



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL  
Writer's Direct No.  
(212) 416-8468

ELIOT SPITZER  
Attorney General

PETER LEHNER  
Environmental Protection Bureau

October 17, 2005

Jaelyn A. Brillling  
Secretary  
New York State Public Service Commission  
3 Empire State Plaza  
Albany, New York 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* issued August 31, 2005 in the above-referenced proceeding, enclosed please find an original and 15 copies of the Attorney General's comments.

Respectfully submitted,

/s/

THOMAS CONGDON  
Policy Analyst

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

-----X

In the Matter of the System Benefits Charge III :

Case No. 05-M-0090

-----X

**COMMENTS OF  
ATTORNEY GENERAL  
ELIOT SPITZER  
ON THE STAFF PROPOSAL FOR THE EXTENSION  
OF THE SYSTEM BENEFITS CHARGE**

Peter H. Lehner  
Bureau Chief  
Thomas Congdon  
Policy Analyst  
Environmental Protection Bureau

New York State Attorney General's Office  
120 Broadway  
New York, NY 10271  
Tel. No.: (212) 416-8450  
Fax No.: (212) 416-6007

October 17, 2005

## I. INTRODUCTION

In 1996, the New York State Public Service Commission (“PSC” or “Commission”) created the System Benefits Charge (“SBC”). The charge was intended to fund energy efficiency and renewable energy projects that were not expected to be funded in the private marketplace during the transition to full electric retail competition.<sup>1</sup> The SBC was extended in 2001 for five years and is currently funded at a level of \$150 million per year (this period is referred to “SBC II”). The Staff of the Department of Public Service (“Staff” or “DPS”) is reviewing the SBC program to determine whether and how it should be extended beyond its current expiration date of June 30, 2006. In order to facilitate this review, on January 28, 2005 the Commission invited public comment on a series of questions regarding the SBC. The Office of the Attorney General (“OAG”) submitted initial comments on March 4, 2005.<sup>2</sup> On August 30, 2005, DPS issued a proposal to create “SBC III” - an extension of the SBC for an additional five years at an annual funding level of \$150 million (the “Staff Proposal”).<sup>3</sup> On August 31, 2005, the Commission invited comments on the Staff Proposal. The OAG submits the following comments pursuant to this invitation.

## II. SUMMARY OF COMMENTS

The OAG reiterates its support for a robust SBC, and again recommends that the SBC be

---

<sup>1</sup> *Opinion and Order Regarding Competitive Opportunities for Electric Service*, Case No. 94-E-0952, *et. al.*, May 20, 1996 at 61.

<sup>2</sup> *Comments of Attorney General Eliot Spitzer*, Case No. 05-M-0090 - In the Matter of the System Benefits Charge III, March 4, 2005.

<sup>3</sup> *Staff Proposal for the Extension of the System Benefits Charge (SBC) and the SBC-funded Public Benefit Programs*, Case No. 05-M-0090 - In the Matter of the System Benefits Charge III, August 30, 2005.

extended through 2016 at an annual funding level of \$250 million. This level of funding is justified by the excellent track record of the SBC programs to date, and by the tremendous potential for further gains in efficiency and clean energy technologies. The SBC must continue because the competitive market has failed, and will continue to fail, to address the environmental and public health externalities of electricity generation. The SBC helps to address these externalities and, while doing so, improves system reliability and energy security, reduces energy costs for all ratepayers, and creates jobs.

### **III. INTEREST OF THE ATTORNEY GENERAL**

The OAG enforces federal and state environmental, consumer and antitrust laws throughout New York State and is a party in numerous PSC regulatory proceedings advocating on behalf of residential and small business consumers and the State of New York. The OAG works to protect and improve New York State's environment, protect public health, prevent ecological degradation, enhance sound economic development, and ensure adequate and reliable energy infrastructure.

The OAG has taken a number of actions to reduce air pollution from the electric generation sector, and to protect and improve the nation's clean air laws. Since 1999, the OAG, working with the U.S. Environmental Protection Agency ("EPA"), the New York Department of Environmental Conservation, and other states, has brought enforcement actions against dozens of coal-fired power plants in New York, Indiana, Kentucky, Ohio, Virginia and West Virginia that violated the New Source Review provisions of the Clean Air Act.<sup>4</sup> Settlements under

---

<sup>4</sup> See *United States, et al. v. Cinergy Corp., et al.* No. IP99-C-1693-M/S (S.D. Ind.), *United States, et al. v. American Elec. Power Service Corp., et al.* No. C2-99-1182 (S.D. Ohio), *United States, et al. v. Ohio Edison, et al.* No. 2:99-CV-1181 (S.D. Ohio), *State of New York, et al. v. Niagara Mohawk Power Corp.* No. 1:02-CV-00024.

several of these cases will reduce emissions by hundreds of thousands of tons per year, and have helped fund some of NYSERDA's clean energy programs. The OAG has sued the federal government over its attempts to weaken the Clean Air Act,<sup>5</sup> is involved in a legal action against the EPA over its failure to regulate emissions of carbon dioxide ("CO<sub>2</sub>") from the nation's vehicles and power plants,<sup>6</sup> and has sued the five largest contributors to global warming in the United States seeking reductions in CO<sub>2</sub> emissions.<sup>7</sup>

Existing electricity generation in the United States produces: one-quarter of the nitrogen oxide emissions that cause urban smog, acid rain and fine particle pollution;<sup>8</sup> two-thirds of the sulfur dioxide emissions that cause acid rain and fine particle pollution;<sup>9</sup> one-third of the mercury emissions that poison fish and wildlife and endanger public health;<sup>10</sup> and 40 percent of energy-related greenhouse gas emissions that are responsible for warming the planet with potentially devastating climatic shifts, increased severe storms, coastal flooding from higher sea levels, and other negative impacts.<sup>11</sup> These health and environmental consequences of electricity generation are taking a toll on New York and its residents. Pollution from traditional sources of electricity has caused premature deaths, contributed to high asthma rates and other respiratory

---

<sup>5</sup> See *State of New York, et al. v. EPA* 413 F.3D 3 (2005). See also *State of New York, et al. v. EPA* No. 03-1380 (D.C. Cir.).

<sup>6</sup> See *Commonwealth of Massachusetts v. EPA* No. 03-1361 (D.C. Cir.); *Our Children's Earth Foundation, et al. v. EPA* No. C03-0770CW (N.D. Cal). See also Letter from Eliot Spitzer, et al. to EPA Administrator Christine Todd Whitman providing notice of intent to sue, February 20, 2003. Available at [http://www.oag.state.ny.us/press/2003/feb/whitman\\_letter.pdf](http://www.oag.state.ny.us/press/2003/feb/whitman_letter.pdf).

<sup>7</sup> See *Connecticut v. AEP et al.* No. 04-CV-05669 (LAP) (DFE) (S.D.N.Y.).

<sup>8</sup> U.S. General Accounting Office, *Acid Rain: Emissions Trends and Effects in the Eastern United States*, 2000 at 9.

<sup>9</sup> *Ibid* at 8.

<sup>10</sup> 65 Federal Register 79825 (December 20, 2000).

<sup>11</sup> Energy Information Administration, Office of Integrated Analysis and Forecasting, *Emissions of Greenhouse Gases in the United States 2001*, December 2000 at 24.

illness,<sup>12</sup> and has made 20 percent of Adirondack lakes too acidic to support aquatic life.<sup>13</sup>

Energy efficiency is one of the fastest, most cost effective, and long-lasting ways to reduce pollution. For that reason, the OAG sued the U.S. Department of Energy to ensure that it issues the appliance energy efficiency standards required by Congress.<sup>14</sup> Investing in energy efficiency and renewable energy resources in New York State will reduce local pollution, improve system reliability and lower peak energy costs. It will also have a larger impact by reducing CO<sub>2</sub> emissions and thus contribute to reducing global warming. New York makes up 0.3 percent of the world's population, but emits 0.9 percent of the world's carbon emissions.<sup>15</sup>

New York has a strong interest in reducing the impact of global warming. Some effects that have been or are predicted to be experienced in New York State in the future include storm surges and coastal flooding, beach erosion, loss of coastal wetland habitat, change in tree species (affecting our classic fall foliage), altered supply of drinking water, increased air pollution as higher temperatures increase the concentration of ground-level ozone, and increased temperature of surface waters.

#### **IV. BACKGROUND OF THE SBC**

In 1996, the PSC established the SBC in Opinion No. 96-12 to mitigate the potential adverse environmental impact of restructuring the electric industry.<sup>16</sup> The Commission

---

<sup>12</sup> Abt Associates, *Death, Disease and Dirty Power: Mortality and Health Damage Due to Air Pollution from Power Plants*, 2000.

<sup>13</sup> National Acid Precipitation and Assessment Program, *NAPAP Biennial Report to Congress: An Integrated Assessment*, 1998.

<sup>14</sup> *See State of New York, et al v. U.S. Department of Energy* No. 05-CV-7807 (S.D.N.Y.).

<sup>15</sup> New York Greenhouse Gas Task Force Report, *Recommendations to Governor Pataki for Reducing New York State Greenhouse Gas Emissions*, April 2003 at 9.

<sup>16</sup> *Opinion and Order Regarding Competitive Opportunities for Electric Service*, Case No. 94-E-0952, *et. al.*, May 20, 1996 at 84-5.

determined that the SBC would provide a stable funding source for public policy initiatives that were deemed unlikely to be privately funded in the energy marketplace during the transition to full electric retail competition.<sup>17</sup>

In Opinion No. 98-3, the PSC determined that: (1) SBC funding levels would be established for the investor-owned utilities in their respective rate or restructuring cases; (2) the SBC-funded programs would commence July 1, 1998 and expire after three years; and (3) the New York Research and Development Authority (“NYSERDA”) would administer the SBC programs.<sup>18</sup>

A March 1998 Memorandum of Understanding finalized SBC operating arrangements among the Commission, the DPS, and NYSERDA. The Memorandum directed NYSERDA to draft an SBC Plan and to establish an outside advisory group to function as an independent program evaluator.

In July 1998, the PSC approved the SBC Plan.<sup>19</sup> The Commission determined that, for the three-year program, a total of \$234.3 million in SBC funds would be collected by New York's six investor-owned electric utilities and that programs would be conducted in three main areas: (1) energy efficiency; (2) research and development (“R&D”); and (3) low-income affordability.<sup>20</sup> Of the \$234.3 million total, nearly \$63 million was set aside to fund prior efficiency program commitments of electric utilities and environmental disclosure (public education regarding impacts of electricity generators).<sup>21</sup> The remaining \$172 million was

---

<sup>17</sup> *Ibid* at 61.

<sup>18</sup> *Opinion and Order Concerning System Benefit Charge Issues*, Case No. 94-E-0952, January 30, 1998, at 5-6, 7, 11.

<sup>19</sup> *Order Approving System Benefits Charge Plan With Modifications and Denying Petitions for Rehearing*, Case No. 94-E-0952, July 2, 1998.

<sup>20</sup> *Ibid* at 3.

<sup>21</sup> *Ibid* at 18.

allocated to fund statewide programs administered by NYSERDA (\$130.17 million for energy efficiency activities; \$27.60 million for public benefit R&D projects; and \$13.90 million for initiatives targeting low-income utility customers).<sup>22</sup>

In January 2001, the PSC extended the SBC for five years through June 30, 2006 and increased the SBC to \$150 million per year (“SBC II”).<sup>23</sup> In its Order, the PSC noted that a five-year program would provide greater funding certainty.<sup>24</sup> The PSC increased the funding level of the SBC because it found that it was necessary to continue ongoing SBC programs and to expand the program to include a peak demand reduction program. The PSC also recognized that SBC programs would provide price benefits “not only to customers taking advantage of the programs, but to all customers in the energy marketplace” due to the wholesale price suppression effect of reducing demand.<sup>25</sup>

In June 2002, NYSERDA filed its operating plan for the program period 2001-2006, specifying \$436.3 million for energy efficiency, \$16.5 million for consumer education and outreach activities, \$113.7 million for low-income energy affordability, and \$200 million for research and development projects, including distributed generation and Combined Heat and Power (“CHP” or “co-generation”) installations.<sup>26</sup>

---

<sup>22</sup> *Ibid* at 9.

<sup>23</sup> *Order Continuing and Expanding the System Benefits Charge for Public Benefit Programs*, Case No. 94-E-0952, January 26, 2001.

<sup>24</sup> *Ibid* at 7.

<sup>25</sup> *Ibid* at 12-13.

<sup>26</sup> NYSERDA, *System Benefits Charge Revised Operating Plan for New York Energy Smart Programs (2001-2006)*, June 12, 2002.

## V. DISCUSSION

### A. The SBC should be continued for 10 years and increased to \$250 million annually.

The Staff Proposal recommends continuing the SBC by five years at an annual funding level of \$150 million (“SBC III”). The OAG agrees with the Staff’s justification for continuing the SBC; however, we believe the proposed funding level and duration are inadequate.

As noted in the Staff Proposal, “an overwhelming majority” of the comments supported the continuation of the SBC, and most supported an increase in funding. The wide-ranging support for the SBC is for good reason, as it has been a tremendous success by every measure. Since the last filing in March, NYSERDA released an evaluation report that summarized the cumulative program benefits achieved by the SBC (the “Evaluation Report”).<sup>27</sup> The Evaluation Report found that through year-end 2004 the SBC has achieved the following results:

- annual energy bill savings of \$195 million;
- reduced peak demand by up to 860 megawatts (MW) through permanent efficiency measures (325 MW) and callable reductions (535 MW), improving system reliability and reducing the risk of wholesale electricity price spikes;
- created 4,200 jobs annually;
- reduced annual electricity use in the State by 1,400 GWh;
- saved 2,600,000 MMBtus of oil and gas;
- caused 102 GWh of renewable energy generation per year; and
- reduced nitrogen oxides (“NOX”) emissions by 1,280 tons, sulfur dioxide (“SO<sub>2</sub>”) emissions by 2,320 tons, and CO<sub>2</sub> emissions by 1,000,000 tons.<sup>28</sup>

---

<sup>27</sup> NYSERDA, *New York Energy Smart Program Evaluation and Status Report, Final Report*, May 2005.

<sup>28</sup> *Ibid* at ES-9.

Staff reviewed the Evaluation Report and agreed with the findings, concluding that “NYSERDA’s programs were generally cost-effective, well-managed and consistent with the Commission’s SBC’s goals.”<sup>29</sup> Staff also noted that a conservative cost-effectiveness analysis of the SBC programs, which simply compared the total cost of the efficiency measures to the value of the energy and capacity saved, showed a benefit/cost ratio of 2:1.<sup>30</sup>

Staff notes that this summer New York State recorded the highest peak demand in history, that demand is projected to grow an average of 1.3 percent annually, and that the State still lacks a power plant siting law.<sup>31</sup> As electricity demand increases and little additional supply is added, electricity prices increase and become more volatile. These price increases take a toll on low-income families, who spend a greater portion of their income for energy bills than average ratepayers, and discourage businesses from locating in New York.

To maintain a reliable electricity grid and to lower electricity prices for all consumers, the State will have to meet the demand growth with increased supply and/or energy efficiency resources. The absence of a siting law certainly limits the ability of the State to add new resources, but even with a siting law in place, it is often difficult to site and/or finance new plants. Indeed, several plants that have already been approved are not under construction due to their inability to obtain financing. When capacity is successfully added, it is often low-income communities – the same communities that we are trying to help by bringing down electricity prices – that bear the burden of living next to the facilities. For low-income communities, it is clear that the best alternative is to meet increased demand through greater energy efficiency.

---

<sup>29</sup> *Staff Proposal for the Extension of the System Benefits Charge (SBC) and the SBC-funded Public Benefit Programs*, Case No. 05-M-0090 - In the Matter of the System Benefits Charge III, August 30, 2005, at 6.

<sup>30</sup> *Ibid* at 11, citing the *New York Energy Smart Program Cost-Effectiveness Assessment*, NYSERDA, June 2005.

<sup>31</sup> *Ibid* at 12.

Since many pollutants from power plants travel long distances, however, all communities near or far benefit from addressing demand needs through efficiency improvements.

The supply/demand imbalance may be worsened if generation capacity resources are retired. It is entirely possible that some of the State's aging coal and oil plants and the 2,000 MW Indian Point nuclear power plant could be retired over the next ten to fifteen years. There is no question that additional generation capacity is needed in New York State, but it is critical to meet as much demand growth as possible with efficiency measures.

Several parties argued that the SBC is needed to reduce New York's dependence on coal, oil, and gas to generate electricity.<sup>32</sup> These resources are largely imported from outside New York State and come with significant external costs, including air pollution and the release of greenhouse gases. Energy efficiency improvements funded by the SBC can reduce our need for these polluting resources and, because such improvements are made locally, they can create job opportunities for New Yorkers.

Many parties also noted that the continuation of the SBC could help realize the tremendous potential for further energy efficiency and clean energy development in New York State.<sup>33</sup> There is great potential for additional efficiency improvements and renewable energy development that will not be realized by the current SBC. Many parties cited NYSERDA's report, "Energy Efficiency and Renewable Energy Resource Development Potential in New York State," which found the potential savings from cost-effective energy efficiency

---

<sup>32</sup> See, e.g., *Comments of Attorney General Eliot Spitzer, Comments of Clean Energy Advocates, Comments of the Conservation Services Group, Inc., and Comments of the New York State Department of Environmental Conservation*, Case No. 05-M-0090 - In the Matter of the System Benefits Charge III, March 4, 2005.

<sup>33</sup> See, e.g., *Comments of Attorney General Eliot Spitzer, Comments of Clean Energy Advocates, and Comments of the New York State Energy Research and Development Authority*, Case No. 05-M-0090 - In the Matter of the System Benefits Charge III, March 4, 2005.

improvements could be as high as 48,584 GWh per year by 2007.<sup>34</sup> When fully implemented, the current SBC program will only achieve 2,700 GWh of energy savings annually (5.6 percent of the potential). By 2022, NYSERDA estimates that potential savings could be as high as 60,501 GWh per year, but the State's currently planned initiatives are expected to realize 8,812 GWh, less than 15 percent of the achievable potential.<sup>35</sup>

Given the success of the SBC program to date, and the powerful arguments used by Staff and other parties in support of the SBC, the OAG believes the funding level and duration proposed by Staff is inadequate.

When accounting for inflation, Staff's proposal to maintain the SBC at the 2001 level amounts to a cut in funding for the SBC program. The Public Utility Law Project commented that the SBC should be funded at \$225 million per year to account for inflation.<sup>36</sup> The Staff Proposal also fails to meet the efficiency funding levels mandated by the PSC in the early 1990s prior to deregulation, and does not bring New York State in line with energy efficiency investments being made in other states in the Northeast.<sup>37</sup> To do so, the OAG reiterates its support for a funding level of \$250 million per year.

Staff proposes that SBC III remain in effect for five years, arguing that a longer period "might negatively impact the marketplace from developing at least some of the services currently funded by the SBC."<sup>38</sup> But, as Staff acknowledges, NYSERDA has been able to adapt

---

<sup>34</sup> NYSERDA, *Energy Efficiency and Renewable Energy Resource Development Potential in New York State*, Volume 1: Summary Report, August 2003. Table 1.6.

<sup>35</sup> *Ibid*, Table 1.10, p. 3-17.

<sup>36</sup> *Comments of the Public Utility Law Project*, Case 05-M-0090 - In the Matter of the System Benefits Charge III, March 4, 2005 at p. 5.

<sup>37</sup> *See Comments of Attorney General Eliot Spitzer*, Case 05-M-0090 - In the Matter of the System Benefits Charge III, March 4, 2005.

<sup>38</sup> *Staff Proposal for the Extension of the System Benefits Charge (SBC) and the SBC-funded Public Benefit Programs*, Case No. 05-M-0090 - In the Matter of the System Benefits Charge III, August 30, 2005, at 13.

the SBC programs to changes in the marketplace.<sup>39</sup> Indeed, one of the strengths of NYSERDA and its program evaluators is their ability to constantly monitor the marketplace and determine which types of projects to fund and what level incentive to provide. The major program categories that have been funded by the SBC and that are outlined in the Staff Proposal for SBC III – peak load, energy efficiency, and O&E; research and development; low-income; and administration/evaluation – are sufficiently broad to give NYSERDA and Staff enough flexibility to update programs as the market develops.

By lengthening the program term through 2016, the SBC program will provide more funding certainty, and continue its success in achieving the State’s energy policy goals. Indeed, long-term funding may be critical to certain projects. Longer term funding may also be more cost-effective in encouraging projects than significantly higher, but shorter-term, funding. In addition, by expanding the SBC program through 2016, the PSC can facilitate the implementation of the newly adopted Renewable Portfolio Standard (“RPS”), which will be in effect through at least 2013. Under the RPS, the State must ensure that 25 percent of the State’s electricity sales are from renewable energy by 2013. The cost of procuring this renewable energy will be borne by New York’s ratepayers. Since the SBC III will reduce electricity sales, it will reduce the amount of renewable energy that must be purchased pursuant to the RPS.

**B. Minor programmatic changes are needed.**

Overall, NYSERDA’s mixture of programs and funding allocations to date have been successful in meeting the goals of the SBC. The OAG agrees with Staff’s recommended

---

<sup>39</sup> *Ibid* at 15, stating “Staff has regularly worked with NYSERDA to refine, update and improve programs. This has contributed to an effective alignment of NYSERDA programs, Commission priorities and the changing electricity environment.”

changes to the SBC program, including: (i) program consolidation to ease administration and make the programs more user friendly; (ii) transmission and distribution (“T&D”) research and development to advance new T&D technologies in New York State; (iii) changes in the renewables programs to account for the fact that the Renewable Portfolio Standard will support the development and deployment of these technologies;<sup>40</sup> (iv) additional demand response programs to reduce peak demand, including more emphasis on distributed generation programs;<sup>41</sup> and (v) a streamlined evaluation and monitoring process. The OAG also recommends additional funding for low-income programs.

More than seven million New Yorkers have incomes below 80 percent of the state median income and qualify for some form of assistance.<sup>42</sup> Many low-income New Yorkers live in rental housing where they are responsible for the energy bills, but not responsible for the quality of housing or the types of appliances in their homes. Low-income housing in New York State is often poorly ventilated, poorly insulated, and equipped with older, inefficient appliances. The result is that people who can least afford to pay high energy bills are often burdened with unnecessarily high energy costs. Indeed, some New York households spend up to 29 percent of their total income on energy, compared to 3 percent for higher-income households.<sup>43</sup>

The existing low-income affordability program has been successful in reducing the energy cost burden on low-income families, while also providing the system-wide benefits of significant demand reductions. But the current funding level cannot reach enough households.<sup>44</sup>

---

<sup>40</sup> See *Comments of Attorney General Eliot Spitzer*, Case 05-M-0090 - In the Matter of the System Benefits Charge III, March 4, 2005, at 16.

<sup>41</sup> *Ibid* at 15.

<sup>42</sup> NYSERDA, *New York Energy Smart Low Income Affordability Program, Report to the Department of Public Services*, September 2002 at S-2.

<sup>43</sup> *Ibid* at S-2.

<sup>44</sup> See *Comments of Attorney General Eliot Spitzer*, Case 05-M-0090 - In the Matter of the System Benefits Charge III, March 4, 2005, at 14-15.

By increasing overall funding for the SBC, the low-income affordability programs can be expanded without hurting other existing SBC programs.

**C. A separate proceeding should be commenced next year to create a natural gas efficiency SBC.**

The OAG supports the establishment of a natural gas SBC. As outlined in our March 4 Comments, several states and NYSERDA (to a limited degree) have already implemented successful natural gas efficiency programs. Staff proposes that the Commission postpone its decision on a natural gas SBC until after the completion of a NYSERDA study of the potential value of a natural gas efficiency program. The study is expected to be complete in a matter of months (early 2006), and will provide valuable information for designing an effective natural gas SBC. Some natural gas efficiency work will be performed in the meantime by NYSERDA through its ongoing low-income programs, and by Con Edison in its service area. Therefore, it is reasonable to delay a decision on a natural gas SBC until next year. Immediately following the release of the NYSERDA gas efficiency study, the OAG recommends that the Commission commence a separate proceeding to establish a natural gas SBC.

## **VI. CONCLUSION**

The SBC program has been extraordinarily successful. It has dramatically reduced the environmental and public health impacts of the electricity generating sector, improved system reliability and energy security, created thousands of jobs, and saved consumers and businesses hundreds of millions of dollars in energy costs. By the most conservative estimates, the benefits of the SBC have outweighed the costs. Yet much more remains to be done. The OAG

recommends that the SBC program continue through 2016 at an increased funding level of \$250 million per year. With increased funding and a longer program term that will provide greater market certainty, the OAG believes the SBC will continue to provide tremendous benefit to the State's economy and environment. An expanded SBC program should provide greater funding to all existing programs, with a greater emphasis on low income affordability, distributed generation installations and peak demand reduction programs, and transmission and distribution improvements.

Dated: New York, New York  
October 17, 2005

Respectfully submitted,

ELIOT SPITZER  
Attorney General of the  
State of New York  
By:

---

PETER H. LEHNER  
Bureau Chief

Peter H. Lehner  
Bureau Chief  
Thomas Congdon  
Policy Analyst

Environmental Protection Bureau  
New York State Attorney General's Office  
120 Broadway  
New York, NY 10271  
Tel. No.: (212) 416-8450  
Fax No.: (212) 416-6007