STATE OF NEW YORK
PUBLIC SERVICE COMMISSION
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IN THE MATTER OF THE
SYSTEMS BENEFITS CHARGE III CASE 05-M-0090

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COMMENTS OF THE PUBLIC UTILITY LAW PROJECT
IN RESPONSE TO THE COMMISSION'S
JANUARY 28, 2005 NOTICE

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On January 28, 2005, the Commission issued its notice in the above-captioned matter seeking comments concerning, generally, the current Systems Benefits Charge program and the shape and direction such program would take, when reauthorized for a period after June 2006. The Public Utility Law Project ("Project" or "PULP") is a not-for-profit legal services organization representing the interests of low-income residential consumers on energy and telecommunications issues for more than 20 years. We welcome the opportunity to respond to the Commission's request for comments. The Commission's January 28 Notice included fourteen specific questions and, to the extent possible, our comments that follow are cross-referenced to these questions.

The SBC Program Should be Extended for At Least Seven Years
(Questions 1 and 2)

The SBC program was established by Commission order in Case 94-E-0952 on January 30, 1998.[1] This order limited the initial life of the SBC program to three years, i.e., through June 2001, and limited the annual funding of the program to $78.1 million per year. In a subsequent order[2], the Commission extended the life of the SBC program for five years (through June 2006) and increased the funding for the program to $150 million per year.

As the implementation of the current SBC program has proceeded over the past eight years, substantial resources have been invested in program design and in the establishment of a "pipeline" for the development of projects. This "pipeline" has proven necessary since projects undergo a lengthy period of development before their implementation. To assure a continuous flow of program benefits, a certain number of projects must be in development at all times.

While the Commission has acted promptly to assure that the future of the SBC program post-June 2006 may be decided promptly and well before the June 2006 deadline, the existence of this timeline and the June 2006 deadline has created an unnecessary slowdown is some of the projects which could be in the program pipeline, but which cannot receive a funding commitment without a further extension of the SBC program. Accordingly, in PULP's view, the extension of the program is well justified, and the decision to implement this extension should be made at the earliest possible opportunity.

The length of the extension should reflect the need to provide a program that can function long enough to demonstrate its programmatic value, to demonstrate the long term

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[1] Case 94-E-0952, In the Matter of Competitive Opportunities Regarding Electric Service, Opinion No. 98-3, issued January 30, 1998 ("SBC I Opinion").
[2] Id., Order Continuing and Expanding the System Benefits Charge for Public Benefit Programs, issued January 26, 2001 ("SBC II Order").

benefits of market transformation and primary and secondary economic development benefits, and to take full advantage of the program structures for administration and evaluation that have been built over the current SBC term. We believe that, based on the experience with SBC I and II, extension terms of three or five years are too short.

Moreover, the decision for the extension of the program in 2006 can take advantage of experience gained from the extension provided in 2001. Specifically, we now see that any extension decision, no matter how timely, will cause some hesitation and delay in the development of new projects during the last eighteen to 24 months of the program cycle. Under these circumstances, consumers who have paid substantial amounts to develop the infrastructure and administrative tools to implement the SBC receive less than the full measure of value from this investment. Because of this, PULP recommends that the extension of the program by the Commission at this juncture be no less than seven years (at least through June 2013), and that the commission state now that its decision on whether to further extend the program beyond that date will be made no later 24 months before the new SBC III end date. If this schedule were implemented, consumers would see at least a full five-year cycle of activity under the program, and there would be no need to repeat the experience of program curtailment prior to the Commission's decision on the scope and nature of the program's next cycle.

The Extension of the SBC Should Include Programs for Gas Customers
(Question 3, 4 and 13)

For low-income residential customers, the greatest challenge is the maintenance of service on a continuous basis throughout the year. Moreover, the discontinuance of one utility service is almost always accompanied by the discontinuance of the other services to that household. For this reason, the greatest threat to the continuation of a low-income household's electric service may be the discontinuance of the gas service for that household. For this reason, the greatest benefit to continued electric service for a household may be programs for gas efficiency. An adjustment to the scope of SBC programs to include programs for gas customers is, therefore, recognition that the most effective continuation of service for low-income electric customers would logically include measures such as this. For the same reason, in PULP's view, the SBC program should also recognize that many households are heated by fuels other than electricity and gas, and that programs for these customers will similarly extend the likelihood of continuous utility electric service for these households as well. In short, for low income households, the benefits for continuous electric service from home efficiency measures, including home heating efficiency measures, fully justify the inclusion of such measures in SBC programs targeted for low income customers even where these customers are not heating with electricity, and this justification extends to gas-heated homes as well as those not heated by gas or electricity. Indeed, the inclusion of homes heated by wood, by propane, or by some other fuel, will prevent an unintended program bias that could prevent program resources from reaching low-income households in rural areas currently beyond the reach of utility gas service.

SBC Revenues Should Be Enhanced By the Reestablishment of Full Funding from Electricity Sales

(Questions 2 and 4)

The current funding level for the SBC was set in July 2001 at $150 million. Inflation alone has reduced the value of this funding to $137.5 million (2001$). Further, because the total collection amounts are fixed at $150 million per year, as kilowatt-hour sales increase, each customer's charge for a contribution to the SBC is lower than the year before, even though the customer's usage is unchanged. If the program is extended with no adjustment in funding, inflation will further erode the value of SBC collections, but customers will still be charged less and less as company-wide kilowatt-hour sales increase. To bring customer contributions to the levels authorized in the SBC II Order, and to offset the effects of inflation, both retrospective and prospective, PULP recommends that the extended SBC be funded at the level of $225 million (2006$) from electric customers.

SBC III Program Funding Should Also Include Revenues From A Surcharge on Natural Gas Sales

(Questions 2, 3, 4, 6, 7 and 13)

As noted above, PULP believes that programs for low income, residential natural gas efficiency are already permissible under the current SBC structure. We would not, therefore, support a "separate" Gas SBC for this purpose. We do, however, strongly urge that additional SBC revenues be provided through a surcharge from natural gas customers. The premise of the first SBC was to assure the continuation of programs unlikely to be provided in a competitive market by channeling utility revenues to a third party entity (now, NYSERDA) with a mandate to continue these initiatives. This premise is unquestionably applicable to the developing natural gas markets, and the extension of SBC revenue collection to natural gas customers is fully justified. PULP supports the collection of $50 million in program revenues from this source plus the collection of an additional $3.4 million (8.7%) for administrative costs and program evaluation.

Program Revenues Should Be Distributed to Programs for Residential Customers In Proportion to the Share of Electric Revenues Paid by Residential Customers
(Questions 6 and 7)

In the SBC II Order, the Commission recognized that "a better approach" to revenue collection would recognize that the benefits received from the SBC program will likely correspond to the utility costs paid by customers. SBC II Order at 24. The most recent data available shows that residential customers pay about 44% of the total revenues received by the State's electric utilities. 2004 New York State Statistical Yearbook, 29th Ed. (2004) at Table L-21. The residential customer class, however, is the beneficiary of residential energy efficiency programs and low income programs which, together, utilize only about 30.5% of the total of SBC funds. New York Energy $mart Program Evaluation and Status Report, Final Report, Volume 2 (May 2004) at Table 3-1. This disparity may only be bridged if the expenditures by the SBC Research and Development Program (22.6% of total SBC funding) may be substantially characterized as directed at research or development activities in support of the interests of residential customers. At this point, the evaluation activities for the SBC cannot confirm that research and development funds are being distributed in this way. In the SBC III that will be extended beyond June 2006, care should be exercised so that an appropriate distribution of SBC funding to programs associated with benefits to the residential customer class can be confirmed.

The Presentation of SBC Charges on Customer Bills Should be Revised
(Question 6)

Under current procedures, the only direct interaction between virtually all customers and the SBC program is the SBC surcharge added to each customer's bill. This interaction presents a distorted characterization of the SBC program to customers, however, and should be revised.

As we now know, the benefits from the SBC program are a significant multiple of the costs the program incurs. Indeed, based on the evaluations conducted by the Systems Benefits Charge Advisory Committee and provided to the Commission, the principle issue appears to be not whether benefits exceed costs, but the size of the multiple by which this is true. On customer bills, however, the only information provided to customers is the direct cost being imposed for this program. Since the favorable benefit cost ratios are now well understood and documented, PULP believes that the itemization of SBC charges on the customer bill no longer serves a significant purpose. Indeed, if the itemization of the SBC charge on customer bills is meant to provide a "price signal" to customers, the itemization of this charge in the current way may actually mislead consumers and suggest that the SBC program is not cost justified. Plainly, however, we now know that the opposite is true. If the Commission elects to continue this itemization of the surcharge, PULP urges that customer confusion due to the lack of information on program benefits must also now be addressed. Plainly, bills that itemize SBC charges must also include information to fully disclose to customers the net benefits associated with the SBC program to date.

The Allocation of SBC Funds Should Increase the Resources Available for Residential Programs and for Low Income Programs.

(Questions 4, 7 and 8)

Over the eight-year life of the SBC program, the Residential program area has been allocated approximately 18% of the total SBC funding. New York Energy $mart Program Evaluation and Status Report, Final Report, Volume 2 at Table 3-1 (May 2004). As the SBC program moves into the next phase, more recent data is available to describe the potential energy efficiency gains that are available in the time period of the SBC III. The NYSERDA Energy Efficiency and Renewable Energy Resource Development Potential in New York State Report (August 2003) indicates that the Residential Efficiency Savings Potential in New York in 2007 will be "on the order of 22,000 GWh per year." Id. at Volume 3 at 3-5. In contrast, the same report shows that the corresponding 2007 technical potential for energy efficiency in the Industrial sector is only approximately 18,000 GWh per year. Id. at Figure 3.4.1. Finally, while the Commercial sector may have a higher technical potential for energy efficiency savings than the residential sector in 2007, the energy efficiency savings potential above that which would be reached under a low avoided cost scenario (i.e., the "high-hanging fruit") is more than twice as large in the Residential sector (approximately 12,000 GWh) as in the Commercial sector (approximately 5,000 GWh). Id. at Figures 3.2.1 and 3.3.1. With this potential, PULP recommends that the portion of SBC III funds expended in the residential program area be increased from 18% to 25%.

As set forth in the SBC I Opinion, the focus of program expenditures in the Low Income program sector is to enhance energy affordability for low-income households. Improved affordability means that these families should experience a somewhat less disproportionate energy burden, leaving more of their resources available for food, clothing, health care and other necessities. Improved affordability also increases the likelihood that these customers will not lose the opportunity for continuous service or experience the harsh effects that the termination of electric service has on residential households. Accordingly, in the current program design, Low Income program expenditures are intended to have very significant non-energy benefits, and customers receive these benefits in addition to the benefits normally associated with the energy efficiency measures themselves. Because of the double impact of Low Income program initiatives, PULP recommends that the portion of SBC III program resources used for Low Income programs be increased from the historic level (approximately 13%) to 20%.

When the increases recommended here are implemented, residential sector programs would receive 45% of the SBC III funding. Against an SBC of $225 million per year, the total available for Residential and Low Income programs would be approximately $101 million. As noted above, PULP also recommends the enhancement of the SBC by $53.4 million by an SBC surcharge for gas utility customers. PULP calculates that residential gas customers pay about 69% of the costs for gas service. This proportion of the $53.4 million would increase funding for SBC Residential and Low Income programs above $101 million by $36.8 million.

Evaluation of Low Income Programs in the SBC Should Focus on Program Impacts on Energy Affordability and Continuation of Service
(Question 11)

As set forth above, Low Income SBC programs are distinguished from other residential programs by the contribution they make to energy affordability for low-income residential customers and by the contribution this improved affordability makes to continuous service for these households. Evaluation of Low Income programs, however, has thus far not been asked to measure specifically the direct impact on energy affordability or continuous service for low-income households arising from program initiatives. As the SBC III is implemented, it is important to reemphasize these fundamental goals and to further develop program evaluation tools so that low-income initiatives can be evaluated against these program goals.

CONCLUSION

As set forth above, the Public Utility Law Project urges the Commission to recognize the substantial success achieved by the SBC I and SBC II programs since January 1998. In light of this success, it is the Project's recommendation that these programs be continued and enhanced as set forth herein.

Respectfully submitted,

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