STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

In the Matter of the System Benefits Charge III — **Case 05-M-0090**

COMMENTS OF MULTIPLE INTERVENORS IN RESPONSE TO I.D. NO. PSC-35-05-00014-P

Dated: October 17, 2005

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PRELIMINARY STATEMENT

Multiple Intervenors, an unincorporated association of approximately 55 large commercial and industrial energy consumers with manufacturing and other facilities located throughout New York State, hereby submits its Comments on I.D. No. PSC-35-05-00014-P. The notice of proposed rulemaking was published in the August 31, 2005 edition of the *New York State Register* ("SAPA Notice"). The SAPA Notice seeks comments on the "Staff Proposal for the Extension of the System Benefits Charge (SBC) and the SBC Funded Public Benefit Programs" ("Staff Proposal").

STATEMENT OF POSITION

The Commission instituted this proceeding to revisit the SBC program and determine whether the SBC program should be continued and, if so, the appropriate funding level for the program. In Comments filed on March 4, 2005, Multiple Intervenors urged the Commission *not* to extend the current SBC program beyond the June 30, 2006 expiration date because, *inter alia*, the SBC increases the price of electricity for all consumers, disproportionately impacting large commercial and industrial consumers upstate. However, Multiple Intervenors recommended that, if, *arguendo*, the SBC program is extended, the Commission should either limit the funding and the program to consumers located geographically within New York Independent System Operator ("NYISO") Zone J; or, in the alternative, if the SBC program is not geographically limited, but is imposed on a statewide basis, the Commission should exempt all industrial customers from the SBC.

The Staff Proposal recommends that the SBC Program be extended at the current funding level - - $150 million per year - - for an additional five year period, through June 30, 2011. (Staff Proposal at 13.) And, although the Staff Proposal is silent on Multiple Intervenors' alternate recommendation that the SBC Program be limited to NYISO Zone J, the Staff Proposal implicitly rejects the recommendation. The Staff Proposal requires the collection of SBC funding from customers located in other NYISO zones. (*See id.* at 24.)

Appendix B, which is a summary of the March 4 comments submitted by the parties to this proceeding acknowledges that Multiple Intervenors urged the Commission to exempt all industrial customers located outside of NYISO Zone J from the SBC, including but not limited to, the currently exempt New York Power Authority ("NYPA") and flex-rate contract customers. (Staff Proposal, Appendix B at 4-5.) The Staff Proposal fails to address the issue of whether the SBC exemption not only will be continued for the currently exempt NYPA customers and flex rate contract customers, and also whether the SBC exemption will be extended to other industrial customers.

For the reasons set forth in its March 4, 2005 comments and herein, Multiple Intervenors urges the Commission to exempt all industrial customers outside of NYISO Zone J, including, but not limited to, the currently exempt NYPA and flex rate contract customers from the SBC. If, *arguendo*, the Commission does not exempt all industrial customers located outside of NYISO Zone J from the SBC, then it should explicitly exempt not only the currently exempt NYPA customers and flex rate customers, but also all flex rate contract customers that currently are not exempt.

Public Service Commission Chairman William M. Flynn recently stated that "[p]romoting and sustaining economic growth in New York State continues to be one of the Commission's highest priorities."[1] As demonstrated herein, in order to achieve the State's economic development goals, it is imperative that the current SBC exemption be continued for NYPA customers and the current exempt flex rate contract customers and extended, at a minimum, to all flex rate contract customers.

POINT I

IF THE SBC PROGRAM IS EXTENDED BEYOND JUNE 30, 2006, ALL INDUSTRIAL CUSTOMERS LOCATED OUTSIDE OF NYISO ZONE J SHOULD BE EXEMPT FROM THE SBC

The Staff Proposal recommends a five year extension of the SBC program. (Staff Proposal at 13.) However, the Staff Proposal does not address the issue of whether industrial customers that are currently exempt from the SBC will continue to be exempt during the proposed five year extension. Nor does the Staff Proposal address whether the exemption will be extended to other industrial customers located outside of NYISO Zone J. This is an issue of utmost importance to Multiple Intervenors. Multiple Intervenors urges the Commission to extend the SBC exemption to all industrial customers outside of NYISO Zone J. The exemption is consistent with New York State's economic development goals and policies.

[1] State of New York Public Service Commission Press Release, "PSC Votes to Approve Revised Flex-Rate Policy" (issued April 13, 2005).

A. New York State's Industrial Electricity Prices Are Too High

The problem in New York State has been, and continues to be, that retail electricity prices are too high. The SBC raises the price of electricity in New York State and has a disproportionate impact on large industrial consumers, especially in upstate. These customers are the backbone of the upstate economy and need lower-priced electricity now. The State has concluded as a matter of policy that "[e]nergy prices need to be brought more in-line with other states to compete more effectively for economic opportunities." [2] In order to achieve the State's economic development goals, it is essential that the price of electricity paid by industrial consumers be reduced.

Electricity prices in New York are well above the national average, and are higher than prices paid in other states that compete with New York in attracting business. [3] According to the Edison Electric Institute, for the period ending January 1, 2005, electricity prices paid by New York's industrial consumers not only exceeded the national average by a significant amount, but also prices paid in neighboring states.[4] The electricity prices paid by high demand/high load factor customers, namely industrial customers, in New York State

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[2] New York State Energy Plan and Final Environmental Impact Statement (June 2002) ("State Energy Plan") at 2-37.

[3] *Id.* at 2-26 – 2-27.

[4] *See*, *Typical Bills and Average Rates Report*, Edison Electric Institute (Winter 2005) ("EEI Report") at 270, 272, 298.

were 42 percent above the national average.[5] In contrast, electricity prices paid by comparable customers in neighboring Pennsylvania were 17 percent above the national average.[6] Moreover, the price of electricity in New York State is increasing for industrial consumers. From June 2002 through January 2005, the average bundled rate for industrial consumers served by investor-owned utilities and LIPA increased by 26 percent.[7] And, the price of electricity is expected to rise. According to the Times Union, wholesale electricity prices are the highest in years, fueled by natural gas costs.[8] Indeed, the Commission has recognized that "[b]eginning last year [2004] and continuing through this year, rising fuel prices have driven energy prices substantially higher in New York State."[9]

It is also important to recognize that the "average" industrial electricity price is just that – an average. It includes the effect of many economic development programs that reduce the price of electricity for participating businesses and, thereby, reduce New York's average electricity price for industrial customers. But, for businesses not eligible to

[5] EEI Report at 270, 298.

[6] *Id.* at 272, 298. New York's average residential and large commercial electricity prices also exceeded the national average by substantial amounts. New York's average residential electricity bill of $122.82 was 34 percent higher than the national average of $91.50. *Id.* at 8, 39. New York's average large commercial electricity bill of $18,797.00 was 42 percent higher than the national average of $13,197. *Id.* at 48,80.

[7] *Id. at* 266; *Typical Bills and Average Rates Report*, Edison Electric Institute (Summer 2002), at 263.

[8] *Albany Times Union*, "Energy Crisis Fuels New Business" (October 12, 2005).

[9] Case 03-E-0641, *Proceeding on Motion of the Commission Regarding Expedited Implementation of Mandatory Hourly Pricing for Commodity Service*, "Order Instituting Further Proceedings and Requiring the Filing of Draft Tariffs" (September 23, 2005) at 4.

participate in economic development programs, the electricity prices they pay are higher than the State's non-competitive average price. The high price of electricity in New York continues to have an adverse impact on the State's economy, especially on the manufacturing sector.[10] Quite simply, New York's industrial customers cannot afford a SBC.

Natural gas prices also are higher in New York than in other states. Average industrial prices for natural gas have been 37% above the national average.[11] And, according to the U.S. Energy Information Administration, natural gas prices for industrial customers in the Northeast, including New York, are expected to increase more than 45% in the fourth quarter of this year compared with 2004.[12]

High energy costs routinely are cited as one of the primary reasons for the decline in New York's manufacturing sector.[13] The State Energy Plan recognizes that "energy prices tend to be important factors in business location and expansion decisions, particularly for energy-intensive businesses."[14] The State Energy Plan also recognizes that

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[10] *See, e.g.*, State Energy Plan at 1-22 (concluding that "[e]nergy prices need to be brought more in-line with other states to compete more effectively for economic opportunities"); *id.* at 2-16 (discussing the importance of energy prices to manufacturers).

[11] The Public Policy Institute of New York State, Inc., News Release: *Cost of Employee Benefits, Energy, Taxes add up to higher overall costs of doing business in New York State*, ("Cost of Employee Benefits") (December 28, 2004) at 1.

[12] *Albany Times Union*, "Manufacturers feeling the heat" (October 14, 2005) at E1.

[13] *See, e.g.*, State Energy Plan at 2-16; *The Key to the Upstate Economy Manufacturing – Still*," Public Policy Institute (September 2002) at 8.

[14] State Energy Plan at 2-16.

"[r]educing energy costs … can have a substantial effect on a business' profitability."[15] Policies that increase electricity prices can be very detrimental to the State's economy, and have a disproportionate impact on the upstate economy.

In order to ensure that New York State does not lose more jobs to states or nations where the cost of doing business is lower, it is imperative that the price of electricity be reduced in New York.[16] Exempting all industrial customers from the SBC would be a step in the right direction.

B. New York State's Economic Climate is Difficult for Manufacturers

New York ranked 44th among all states in terms of population growth, with a growth rate of 1.1 percent from April 2000 through July 2003.[17] The State's growth rate is well below the national growth rate for the same period of 3.3 percent.[18] The economic climate is particularly difficult for New York's manufacturing sector. The manufacturing sector has been particularly impacted by job losses in New York State between June 2004 and June 2005. While most non-farm industries experienced a gain in employment during

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[15] *Id.*

[16] The SBC surcharge for large, high load factor customers is substantial. For a 10 megawatt customer, with a 75 percent load factor, it is almost $100,000 annually.

[17] Business Council of New York State, Inc., *New Census Data Show New York Losing Ground to the Nation in Population Growth* (March 19, 2004) at 1.

[18] *Id.*

this period, the manufacturing sectors had job losses of 19,400.[19] Between 1990 and 2003, manufacturing jobs in the metropolitan areas of upstate New York declined by 31.8 percent, dropping from 18 percent of total jobs in the region in 1990, to 12 percent in 2003.[20] During the same period, the United States overall loss of manufacturing jobs was 17.9 percent compared with upstate New York's 31.8 percent.[21]

C. The Cost of Doing Business in New York Significantly Exceeds the National Average

The cost of doing business in New York significantly exceeds the national average. The higher costs bear directly on the State's ability to keep and create good jobs. New York State has the highest state-local tax burden in the nation, 48 percent above the national average per capita.[22] Moreover, New York has the third highest property taxes per capita in the country, approximately 55 percent above the national average.[23] The net result of those high taxes is that upstate New York businesses and residents pay state and local

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[19] New York State Department of Labor.

[20] Public Policy Institute of New York State, Inc., *Could New York Let Upstate be Upstate?* (May 2004) at 4.

[21] *Id*. at 4.

[22] Public Policy Institute of New York State, Inc., *How High Is the Upstate Tax Burden – and Why?* (August 2004) at 2.

[23] *Id.* at 3.

taxes that are as much as $6 billion a year higher than they would be if the State's taxes matched the national average per capita.[24]

Average employer costs for work-based health insurance in New York are the second highest in the country.[25] The total average premium, including employees' costs, is third-highest in the nation.[26] The average costs of a workers' compensation case in New York was third-highest in the nation, 80 percent higher than the median figure for all states.[27] Most neighboring and competing states, such as New Jersey and Michigan, have much lower workers' compensation costs. It is important to reduce the cost of doing business in New York and extending the SBC is not consistent with this important public policy goal.

D. Industrial Customers Pursue Energy Efficiency

Industrial customers pursue energy efficiency because a proactive energy efficiency policy helps their companies stay competitive. They invest in energy efficiency in their facilities. Private businesses recognize the importance of energy conservation and are pursuing energy efficiency and management on an unprecedented level.[28] Corporations

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[24] *Id*. at 1.

[25] *Costs of Employee Benefits, supra,* at 1.

[26] *Id.*

[27] *Id.*

[28] Alliance to Save Energy, "Big Goals Mean Big Success: Corporate Energy Management at Frito-Lay;" Alliance to Save Energy, "A Culture of Excellence: Corporate Energy Management at 3M;" Copper Development Association, "Energy Efficiency Case Study: Kodak Focuses on NEMA Premium Motors."

throughout the country have made energy conservation a high priority corporate issue. The Alliance to Save Energy has highlighted the programs of a few of the corporations.[29] In fact, given the very high cost of electricity in New York -- both on an actual and a relative basis -- energy intensive businesses must pursue energy efficiency in order to compete in the global marketplace. Large electricity consumers should not be required to pay an SBC surcharge in addition to the funds that they are investing in energy efficiency at their facilities.

Industrial customers also participate in the NYISO demand response programs.[30] Neenan Associates conducted a study of the NYISO's 2003 demand response programs.[31] According to the PRL Study, in 2003, the EDRP provided 854 megawatts; the ICAP/SCR provided 850 megawatts; and the DADRP provided 411 megawatts.[32] As of May 25, 2005, the registration numbers for the SCR program had increased significantly to 975.4 megawatts.[33] The EDRP had a slight decrease in registration.[34] The NYISO concluded that "[t]his is not surprising given the fact that the EDRP program was not called in 2004 and . . .

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[29] Alliance to Save Energy, "Benchmarks that Measure Success: Corporate Energy Management."

[30] *See* Neenan Associates, "A Study of NYISO 2003 PRL Program Performance" ("PRL Study").

[31] *Id*.

[32] *Id.*

[33] FERC ER01-3001-012l, "NYISO Amended Bi-Annual Compliance Report Regarding Status of Demand Response Programs and the Addition of New Generation in New York" (July 13, 2005), Attachment I at 3-4.

[34] *Id.* at 4.

is unlikely to be called upon in 2005."[35] Registration in the DADRP program remains steady. The NYISO's demand response programs were very successful and provided New York State with significant reliability benefits.

Proportionally, the NYISO has the largest amount of demand response out of its three neighboring Northeast ISOs, on both a percentage of ICAP and a percentage of required installed reserves basis.[36] The programs encouraged participation by providing customers with meaningful, market-based compensation. The NYISO demand response programs will continue in the future and are not dependent on the continuation of the SBC.

In addition, the upstate zones account for more curtailable load under the NYISO programs than do Zones J and K.[37] In the EDRP program, Zones J and K account for only 33 percent of curtailable load; in the ICAP/SCR program, only 16 percent of the total load enrolled is located in Zones J and K.[38] Clearly, in the upstate region, consumers are participating in the NYISO's market-driven programs and reducing demand. They have pursued market-based initiatives. The competitive markets are addressing energy efficiency for industrial consumers. They do not need SBC programs and should not be required to pay for them.

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[35] *Id.*

[36] ISO Power Trends New York's Success and Unfinished Business, May, 2004 at 34 (hereinafter "ISO Power Trends Report").

[37] PRL Study at E-6.

[38] *Id.*

E. The SBC Program is Not Needed in Zones A-G

In May 2004, the NYISO issued its report "ISO Power Trends New York's Success & Unfinished Business." The NYISO recommended that additional capacity should be completed in the 2008 and beyond time frame predominantly in New York City and on Long Island to ensure that these areas do not fall below the minimum reliability requirements.[39] According to the ISO Power Trends Report, New York City could fall below its locational requirement in 2009.[40] The NYISO programs dampen peak demand in New York City.[41]

However, the rest of the state does not need SBC programs because demand is not growing. Demand in New York City and Long Island is growing, but it has flattened upstate.[42] Indeed, in NYISO Zones A, C, E, F, and G, the summer peak demand was less in 2003 than in 1994,[43] as was the winter peak demand for all of these zones except Zone C.[44] And, the annual energy requirements for these same zones has decreased. During the period

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[39] ISO Power Trends Report, *supra*, at 8.

[40] *Id.*

[41] LIPA also needs demand response programs. However, LIPA is not regulated by the Commission and its demand response programs are not part of the current SBC program.

[42] *Id.* at 39.

[43] New York Independent System Operator "2004 Load & Capacity Data" at 7.

[44] *Id.*

1995-2005, the load in Zones J and K increased 20.32%.[45] In the rest of the State it decreased 0.88%.[46]

Moreover, the RPS will result in increased wind generation in Zones A-G, even though demand in several of the zones has decreased.[47] In addition, as demonstrated, *supra*, the upstate zones currently account for more curtailable load under the NYISO programs than do Zones J and K.[48] Given the success of the market-driven NYISO demand response programs in upstate and the excess capacity, the Commission should not require industrial customers outside of Zone J to continue to participate in and fund the SBC programs.

<u>POINT II</u>

IF ALL INDUSTRIAL CUSTOMERS ARE NOT EXEMPT FROM THE SBC, THE CURRENT NYPA AND FLEX RATE CONTRACT CUSTOMER EXEMPTION SHOULD BE CONTINUED AND BE EXTENDED TO ALL FLEX RATE CONTRACT CUSTOMERS

The Commission has exempted industrial consumers from SBC-like surcharges in the past. Prior to the adoption of the SBC program, Niagara Mohawk and RG&E had programs in place that permitted their largest industrial customers to choose not to participate

[45] NYISO, *Load & Capacity Data* (2005), Table I-4 ("Gold Book").

[46] *Id.*

[47] NYSERDA, *The Effects of Integrating Wind Power on Transmission System Planning, Reliability, and Operations, Report on Phase 2: System Performance Evaluation*, (February 3, 2005 Draft) at 2.1.

[48] PRL Study at E-6.

in the utilities' demand side management ("DSM") programs and not to pay for them.[49] Central Hudson utilized an interclass allocation methodology for DSM expenses that also resulted in industrial customers paying the DSM program costs based only on participation of the large industrial class.

When the Commission implemented the SBC program, the Commission exempted NYPA's customers from the SBC surcharge.[50] In the 2001 SBC Order, the Commission reaffirmed that the SBC would not be applied to NYPA customers.[51] If the Commission extends the SBC beyond June 30, 2006, it should continue the exemption for NYPA's industrial customers. Imposition of the SBC on NYPA's industrial customers, as set forth below, would be antithetical to the goals of the NYPA economic development programs. These programs are designed to provide lower-cost electricity to businesses.

In addition, some flex-rate contract customers have been exempted from the SBC.[52] In order to enhance economic development and business retention in the State, it is essential that these exemptions not only be continued, but also be extended to all flex rate

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[49] *See e.g.,* Case 92-E-0108, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Niagara Mohawk Power Corporation for Electric Service.* Opinion No. 93-3, "Opinion and Order Conditionally Approving Settlement" (issued February 2, 1993).

[50] Case 94-E-0952, *In the Matter of Competitive Opportunities Regarding Electric Service*, Opinion No. 98-3, "Opinion and Order Concerning System Benefits Charge Issues" (issued January 30, 1998) at 6-7.

[51] Case 94-E-0952, *supra*, "Order Continuing and Expanding the System Benefits Charge for Public Benefit Programs" (issued January 26, 2001) at 23.

[52] *Id*.

contract customers. In Case 03-E-0188, *Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard*, the Commission exempted all customers currently exempt from SBC contribution from the RPS surcharge.[53] The Commission recognized that:

> Such customers are generally provided electricity at reduced prices to achieve economic development objectives such as sustaining or creating jobs. We recognize that requiring such customers to pay for the objectives of the RPS would be counterproductive to economic development goals.[54]

As demonstrated below, the Commission's rationale applies to all flex rate contract customers, not just the flex rate customers that currently are exempt from the SBC.

A. NYPA Customers Should Continue to be Exempt from the SBC

The current SBC exemption should be continued: (1) in order to ensure that the SBC does not interfere with the goals of the NYPA industrial programs of providing low cost power to assist economic development in the State (*see* Staff Proposal, Appendix B at 5); and (2) because NYPA conducts its own SBC-type programs and, thus, the SBC would be duplicative. (*Id).*

[53] Case 03-E-0188, *Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard,* "Order Regarding Retail Renewable Portfolio Standard" (issued September 24, 2004) at 55.

[54] *Id.*

(i) The purpose of the NYPA industrial power programs is to enhance economic development

The State has several programs to provide lower-cost electricity to industry to enhance economic development in the State of New York. The low-cost power programs administered by NYPA play a significant role in fostering the State's economic development.[55] NYPA sells Niagara Project hydropower to industrial consumers within 30 miles of the Niagara Project switchyard. One category of industrial hydropower is Replacement Power. In 1957, the United Stated Congress enacted the Niagara Redevelopment Act ("NRA"), 16 USC § 836(a). The NRA provides that NYPA shall contract to sell 445 megawatts of Niagara Project power, known as Replacement Power, to industries that are located in the Buffalo/Niagara area. This power has been sold to industrial customers for more than 40 years.

In addition, 250 megawatts of power generated at NYPA's Niagara Project, known as Expansion Power, is sold to industries on the Niagara Frontier for economic development. This power has been sold to industrial customers since the early 1960s. In 1987, the New York State Legislature amended Section 1005 of the New York Public Authorities Law to codify the preexisting contractual Expansion Power program. *See* N.Y. Econ. Dev. Law §§ 182 *et seq*. (McKinney 1988 & Supp. 2003); N.Y. Pub. Auth. Law § 1005 (McKinney 1988 & Supp. 2003). In enacting the Expansion Power Program, the New York Legislature found that:

[55] New York State Assembly Memorandum in Support of A 8690, which was enacted into law during the 2005 session. *See* 2005 N.Y. Laws, Ch. 313.

> Expansion power contracts have been a proper and essential part of The Power Authority's plan for marketing Niagara project power and energy. The legislature further found that the economy of the Niagara region . . . has become critically dependent on these allocations and the businesses which require them to be competitive.

1987 N.Y. Laws, Ch. 32, at § 1.

When the Legislature amended Section 1005 of the New York Public Authorities Law to codify the Expansion Power Program, it also created another lower-cost category of power, Economic Development Power. The New York State Legislature created this program to encourage job development and industrial investment in New York State. *See id.*

In 1997, the Legislature also created the Power For Jobs ("PFJ") program. The Legislature enacted the PFJ program because New York State businesses "pay well above the national average for electricity and are compelled to compete in a national and global economy with other enterprises that pay less for electricity." 1997 N.Y. Laws, Ch. 316, at § 1. The PFJ program makes a lower cost form of power available to New York businesses for job retention and economic development purposes. *See* N.Y. Econ. Dev. Law § 189 (McKinney Supp. 2003).

In enacting the PFJ Program, the Legislature expressly determined that "the cost of electricity has a significant effect on economic development, employment levels and decisions to retain, attract or expand businesses in New York." 1997 N.Y. Laws, Ch. 316, at § 1. The Legislature determined that in the absence of the opportunity to avail themselves of a lower cost form of power in the future, "New York enterprises may not make the investments and commitments to maintain and expand facilities in New York State." *Id.*

Thus, the PFJ program was enacted to "provide electricity at the least cost" to New York State businesses and thereby "strongly advance the economic interests of New York State by improving economic opportunities, enhancing its competitive position, and making possible the retention of existing jobs and the expansion of job opportunities."[56] Lauded by Governor George Pataki as "yet another example of [New York State's] aggressive and innovative strategy to encourage business growth and expansion," this program also has been heralded by members of the New York State Senate and the Assembly as "important and historic legislation" that will "help New York compete with other states which have lower energy costs."[57]

This year the New York State Legislature amended the Public Authorities Law and the Economic Development Law to, *inter alia*, provide state statutory protection for Replacement Power and remove limitations on NYPA's Economic Development Power and High Load Factor Power programs. 2005 N.Y. Laws, Ch. 313. Governor Pataki stated that the legislation "…will ensure that hundreds of companies representing tens of thousands of jobs have competitively priced power to allow them to stay and grow right here in the

[56] Bill Jacket, 1997 N.Y. Laws, Ch. 316, Governor George E. Pataki's Program Bill No. 96 at 2.

[57] Press Release, State of New York Executive Chamber, Governor Pataki Signs Historic "Power For Jobs" Legislation -- Law Will Provide Low-Cost Electricity to Save, Create Jobs (August 6, 1997).

Empire State."[58] The New York State Assembly Memorandum in Support of the legislation also recognized that employers "have relied on Authority power programs. . ."[59]

The legislative intent of these programs is to provide low-cost power to businesses. Imposing a SBC surcharge on these customers would increase the price paid by these consumers and would be contrary to the legislative intent. These customers should not be required to pay a SBC surcharge.

(ii) NYPA has extensive energy efficiency programs

Prior to July 2004, NYPA's energy efficiency funding had been more than $750 million. In July 2004, NYPA increased its funding for energy efficiency projects for its governmental customers in southeastern New York by $230 million. The total NYPA funding statewide is $1.33 billion for projects that conserve energy.[60] NYPA is committed to investing up to $100 million annually on energy efficiency for educational institutions, local governments and state agencies.[61] Completed energy-efficiency improvements at schools

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[58] Star-Gazette, "Pataki, Legislative Leaders Agree on Low-Cost Electricity to Keep Jobs in State" (June 22, 2005) at http://www/pulpny.org/html/pataki_legislative_leaders_ag.html.

[59] New York State Assembly Memorandum in Support of A 8960, *supra*.

[60] New York Power Authority News Release: "NYPA Energy Efficiency Tops $1.3 Billion" (July 27, 2004).

[61] New York Power Authority Press Release, "$4 Million Energy-Saving Project Completed for Suffolk County Community College: New York Power Authority and Long Island Power Authority Combine Efforts to Cut College's Energy Costs" (April 27, 2005).

and other facilities included the installation of high-efficiency lighting at public schools in New York City and Buffalo and at Nassau University Medical Center; insulated windows at the Metropolitan Transportation Authority's New York City headquarters; and a new boiler at a New York Police Department precinct house.[62] NYPA has completed energy-efficiency improvements at more than 2,200 public facilities statewide.[63]

NYPA also has a peak load management program to reduce summer electrical demand among its New York City area government and business customers.[64] The peak load management program has been instituted at more than 80 customer facilities. Customers earn incentives of more than $40 for each kilowatt saved. These programs, which are paid for by NYPA's customers, are separate from the SBC programs. NYPA customers should not be required to pay for both NYPA's programs and SBC programs.

B. All Flex-Rate Contract Customers Should be Exempt From the SBC

Some flex-rate contract customers currently are exempt from the SBC. The Commission should not only continue this exemption, but should also extend this exemption to all customers who have a flex-rate contract or become eligible for one. Currently, flex rate contract customers that have contracts that do not allow the collection of the SBC are exempt

[62] NYPA Notes (Week of August 1, 2004) at 1.

[63] New York Power Authority Press Release, "NYPA's 2004 Annual Report Highlights Energy-Efficient Projects, New Technologies and is Available On Line" (April 28, 2005).

[64] NYPA Notes (Week of June 20, 2004) at 1

from the SBC.[65] However, once the contracts expire, the utilities then collect the SBC from the customers.[66] If flex rate contract customers are eligible for a new flex rate contract when its existing flex rate contract expires, the utilities have taken the position that they are required to impose the SBC on these customers. This results in an increase in the price of electricity to the customers who either currently have flex rate contracts that are about to expire or had flex rate contracts in the past.

This is contrary to the intent of the flex rate contract legislation.[67] The goal of the flex-rate contract legislation is to reduce the price of electricity for industrial consumers in order to enhance economic activity in the state. Requiring flex rate contract customers to pay the SBC is contrary to the intent of the flex rate contract legislation.

In 1983, the New York Legislature added Section 66(12-b)(a) to the Public Service Law. That law authorizes the Commission to designate as economic incentive areas, specific areas in which reduced economic activity and unemployment "… justifies the approval of reduced incentive for utility services …." N.Y. Pub. Serv. Law § 66(12-b)(a)(1). The statute also authorizes the Commission to designate classes of customers as appropriate for special rates or tariffs, "… in order to prevent loss of such customers, or to attract new customers …." *Id.* In his Memorandum of Support for Section 66(12-b)(a), Senator Dale M.

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[65] Case 94-E-0952, *supra*, "Order Continuing and Expanding the System Benefits Charge for Public Benefit Programs" at 23.

[66] *Id.*

[67] Currently, utilities are authorized to grant requests from any exempt customers wishing to voluntarily contribute to the SBC in exchange for being allowed to fully participate in its programs. *Id.* at 23. Multiple Intervenors does not oppose continuation of this policy.

Volker, the New York State Senate sponsor of the bill, stated that the purpose of the legislation was "[t]o retain and attract businesses."[68]

The Commission has used its authority wisely to authorize and/or order the utilities to offer flex-rate contracts to customers with competitive alternatives, including the potential relocation of production out of state. To qualify, customers must satisfy a series of stringent requirements and demonstrate that the flex-rate contracts are critical to their ability to retain production, and jobs, in New York. In furtherance of the state's economic development policies, flex-rate customers should be exempt from the SBC. Accordingly, the flex-rate exemption should not only be continued, but it also should be broadened to include any existing or future flex-rate customers.

The Governor, the Legislature and the Commission have recognized that electricity prices are too high in New York. Indeed, it is State policy that "[e]nergy prices need to be brought more in-line with other states to compete more effectively for economic opportunities."[69] As ALJ Stein observed in the Recommended Decision in the RPS proceeding, "adding costs to a priority program for economic development may have adverse consequences disproportionate to the benefits."[70] The SBC increases the price of electricity, thereby increasing the disparity between New York's electricity prices and the prices available to businesses located in other states. Flex-rate contract customers, who by

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[68] 1983 N.Y. Laws Ch. 626 (Memorandum in Support of Senator Dale M. Volker at 1.)

[69] State Energy Plan at 2-37.

[70] Case 03-E-0188, *supra*, Recommended Decision at 70.

definition have demonstrated that discounted electricity prices are critical to their survival in New York, should be exempt from the SBC surcharge.

POINT III

IF THE SBC PROGRAM IS EXTENDED, THE SBC BUDGET SHOULD BE REDUCED BELOW $150 MILLION AND PHASED OUT OVER FIVE YEARS

There is no evidence that many of the SBC programs need to be continued. The NYISO's demand response programs, which are voluntary, market-based programs, have been successful. Without the SBC, those programs will continue. Moreover, the private sector has pursued energy-related energy efficiency and research and development. And, there is no need to fund renewable resources through the SBC because the RPS will provide subsidies for renewable generation. The Long Island Power Authority ("LIPA") and the NYPA have significant energy efficiency programs that are not funded by the SBC.[71]

The Staff Proposal recommends that the current funding level of $150 million for the SBC Program be extended for five years. Multiple Intervenors urges the Commission not to adopt that recommendation. The SBC budget should be phased down from June 30, 2006 to June 30, 2011, if the SBC Program is extended. SBC funds should not be utilized for research and development into retail and/or wholesale electric market competitiveness issues or transmission and/or distribution of the State's energy resources. In Opinion No. 96-

[71] As to low-income programs, the market may not be providing these services. But, if the market will not provide these services, other sources of funding should be explored. Moreover, all or virtually all of the State's regulated utilities already offer rate discounts to low-income consumers separate and apart from the SBC program through Commission adopted rate plans.

12, the Commission expressly delineated the scope of programs to be funded by the SBC, stating that "certain programs such as energy efficiency, research and development, environmental protections and low-income beyond what competitive markets provide" may need SBC funding during the transition period to ensure that electric service is provided safely, cleanly and efficiently.[72]

It is Multiple Intervenors' position that, if the SBC is extended beyond June 30, 2006, its scope should not be expanded. The composition of the SBC should be limited to no more (and preferably less) than the four public policy programs that were identified by the Commission in Opinion No. 96-12. Studies of retail and/or wholesale electric market competitiveness and the State's transmission and/or distribution system capabilities and planning are issues that the Commission and the NYISO have been, and continue, to examine. The SBC was established "to address public benefit programs unlikely to be assumed by the energy marketplace during the transition to full electric retail competition."[73] It should not be used to fund other programs or studies.

The budget should be reduced: (1) to reflect the fact that renewable resource initiatives will be funded through the RPS surcharge; and (2) to reflect the fact that market-driven initiatives are providing goods and services formerly funded by the SBC. If the SBC Program is continued, Multiple Intervenors urges the Commission to adopt, as a policy, the goal of phasing the SBC program out over the period June 30, 2006 through June 30, 2011.

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[72] Case 94-E-0952, *supra*, Opinion 96-12, "Opinion and Order Regarding Competitive Opportunities for Electric Service" (issued May 20, 1996) at 27.

[73] Case 94-E-0952, *supra*, "Order Continuing and Expanding the System Benefits Charge for Public Benefit Programs," at 1.

A. The SBC Funding Level Should be Reduced to Reflect the RPS Program

The Commission's "Order Regarding Retail Renewable Portfolio Standard," issued on September 24, 2004, requires consumers to subsidize renewable resources. The RPS surcharge from 2006 through 2013 is projected to range from $582 million and $762 million in 2003.[74] Many participants in the RPS proceeding believe that projected cost to be understated. To reflect the fact that consumers will be funding renewable resources through the RPS surcharges, the level of SBC funding should be reduced. The SBC funds that were allocated to renewable resources should be viewed as "extra" money that can be reallocated and used to fund other SBC programs. The SBC current actual expenditure level should not be viewed as a revolving fund that remains available for programs in perpetuity.

The SBC program budget for wholesale renewables is $57.2 million for the 8 years ending June 30, 2006.[75] The budget for end-use renewables is $22.7 million.[76] That is an expenditure of approximately $6.5 million per year on wholesale renewables and $3.1 million on end-use renewables. The wholesale renewables program ". . . is designed to increase the supply and demand for green power in the wholesale market."[77] Clearly that

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[74] Case 03-E-0188, *supra*, at App. D, Tables 13 and 14.

[75] NYSERDA, "New York Energy Smart Program Evaluation and Status Report (Draft)" (May 2005), Figure 3-6.

[76] *Id.*

[77] *Id.* at 8-6.

objective will be satisfied by the RPS. Thus, the SBC budget from June 30, 2006 through June 30, 2007 should be reduced annually by the $6.5 million that currently is budgeted for wholesale renewables.

The end-use renewable program "is designed to promote adoption of customer-sited renewable energy equipment, provide incentives for small wind and PV installation, and support a number of training, education, outreach, and support activities in niche markets."[78] SBC funding for these incentives is no longer necessary because the funding will be provided by the RPS SBC-like tier. Thus, the SBC funding levels, after June 30, 2006, should be reduced by the amount currently being spent on end-use renewable incentives. And, the SBC expenditures on building a business infrastructure should be reduced, if not altogether eliminated. The RPS is expected to stimulate the market for end-use renewables and a business infrastructure is expected to develop. All SBC end-use renewable funding for building a business infrastructure, if not eliminated as of June 30, 2006, should be eliminated within the next three years and the SBC annual budget level reduced by an additional $3.1 million.

B. The SBC Funding Level Should be Reduced to Reflect Market-Driven Initiatives

If the Commission decides to extend the SBC beyond its current expiration date, it should examine each SBC energy efficiency and peak demand reduction programs to determine if each program is necessary. The 2004 Energy Smart Evaluation Report indicates

[78] *Id.* at 8-22.

that there is an extensive network of energy services companies, contractors and service providers that are implementing energy efficiency projects throughout New York State.[79] More than 150 energy service companies are now doing business in New York, up from 13 in 1998 before the SBC program began.[80] The market now is capable of providing many of the services that previously have been provided with SBC funding. Thus, SBC funding level should be reduced to reflect the increasing impact of market-driven measures.

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[79] NYSERDA, "New York Energy Smart Program Evaluation and Status Report" (May 26, 2004) at ES-8.

[80] *Id.* at ES-30.

CONCLUSION

For the reasons stated in its March 4, 2005 Comments and herein, if the current system benefits charge program is extended beyond the June 30, 2006 expiration date, Multiple Intervenors urges the Commission: (1) to exempt all industrial customers including, but not limited to, the currently exempt NYPA customers and flex-rate contract customers from the SBC; and (2) reduce the SBC funding below the current level, with the goal of phasing it out by June 30, 2011.

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Respectfully submitted,

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