

VIA HAND DELIVERY

March 4, 2005

Jaclyn A. Brillling  
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 System Benefits Charge III.

Dear Secretary Brillling:

Pursuant to the Notice Soliciting Comments, dated January 28, 2005, please accept this letter as comments to be submitted in the above-captioned proceeding.

These comments do not necessarily fall within the list of questions presented, which may indicate that the questions presented may not provide an adequate and appropriate framework for discussions of a future-looking System Benefits Charge (SBC). To the degree that the comments made in this letter relate to the Questions presented, such connections shall be identified.

### **Legislative Authority for the SBC**

While Questions 1 through 5 address seemingly broad “goals and objectives” issues, nowhere is there discussion of whether such issues should be resolved in the context of an administrative proceeding, or are required to be decided through legislation. Among states across the nation that have implemented SBCs, New York is singular in its creation of an SBC -- its funding level, its programmatic construct, and now its longevity -- through administrative decision-making. It is arguable that the continuation of the SBC has been merely tolerated, in the absence of challenges in the court system to uphold or reject the agency’s legal capacity to implement and expand the SBC.

Such concern should not be merely dismissed as trivial legal argument. Legislated policies and programs provide assurances to the public that dollars paid by the public are for programs which serve the broader interests of the public. In the absence of such legislative action, the SBC becomes little more than the province of “stakeholders” whose professional and business interests are concentrated in these subject areas, and may thus not be responsive to the electorate.

The Assembly has long-advocated that legislation is required in order for the SBC to have legal authority. Because the funding required for these programs is prospective in nature, and is not directly connected to utility company provision of services, at prudently-determined cost levels, there exist questions as to the capability of the agency to impose such charge on utility customers.

To resolve this, it is appropriate that, in its development of a proposal regarding the future of the SBC program, the Department of Public Service (DPS) Staff in conjunction with the parties in the proceeding develop a legislative proposal for submittal to the State Legislature for consideration. In such manner, the Legislature could finally determine the SBC, its funding levels and its program design, within the context of broader New York State energy and economic development policies. Certainly this also involves the issues of Question 5, the implementation of a Renewable Portfolio Standard, again without legislation and context within broad energy policy.

The need for legislation is also an issue with respect to Question 13, regarding the expansion of the SBC program to natural gas customers. As with electricity, the issues of administrative agency authority to require such a surcharge on natural gas customers must be answered. The question of funding levels of any such surcharge must be made in consideration that charging “natural gas customers” for SBC programs may create a pancaking effect of imposing charges for similar programs for customers who take both electric and natural gas services. To repeat, these discussions are best vetted in broader policy negotiations, and beyond the narrow scope of a singular administrative proceeding.

### **Market-driven Programs**

Questions 7-9 and 11 raise concerns regarding the scope and purpose of the SBC programs. These questions, taken together pose another question: Are the SBC funded programs intended to support development of self-sustaining markets for advanced energy technologies, or are SBC programs designed to support a limited number of activities on a program-by-program basis? For example, many of the SBC program opportunities are structured on a time-oriented basis. This may mean that many worthwhile potential projects, if all financing requirements are not in place at a particular time, or if project opportunities do not materialize within the limited time frame of a program opportunity, may lose access to SBC funds, solely as a result of limiting dollar availability.

Question 9 emphasizes this point. Rather than examining or discussing the effectiveness of the marketing of the SBC programs, it would likely be a more fruitful discussion to determine if the programs are structured to meet customer needs. Generally speaking, enterprises that access the SBC program dollars are aware of the programs and are not in need of marketing. What they may need is more assurance that programs dollars will be available, and more flexibility from the program administration that such dollars will be available as projects are put together.

After several years of SBC activities, both in New York and elsewhere, it should be fairly apparent which technologies the market is interested in supporting on a wide-scale basis, and

those which, while worthwhile, have more limited appeal. Thus, the structure of SBC program opportunities should reflect these circumstances.

### **Effectiveness of Program Administration**

With respect Question 10 and NYSERDA's Administration of the SBC programs, no decisions on this subject should be rendered until New York State Comptroller Alan Hevesi completes the general audit on the SBC program, which I understand will be initiated in the near future. Such audit may contain recommendations that would be useful in this proceeding, and would be better incorporated in the discussions as they progress, rather than included as an afterthought. Some coordination for inclusion of the Comptroller's office should likely be sought in consideration of such work.

### **Conclusion**

Finally, these comments have not been submitted to be wholly critical of the SBC program. Certainly the overarching purpose of the program is laudable. Certainly the staff of NYSERDA is capable and dedicated to the success of the program. However, clarity of the legal foundation is necessary to assure that SBC programs and dollars are put to maximum efficiency and benefit to ratepayers. The funding levels for any continued program must be done in recognition of the burden New York citizens and businesses maintain for already high energy prices. And the program design must be done to promote self-sustaining markets for advanced energy technologies and energy efficiency activities in the context of enhancing customer energy choices, reducing energy usage and costs, producing real environmental benefits, and contributing to the state's energy reliability, security and independence.

Respectfully submitted,

s/

Paul D. Tonko

Chairman

Assembly Standing Committee on Energy

cc: SBC listerve via e-mail