SBC Program**

As the most highly constrained load pocket area in the State, the City has a direct and urgent interest in assuring the long-term continuation of a coherent program of energy efficiency, demand response and environmental enhancements. Nowhere is the need for peak load reduction more pronounced than in the City.

At present, the City contributes approximately 50 percent of the SBC funding, while receiving considerably less than that in SBC-funded projects (approximately 46 percent, by NYSERDA's calculations). As noted in our original Comments in this proceeding,<sup>2</sup> this overall shortfall of benefits when compared to funding clearly needs to be addressed in whatever form the SBC program takes in the future. Indeed, if there is to be any significant differential in SBC funding levels among the regions of the State, that difference should arguably run in favor of the City, given its extremely high electricity

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<sup>1</sup> Senate 3669, and Assembly 6843 (passed on March 30, 2005)

<sup>2</sup> See Comments of the City of New York in Case 05-M-0090 at pp. 5-6 (filed March 4, 2005)

prices, and the consequent relative value derived from all energy savings effected in New York City. At a minimum, the existing regional inequity in SBC funding allocations must be corrected.<sup>3</sup>

The New York City Energy Policy Task Force ("Task Force") in its 2004 Report to Mayor Bloomberg<sup>4</sup> recognized the need for the widespread use of Distributed Resources<sup>5</sup> as an essential part of a comprehensive program to ensure that the City's energy needs are met, and also to enhance the City's environmental quality. Moreover, the Task Force explicitly noted the importance of extending the SBC program, and made that extension one of its specific recommendations.

That conclusion was recently reaffirmed by the Commission's March 16, 2005 Order approving a comprehensive electric rate plan for Consolidated Edison. The Commission recognized the need for increased investment in demand reduction measures in the Con Edison service territory, and approved an aggressive initiative to secure 675 megawatts of Distributed Resources over the period of the three-year rate plan. In approving the initiative, and in order to improve the chances of actually achieving the 675 megawatts, the Commission authorized NYSERDA to take on the critical role of administering that initiative.

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<sup>3</sup> The City's interest in assuring such fairness applies regardless of the ultimate form of program design and oversight to which NYSERDA is subject from the Commission or the New York State Legislature – or even a combination of the two, as was suggested in recent Comments by Assembly Member Paul Tonko. *See* Comments of Assembly Member Paul D. Tonko in Case No. 05-M-0090, at p. 2 (filed March 4, 2005)

<sup>4</sup> *New York City Energy Policy: An Electricity Resource Roadmap* (January 2004), available at [http://www.nyc.gov/html/om/pdf/energy\\_task\\_force.pdf](http://www.nyc.gov/html/om/pdf/energy_task_force.pdf)

<sup>5</sup> Defined collectively as energy efficiency, clean on-site generation and peak load management.

## **II. Annual Legislative Reviews of SBC and Other Forms of NYSERDA Funding Can Hinder Efforts to Reach Critical Distributed Resource Targets**

The Notice asks for the impact of the pending legislation on the SBC program. It is the City's view that subjecting the SBC funds to annual legislative review and modification will undermine efforts to achieve Distributed Resources that are needed to ensure reliability and achieve environmental goals in the City. The demonstrated success of the SBC programs to date reflects NYSERDA's unique ability to work with market participants to design programs that yield desired results. It also reflects the ability of NYSERDA to offer a satisfactory degree of certainty for initiatives that may require more than one year of funding. Annual legislative reviews will disrupt the balance that NYSERDA has achieved, and compromise the success rate of the programs.

NYSERDA occupies a unique position in the field of Distributed Resources. Its ability to work with market participants to craft programs designed to maximize cost-effective Distributed Resource measures is one of the cornerstones of the success of the SBC programs. Moreover, NYSERDA's collaborative, flexible approach to program evaluation should mean that successful programs advance and unsuccessful programs are discarded. That is not to say that NYSERDA is without flaws, or that it should be exempted from continued internal and external reviews, as discussed below at page 7. Nevertheless, the fact remains that the current administration of the SBC funds has generally worked well, and is the reason that the recently approved Consolidated Edison electric rate plan entrusted the administration of non-SBC Distributed Resource funding

to NYSERDA.<sup>6</sup> More importantly, it is difficult for the City to envision how an annual legislative process would result in better programs or evaluations.

Annual legislative review of the programs also will eliminate the general funding certainty that is now available from NYSERDA in most instances. An effective SBC program plays a critical role in providing incentives to encourage investment in energy efficiency and load control, as well as numerous other demand-side resources, including advanced equipment to facilitate the wider use of real time pricing in the residential as well as commercial sectors. The *long-term continuity* and *predictability* of the structures and levels of funding for SBC programs are needed to encourage market investments in the often very expensive equipment and processes needed to foster the growth of Distributed Resources.

Even under ideal conditions, NYSERDA cannot be expected to provide 100 percent funding for energy efficiency measures. Indeed, it has long been its policy to seek substantial matching funds in order to maximize the available returns on all energy investments. This form of leverage has, in general, operated satisfactorily, and has had a demonstrable multiplier effect. However, that success is necessarily dependent on private investment in energy efficiency. In the main, investors have been reassured that particular NYSERDA programs, and the funding levels for the same, will exist over a substantial time period, and will remain reasonably constant, or are at least predictable.

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<sup>6</sup> Inasmuch as the non-SBC distributed resource funding approved in the Con Edison settlement is included in rates, and not as an "assessment collected for the purpose of public policy energy concerns," the City assumes that the legislative review would not apply to that funding. To the extent that it does, the City's concern with the achievability of the targeted 675 megawatts of distributed generation is heightened even further.

Such predictability is especially important for technologies that require long development lead times. The adverse impact on market investments in alternative energy technologies resulting from uncertainty in incentive programs has been well documented. The most notable case has been the reduced national investment levels in wind power resulting from short-term reauthorizations, and brief authorization lapses by the U.S. Congress of the federal wind production tax credit.<sup>7</sup>

The necessity for annual NYSERDA appropriations by the Legislature, even if they are made on a timely basis, will clearly have an impact on public and commercial expectations, and can be expected to discourage sustained investment by the private sector in energy programs, as well as greatly complicating planning efforts by the Authority and the stakeholders who deal with it. And for the City itself, the aggressive Distributed Resources targets established by the Task Force and in the Consolidated Edison electric rate plan will be considerably more difficult to meet.

Any real or perceived reduction in SBC funding or change in program structures will compromise the City's ability to meet the goals of achieving energy savings, keeping consumer electricity costs under control, and benefiting the environment. The effectiveness of the City's own business development and retention tools, which are dependent on NYSERDA funding to be fully effective, will also be adversely affected by any reductions in support from the Authority.

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<sup>7</sup> See American Wind Energy Association (AWEA) at [www.awea.org](http://www.awea.org)

### **III. There Is a Clear Need for Continued Strong Oversight of NYSERDA Programs and Expenditures, But the Commission Is Well Positioned to Provide Such Review and Direction**

The City strongly believes in transparency and a high degree of openness and accountability for NYSERDA, and recognizes the Legislature's implicit concern that there needs to be in place a comprehensive monitoring system for SBC expenditures, which under the current form of the program amount to an aggregate total of some \$150 million annually. In its prior Comments in this case, notably in response to Question 11,<sup>8</sup> the City called for standardized data collection and tracking for all SBC fund allocations, including the purpose served by such expenditures, and their relationship to NYSERDA's overall program goals. The City in its Comments also strongly urged the use of *specific* and *quantifiable* goals to evaluate all SBC programs.

These positions are not novel ones. The City in its capacity as a member of the SBC Advisory Group has for some time espoused the same views. We thus share the Legislature's apparent opinion that there is a clear need for overall public accountability concerning NYSERDA activities. However, the City believes that the Public Service Commission, particularly when aided by the independent review of the SBC programs authorized and reviewed by the SBC Advisory Group, is well equipped to ensure effective oversight of NYSERDA programs, goals, and expenditures.

### **IV. Conclusion**

For the reasons set forth herein, the City submits that the legislative review and annual appropriation process for the SBC programs would have a detrimental impact on the programs, and thus would be inconsistent with the goals of the New

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<sup>8</sup> Comments of the City of New York in Case 05-M-0090 at p. 9 (March 4, 2005)

York City Energy Task Force and the recently approved Consolidated Edison electric rate plan.

Dated: April 8, 2005

Respectfully submitted,

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