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

Re: Case 05-M-0090 – In the Matter of the Systems Benefit Charge III, Staff Proposal

Dear Ms. Brilling:

The staff of the Public Service Commission (PSC) should be commended for the thorough and thoughtful proposal they have made for the extension of the Systems Benefit Charge (SBC). We believe their work took judicious consideration of the voluminous responses submitted to the PSC when the issue was initially presented for public comment. While we are generally pleased with the conclusions reached and the recommendations made in their report, we would like to take this opportunity to make additional comments on a few issues we think deserve further attention as the PSC refines the proposal for final consideration.

In our view, the staff proposal could take even greater account of the hardship steeply rising energy costs will present for low income residents of New York State. While it is unclear how long the Middle East conflict and Hurricane Katrina's after effects will combine to sustain the current price spike, it appears that substantially higher energy costs are here to stay. We believe that this situation calls for enhanced efforts to support low income customers through direct support to defray energy bills and through programs that reduce consumption. In some cases, higher energy bills this winter may push multifamily buildings in already tenuous financial conditions into restructuring or foreclosure. The viability of a segment of New York's low income housing stock is at stake.

As an implementing contractor for the New York State Energy Research and Development Authority's (NYSERDA's) Assisted Multifamily Program (AMP), we are particularly focused on the question of how to deliver benefits to low and moderate income residents of the state. We believe one critically important method deserves special attention from the PSC itself – **submetering**. The vast majority of properties in AMP are master metered. In these properties, tenants have, effectively, an unlimited right to consume energy. In light of the growing consensus that petroleum resources are declining and climate change is a real threat, we believe an unlimited right to consume is, as a matter of public policy, an anomaly that can no longer be allowed to persist. DHCR has taken steps to facilitate submetering of electricity (see DHCR Fact Sheet #29, updated 4/26/05). Despite ample evidence that electric submeters alone reduce consumption by roughly 20%, however, most owners participating in AMP are unwilling to consider installing them. It is impossible, they invariably point out, to compel tenants to pay for their submetered consumption. This argument is entirely sound in our view – there is nothing in the Rent Stabilization Code that makes non-payment of utility bills, even if they are paid to the owner as part of a submetering arrangement, grounds for eviction. Owners are further justified in their skepticism regarding their prospects in Housing Court. We believe the PSC should move to remedy this situation.

Submeters are not only proven energy conservation tools but excellent vehicles for delivering tenant benefit. When owners of master metered properties shift the cost of the master meters off the operating budget of the property, DHCR requires a rent reduction to compensate for bills that will accrue directly to tenants. A tenant compelled to be judicious about energy consumption will not only reduce usage, but is likely to reap a cost benefit – the cash difference between the rent reduction and monthly energy usage. Indeed, wherever technically possible, we would advocate for submetering of fuel usage as well, so that tenants use thermostats rather than window sashes to control indoor temperatures. ***We recommend that the PSC address the issue of electric submetering with the Rent Guidelines Board, and that it initiate efforts either directly or via NYSERDA to work with HUD, DHCR and other housing regulators to facilitate implementation of submetering statewide*.**

Another factor affecting low income consumers that is not addressed in the staff report concerns the geographical allocation of SBC funds. Con Ed customers pay half of SBC funds and the staff report recommends increasing that proportion. However, Con Ed customers are not a proportionate recipient of NYSERDA programming and benefits, receiving about 45% of funds committed to date. The shortfall is principally on the commercial/industrial side, where New York City has received a disproportionate share of SBC receipts. Since Con Ed territory is home to the majority of multifamily properties and the majority of low income residents, we believe that expenditure of substantial SBC funds collected from Con Ed customers on programming outside Con Ed territory fails not only to address the central locus of the State's energy use but also has a disproportionate impact on low income consumers. There are at least two ways to address this issue. NYSERDA could engage much more heavily in programs to reduce energy use in commercial office space, which eclipses manufacturing and industrial usage in New York City, as well as in other commercial uses that predominate, such as restaurants. Second, NYSERDA could increase the proportion of funds allocated to the low income sector, which is a greater proportion of Con Ed consumer territory and for which cost burdens of energy are greater. ***We recommend, at a minimum, a goal of proportionality in expenditure of SBC funds between Con Ed and upstate utilities*.**

Some have suggested that proportionality should also apply to allocation of SBC funds among rate paying classes, i.e. residential and commercial/industrial, such that funds collected from residential customers should be spent on residential programs, etc. We believe that in this case, the PSC should commission research. It seems likely that there are significant spillover effects from the commercial to the residential sector – e.g. beneficial price impacts from peak load reduction and job creation resulting from investment of energy savings. If, in fact, those SBC dollars from the residential sector that are invested in commercial programs do not provide significant spillover benefit to the residential sector, we believe that the allocation of SBC funds across the sectors should be reviewed and adjusted. R&D should be similarly evaluated. If R&D investments focus disproportionately on commercial technologies, spillover effects from the implementation of those technologies should have sufficient benefit for the residential sector such that SBC funds do not constitute a significant transfer of funds from residential ratepayers to the commercial sector without a comparable net benefit to residents. ***We recommend that the PSC study the impacts across usage sectors (residential and commercial/ industrial) of SBC programming within those sectors.***

While we are pleased that the staff recognizes the continuing need for a comprehensive portfolio of energy programs, it also suggests that the funding level is "adequate" to sustain those programs. Maintaining the level of SBC funding established in 2001 is, however, an implicit reduction due to inflation. We believe that energy prices and environmental conditions have only increased the need for SBC funding. California recognized this fact and set a powerful example by dramatically increasing its funding for public benefit programs in September of this year. ***We recommend that, at a minimum, the funding level for the Systems Benefit Charge be indexed to inflation.***

With respect to the staff recommendation to authorize the SBC for another five years, we believe this term is a minimum time-horizon with which to plan and manage market-transformative programs. While we agree that the energy environment is volatile enough to warrant revisiting the issue in five years, we doubt seriously that the need for an SBC will have diminished in five years. ***We recommend that the PSC consider approving the renewal of the SBC with one or two two-year renewal options that would not require the full public approval process currently underway for SBC III***. It may be possible for the SBC to place conditions on those renewals that allow for modifications of the program to accommodate changing market conditions.

Finally, while R&D programs remain critically important to ensuring a more energy efficient future, we believe NYSERDA's current method of supporting R&D should be modified to focus greater emphasis on deployment. NYSERDA is active in many thousands of facilities – commercial buildings, industrial operations, multifamily buildings, single family homes, among others. These venues present opportunities to test the performance of new technologies in the field. In many cases, new energy efficiency technologies have not yet become "financially feasible" because they lack a track record in the field or because insufficient numbers of them have been ordered to create economies of scale in production. ***We recommend that a third "D" – for deployment – be added to NYSERDA's R&D operations that enhances its mandate to work with the residential and commercial programs to incentivize installation of cutting-edge technologies that are on the verge of becoming economically viable.***

Sincerely,

Candace P. Damon, Partner
Hamilton, Rabinovitz & Alschuler, Inc.