

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

In the Matter of the System Benefits Charge III

Case 05-M-0090

COMMENTS OF THE
CONSUMER PROTECTION BOARD

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In a Notice Soliciting Comments issued January 28, 2005, the Public Service Commission (“PSC”) requested input from interested parties on a series of questions designed to assist Staff of the Department of Public Service (“DPS Staff”) in developing a proposal regarding the future of the System Benefits Charge (“SBC”). The SBC, paid by most electric ratepayers, provides a source of funds for public benefit programs previously administered by utilities that are not likely to be adequately provided by the market place during the transition to fully competitive markets, including those addressing energy efficiency, renewable energy, low-income energy affordability, research and development, and environmental protection. The SBC was established in 1998¹ and subsequently expanded and extended through June 30, 2006.² The New York State Consumer Protection Board (“CPB”) provides the following comments and recommendations regarding the matters identified in the PSC’s January 2005 Notice.

¹ Case 94-E-0952 *et al.*, In the Matter of Competitive Opportunities Regarding Electric Service, Opinion and Order Regarding Competitive Opportunities for Electric Service, issued May 20, 1996 (“May 20, 1996 Order”).

² Case 94-E-0952 *et al.*, supra, Order Continuing and Expanding the System Benefits Charge for Public Benefit Programs, issued January 26, 2001 (“January 26, 2001 Order”).

INTRODUCTION

The CPB has been actively involved with, and strongly supportive of, the public benefit programs funded by the SBC since its inception. We thoroughly reviewed and commented upon the proposals that led to the program's creation as well as its extension and expansion through 2006. We have also contributed to the oversight, monitoring and evaluation of SBC-funded programs through our membership on the SBC Advisory Group since its formation. That Group was established by the New York State Energy Research and Development Authority ("NYSERDA") and the PSC to serve as an independent program evaluator to help determine whether the SBC-funded programs are meeting the PSC's public policy goals. It consists of utility experts, energy consultants and representatives of generators, Energy Services Companies ("ESCOs"), consumer groups, environmental advocacy organizations, and low income advocacy groups.

From our close observation of the SBC-funded programs, the CPB is strongly convinced that the SBC continues to serve the important functions for which it was created. The CPB also concludes, based on the detailed evaluations that have been performed on behalf of the SBC Advisory Group, that these programs provide significant cost-effective consumer and environmental benefits and operate in a highly efficient manner. Moreover, it is apparent that emerging competitive markets have not yet evolved to offer the scope and magnitude of the services now provided through the SBC, especially energy management services, research and development, and services to make energy more affordable for low-income consumers. It is also apparent that additional

cost-effective opportunities in these areas are available to benefit consumers and the environment. Accordingly, the CPB supports the extension of the SBC program for an additional five-year period, subject to continuation of oversight, monitoring, and evaluation necessary to assure that program objectives are achieved as efficiently as possible. We also support a new SBC for natural gas for a three-year introductory period.

1. To what extent have the goals and objectives established by the Commission been achieved?

The PSC established the SBC to “provide a funding source during the transition, and possibly over the long term, for public policy initiatives that are not expected to be adequately addressed by competitive markets.”³ Since its inception, the SBC has been instrumental in achieving the Commission’s goals of increasing energy efficiency, expanding research and development including environmental and renewable resources, and making energy services more affordable for low-income customers.⁴

According to the most recent data available, the New York Energy \$mart ProgramSM has lowered peak electric demand by 1,135 MW, reduced annual energy use in the state by approximately 1,340 GWh, and achieved savings for ratepayers and program participants of nearly \$200 million annually.⁵ Moreover, reductions in atmospheric emissions directly attributable to SBC funded

³ May 20, 1996 Order, p. 61.

⁴ January 26, 2001 Order, pp. 1 – 2.

⁵ New York Energy \$martSM Program Quarterly Evaluation and Status Report, Quarterly Report to the Department of Public Service, Quarter Ending September 30, 2004, p. 2.

programs were estimated at 1,265 annual tons of nitrogen oxide, 2,175 annual tons of sulfur dioxide, and 1,004,000 annual tons of carbon dioxide.⁶ The Energy Smart ProgramSM has also fostered and accelerated market development that would not have occurred otherwise in areas including energy efficiency, peak load reduction, and renewable energy.⁷ Annual energy cost savings alone were estimated to be nearly twice the annual program budget for program measures installed through December 2003.⁸ In addition, the macroeconomic impact of the SBC programs shows that significant multipliers are at work in terms of benefits generated per dollar expended.⁹ These benefits are well distributed among principal constituencies contributing to the funding of the SBC.

Although these accomplishments are impressive, there is a great deal more to be done, and there is no indication that the current level of progress can be sustained by the marketplace without the impetus of the SBC program. Moreover, since the inception of the SBC, the prices of fuels used to generate electricity, including natural gas and oil, have increased, thereby increasing the consumer benefits from energy efficiency and conservation programs funded by the SBC and the cost justification for those programs. The transition to fully competitive electric supply markets will continue for many years, during which

⁶ Id.

⁷ New York Energy SmartSM Program Evaluation and Status Report, Report to the System Benefits Charge Advisory Group, Final Report, Volume 1, May 2004, Executive Summary, p. ES-8 (“2004 SBC Evaluation Report”).

⁸ Id., p. ES-30.

⁹ Id., p. ES-27.

time, the SBC program will continue to be the primary vehicle to achieve the public policy objectives identified above.

2. Should the SBC program continue beyond its current expiration date of June 30, 2006? If so, for what duration should the SBC be extended and at what funding level?

The CPB recommends that the SBC program be extended for an additional five years. Combined with our recommendation to continue the oversight and review of SBC-programs, the five-year period we recommend provides participants in SBC-funded programs the assurance of stable funding while also ensuring sufficient flexibility to reallocate resources in the event that circumstances and/or priorities change.

Given the significant cost-effective consumer and environmental benefits of the SBC-funded programs identified above, the CPB urges that serious consideration be given to maintaining or increasing funding for the SBC program. We recommend that DPS Staff conduct a comprehensive study to determine the appropriate funding level. That study should include detailed evaluation of the extent to which SBC-funded services are being provided by competitive markets, the cost-effectiveness of SBC programs, as well as the magnitude of incremental energy efficiency, distributed generation and load management measures included in rate plans of individual utilities.¹⁰ Determination of the funding level for the SBC should also consider customer bill impacts.

¹⁰ For example, on December 2, 2004, a Joint Proposal for the electric operations of Consolidated Edison Company of New York, Inc., was filed in case 04-E-0572. That Joint Proposal establishes a goal of 300 MW of load reduction incremental to those already funded through the SBC. The PSC is expected to consider that Joint Proposal at its March 2005 Session.

3. Have conditions changed since the establishment of the SBC that would necessitate a change in the overall goals and objectives of the SBC? If so, what changes are recommended?

No. Although conditions have certainly changed since the establishment of the SBC, emerging competitive markets do not adequately provide services that foster energy efficiency, research and development, and more affordable energy services for low-income customers. Consequently, for the foreseeable future, the fundamental underlying reason for the SBC program, to provide important public benefit programs that are not expected to be addressed adequately by competitive markets, continues. Accordingly, the essential goals and objectives of the SBC program remain valid.

4. If assuming continuation of the SBC (sic), how should programs be prioritized to meet those goals and objectives?

The CPB does not recommend any major changes to current SBC program priorities. We recommend continuation of the biennial detailed evaluations of the SBC and its funded programs, as well as interim status reports. These reports provide valuable information to NYSERDA and the SBC Advisory Group that is used to establish program priorities and evaluate progress in achieving those objectives.

We also recommend continuation of current procedures to prioritize SBC-funded projects. NYSERDA routinely reviews and prioritizes programs based on progress in achieving program objectives and the SBC Advisory Group provides additional input to ensure that objectives are being met. The current measurement and verification process, with its periodic reports, also facilitates

identification of areas where more or less focus is required. This process should be maintained, and strengthened as discussed below in the response to Question 11, but overall, the procedures now in place ensure that projects are prioritized to achieve the goals and objectives of the SBC program, in consideration of changing circumstances.

5. How might the SBC programs be adjusted given the Commission's order, issued September 24, 2004, regarding a Renewable Portfolio Standard (Case No. 03-E-0188)?

The establishment of a Renewable Portfolio Standard ("RPS") applicable to all electric suppliers, including ESCOs, does not create a new policy objective for the SBC program. Through its End-Use Renewables Program, its Wholesale Renewables Program and its research and development efforts, the SBC program is already pursuing increased availability and use of renewable energy, and has achieved some significant positive results as detailed above.

The CPB understands that funding provided for the RPS program addresses only procurement of renewable energy. Therefore, there may be no overlap between the SBC's marketing and research and development programs for renewable energy, and the new RPS. It may be the case, however, that to provide the level of assistance that will be required by the market to achieve the benchmarks established by the RPS, SBC program priorities will require some realignment. CPB expects that this is a subject that should, and will, be addressed in considerable detail by the program manager and the SBC Advisory Group.

6. In what ways might the current SBC fund collection and allocation process be improved?

The CPB has two recommendations to improve the current SBC fund collection and allocation process.

a. Inclusion of Municipal Authorities. Currently, municipal electric utilities and municipal distribution authorities do not collect the SBC and their customers are not eligible for SBC-funded programs. The Commission, in its order extending the SBC program, rejected suggestions that municipals be included, deciding instead to invite voluntary participation by excluded customers willing to pay the charge in return for program eligibility.¹¹

The CPB would encourage the Commission to reconsider this position and to mandate collection of the SBC by municipals over which it has rate jurisdiction. This is clearly appropriate from the standpoint of fairness and statewide equity. Many, if not all of the programs funded by the SBC generate benefits that accrue to all electric customers, and indeed, to all citizens of the state. Reductions in environmental impacts, decreases in peak demand, dissemination of energy efficiency information, and market transformation efforts that make new and improved technologies and services more readily available, are obvious examples of the generalized benefits achieved through SBC programs. As to these programs, municipal customers are currently “free riders,” and are subsidized by the general body of ratepayers.

As to the participatory programs funded by the SBC, municipal customers are losing out. Businesses and residences that could benefit from efficiency and

¹¹ January 26, 2001 Order, p. 23.

affordability programs are ineligible for no reason other than their locations. This is particularly unfortunate, in CPB's view, in the case of low-income customers of municipal utilities who are unable to participate in programs that target their specific needs.

b. Allocation Among Program Areas. Under the guidelines established by the Commission in its January 26, 2001 Order, NYSERDA has discretion, in consultation with interested parties, and subject to direct oversight by DPS Staff, to allocate funds within the four primary program categories of energy efficiency, low-income energy affordability, research and development, and peak demand reduction. To reallocate funds among categories, however, NYSERDA must obtain Commission approval.

This requirement necessarily inhibits the advocacy of proposals that would require funds to be shifted among program categories, in favor of alternative, if perhaps less attractive, proposals for using funds within the same category. The Commission undoubtedly intended such a result when it issued its Order in 2001. Now, however, more than four years later, markets have developed further, the pace of change is quickening, and greater market participation by consumers, ESCOs and generators will almost certainly result in further innovation. Consequently, greater flexibility in the allocation of SBC funds may prove extremely valuable over the next five years.

NYSERDA has demonstrated its capability in setting and re-ordering priorities as its programs evolve. Accordingly, it should be allowed to move funds among categories on a more expedited basis, subject to appropriate oversight.

We recommend that a defined amount or percentage of funds in each program category be available for reallocation for specific purposes identified by NYSERDA, when such reallocations are authorized by the SBC Advisory Group and DPS Staff. Thus, for example, the Commission might provide that up to 10% of funds originally allocated to a particular program category may be redirected to another category, if approved by the SBC Advisory Group and DPS Staff.

7. What specific program(s) should be eliminated, expanded or created?

The CPB believes that the on-going oversight and review of SBC-funded programs is effective. Accordingly, we do not have any specific recommendations to change SBC-funded programs at this time. In general, NYSERDA has done an effective job of allocating funds, shifting emphases and changing strategies where necessary to respond to changing market conditions.¹² Furthermore, the diversity of interests represented on the SBC Advisory Group helps ensure not only that thorough scrutiny will be given to proposals to scale back particular programs, but also that promising areas for expansion or creation of new programs will not be overlooked.

8. How can future SBC funded programs be more responsive to the needs of New York's energy consumers?

CPB considers the maintenance of open lines of communication between program administrators and consumers, ESCOs, environmental organizations and others having a direct stake in the policy objectives of the SBC program to

¹² 2004 SBC Evaluation Report, Section 3.10.

be of critical importance in ensuring that SBC-funded programs are responsive to the needs of New York's energy consumers. Maintaining the effectiveness of the program and assuring the establishment of priorities that accurately reflect consumer interests requires continual exchange of information, as well as feedback. We believe that the SBC Advisory Group provides this essential communication channel and that it is vital that its role be continued with adequate funding for measurement and verification programs.

9. How can SBC funded programs be marketed more effectively?

Based on information provided to the SBC Advisory Group, the CPB has found NYSERDA's marketing of SBC-funded programs to be generally appropriate and effective. We do not have any specific recommendations to modify the marketing of SBC-funded programs at this time.

10. In what ways can NYSERDA improve its administration of the SBC?

At present, CPB is comfortable that the program is being administered efficiently by NYSERDA, and that effective oversight by the SBC Advisory Group, DPS Staff, and the PSC can assure that this will continue to be true for the duration of any program extension.

11. Is the current NYSERDA program evaluation process adequate? How might it be improved?

Objective evaluation of the effectiveness of SBC programs is essential to assuring that New York consumers are getting what they pay for -- to assuring, in

effect, that the rates they pay to support public benefit programs are just and reasonable. The significant increase in funding for measurement and verification efforts approved as a part of SBC II has improved the evaluation of SBC programs substantially, but CPB believes even more effort may be worthwhile. Currently, only two percent of SBC program funds are allotted for the evaluation of program effectiveness and cost benefit analysis. The CPB is aware that funding for these efforts in comparable programs in other states is higher, sometimes considerably so. Consequently, we recommend that the possibility of at least a modest increase in the percentage of funds allocated for program evaluation be considered in this proceeding.

A portion of the increase in funding for measurement and verification efforts should be set aside for use by the SBC Advisory Group. Under the terms of the Memorandum of Understanding (“MOU”) currently in effect between the PSC, DPS and NYSERDA, it is the responsibility of NYSERDA to assure “appropriate auditing of all programs” and to arrange “for the evaluation of all programs.”¹³ In furtherance of this responsibility, NYSERDA is required, at a minimum, to provide detailed program evaluation reports biennially, with status reports in interim years, and quarterly reports on the progress of peak load reduction programs.¹⁴

The evaluation and reporting process defined in the MOU calls for NYSERDA to perform its program evaluation in a manner acceptable to DPS “to

¹³ “Second Amendment to Memorandum of Understanding,” Section III. F., dated December 14, 2001.

¹⁴ Id., Section III. H.

determine whether [the programs] are meeting their intended objectives and are cost-effective and effectively and timely implemented.”¹⁵ When the evaluation is complete, NYSERDA prepares a draft report which is submitted to the SBC Advisory Group as the “Independent Program Evaluator.” The SBC Advisory Group performs “a final review of the draft program evaluation” and submits its comments on NYSERDA’s draft in a report to the DPS and the PSC.

In practice, the SBC Advisory Group is called on for much more than just a final draft review. As noted in the 2004 evaluation report, the group “was involved in developing the scope of work for the evaluation activities and selecting the evaluation contractors ... reviewed and commented on NYSERDA’s recommendation ... helped apportion the budget among the contractors ... and helped select the specific evaluation tasks to be completed.”¹⁶ All of these are examples of the type of objective input that should be provided by an “Independent Program Evaluator.”

The CPB is concerned, however, that the SBC Advisory Group does not have the resources necessary to consistently make an informed contribution to the evaluation process. The group has no budget and no staff. Its members are voluntary and meet only a few times per year. Consequently, as a practical matter, the SBC Advisory Group is highly dependent on the information presented to them by NYSERDA or its contractors.

¹⁵ Id., Section IV.

¹⁶ 2004 SBC Evaluation Report, p. ES-1.

The CPB has no hesitation in stating that NYSERDA does an excellent job as SBC administrator, running its programs efficiently and professionally and with thorough regard for the need for objective verification and measurement of results. Still, if the SBC Advisory Group is not able to provide an effective independent review, NYSERDA's contractors and consultants may perceive themselves accountable primarily to the administrator of the programs they are evaluating. This would inherently hinder the achievement of objectivity, regardless of how strongly such objectivity may be desired.

Therefore, the CPB recommends that consideration be given to providing the SBC Advisory Group the resources necessary to enable them to obtain expert assistance in carrying out their functions. This funding should be a portion of the modest increase in the percentage of funds allocated to program evaluation that we recommend.

12. Should SBC funds be extended to programs that encompass research and development into retail and/or wholesale electric market competitiveness issues, or transmission and/or distribution of the State's energy resources?

CPB does not believe that these types of programs should be funded through the SBC. The investigation of wholesale market competitiveness and transmission issues is a staple of the New York Independent System Operator, while retail market competitiveness and distribution issues are the concern of the PSC. We believe this allocation of responsibility is appropriate and should be maintained.

13. Should the scope of the SBC program be expanded to include programs for natural gas customers?

The fundamental goals of the SBC program – efficiency, reliability, reduced environmental impacts, and facilitation of competition in the markets for these services - are not inherently fuel specific. To the extent that benefits comparable to those achieved in the electric SBC program can be realized from programs aimed at natural gas use, natural gas customers should definitely be included within the SBC program.

If so:

a. What kinds of programs would benefit New York’s gas customers?

Programs aimed at improving the efficiency of end-user facilities, reducing demand and fostering marketplace adoption of innovative and energy-saving technologies, are as applicable to gas as to electricity. There is no necessary correlation, however, between a program’s effectiveness on the electric and gas sides of the industry. Therefore, the appropriateness and cost effectiveness of each potential gas SBC program will need to be evaluated individually. In that regard, the recent establishment of a gas efficiency program in the service territory of Consolidated Edison Corporation of New York, Inc., as a result of the Commission’s September 27, 2004 Order,¹⁷ provides an excellent opportunity to gain experience, gather information, evaluate, and refine programs that may be expanded statewide as part of a gas SBC.

¹⁷ Case 03-G-1671, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc., Order Adopting The Terms of a Joint Proposal, September 27, 2004, p. 8; Joint Proposal, p. 38.

b. Which classes of customers would be served most effectively by a natural gas SBC program?

A natural gas SBC program would be expected to benefit all gas customers through reductions in peak demand, dissemination of energy efficiency information, and market transformation measures to facilitate development and expansion of new and improved technologies and services. Low-income customers, for whom natural gas may be a more significant expense than electricity during the heating season, could particularly benefit from a gas SBC.

c. How should a natural gas SBC program be funded and what annual level of funding might be considered reasonable? How might a natural gas SBC affect current electric SBC funding levels?

A gas SBC allocated among utilities on the basis of gas revenue and collected through a volumetric surcharge on gas delivery rates, in the manner of the electric SBC, would be appropriate. To help determine the initial target funding level, DPS Staff should conduct a comprehensive review of the extent to which competitive markets do not offer services that might be provided through a gas SBC, cost-benefit analyses of potential gas efficiency and reliability programs, as well as the degree to which programs funded through the electric SBC provide benefits to gas customers. The results of the gas efficiency program in the current rate plan for Consolidated Edison's gas operation should also be considered in this analysis.

Determination of the funding level for the gas SBC should also consider bill impacts. Virtually every natural gas customer is also an electric customer

who already pays the electric SBC and will likely be experiencing additional bill increases as a result of implementation of the Renewable Portfolio Standard.¹⁸ The overall bill impact of these combined charges should be carefully considered in assessing the funding level for the gas SBC.

d. What should be the initial duration of a natural gas SBC, and should that term coincide with the extension of an electric SBC, if the electric SBC is extended?

With the substantial experience we have gained from the electric SBC program, and with effective oversight bodies and evaluation procedures in place, CPB does not believe a gas program would require the same extent of trial and adjustment that occurred for the existing SBC program. Nevertheless, because gas retail markets are generally more developed than electric, and because there is no a priori basis for assuming cost-benefit ratios for gas programs will mirror those on the electric side, we recommend that the initial gas SBC program be limited to three years in duration. A comprehensive evaluation of the program should be conducted after 18 months.

e. How might a natural gas SBC be administered and evaluated and how should it differ from the administration of the electric SBC?

CPB does not see any need for creating new or different structures or procedures for administering and evaluating a gas SBC. Gas and electric programs are not likely to require significantly different approaches to administration or oversight. NYSERDA staff and the SBC Advisory Group have

¹⁸ Case 03-E-0188, Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard, Order Regarding Retail Renewable Portfolio Standard, September 24, 2004.

developed the requisite expertise in their handling of the electric SBC, and we believe this can be carried over into gas.

14. Do you have any other suggestions for improving the overall SBC program that are not addressed by the above questions?

Not at this time.

CONCLUSION

The Consumer Protection Board recommends that Staff of the Department of Public Service reflect the recommendations identified herein in developing its proposal regarding the extension and expansion of the programs funded by the System Benefits Charge.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Teresa A. Santiago". The signature is written in a cursive style with a large, sweeping initial "T".

Teresa A. Santiago, Chairperson and Executive Director
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