STATE OF NEW YORK

PUBLIC SERVICE COMMISSION

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| In the Matter of the System Benefits Charge III | Case No. 05-M-0090 |

# CONSUMER PROTECTION BOARD RESPONSE TO STAFF PROPOSAL


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The New York State Consumer Protection Board ("CPB") submits these comments regarding the August 30, 2005 proposal by Staff of the Department of Public Service ("Staff") for the extension of Systems Benefit Charge ("SBC") and SBC funded Public Benefit Programs ("Staff Proposal").[1]

The SBC was created in 1998 for a three-year period to fund the Public Service Commission's ("Commission") goal of providing programs that would encourage energy efficiency, a cleaner environment and reduce the burden of energy costs on low-income consumers. These programs were previously provided by regulated utilities and were not expected to be available in the marketplace as the electric industry transitioned to retail competition. In 2001, the Commission reviewed the record of SBC-funded programs and concluded that although progress had been made, public benefit programs were still not expected to be fully served by competitive markets.[2] It extended the SBC program for a five-year term and increased funding from $78 million to $150 million annually.

[1] Staff Proposal for the Extension of the System Benefits Charge (SBC) and the SBC-Funded Public Benefit Programs, August 30, 2005.

[2] Case No. 94-E-0952, Order Continuing and Expanding the System Benefits Charge for Public Benefit Programs, January 26, 2001 ("SBC Extension Order").

Earlier this year, the Commission solicited input on the future of the SBC.[3] The CPB submitted lengthy comments in which we concluded that the SBC continues to serve the important functions for which it was created, that programs funded by the SBC generally provide significant cost-effective consumer and environmental benefits, and that these programs operate in a highly efficient manner.[4] We recommended that the SBC be extended subject to continuation of oversight, monitoring, and evaluation necessary to assure that program objectives are achieved as efficiently as possible.

The Staff Proposal was developed in consideration of the recommendations of the CPB and other parties. The CPB has carefully reviewed the Staff Proposal, and the SBC evaluation report submitted by the SBC Advisory Group and jointly prepared by the New York State Energy Research and Development Authority ("NYSERDA") and a team of evaluation assistance and specialty contractors.[5] The SBC Advisory Group was established by NYSERDA and the PSC as an independent program evaluator and consists of utility experts, energy consultants, as well as representatives of generators, Energy Services Companies ("ESCOs"), consumer groups, environmental advocacy organizations and low income advocacy groups. The CPB is a member of the SBC Advisory Group.

The CPB generally agrees with Staff and the SBC Advisory Group that the New York Energy $mart program made significant progress towards meeting the

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3 Case 05-M-0090, Notice Soliciting Comments, January 28, 2005.

4 Case 05-M-0090, Comments of the Consumer Protection Board, March 4, 2005 ("CPB Initial Comments").

5 New York Energy Smart Program Evaluation and Status Report, May 2005 ("Evaluation Report").

Commission's goals of energy efficiency, demand reductions, encouraging renewables, supporting R&D and reducing the energy cost burden on low-income New Yorkers. As reported by NYSERDA, SBC programs resulted in substantial decreases in energy use, consumer bill savings, and emission reductions, while adding to investment in energy efficiency and job creation. With regard to cost effectiveness, even under the most conservative measures, the overall New York Energy $mart programs achieved a benefit/cost ratio of 2:1.

We agree with Staff's rationale for SBC renewal. Since the renewal of SBC in 2001, further progress has been made in transitioning to competition, with approximately 55 percent of commercial/industrial consumers buying electricity from ESCOs. However, progress at the residential level is muted with 6 percent of customers having migrated to ESCOs.[6] Electricity demand continues to grow with a new peak of 32,075 MWs reached this summer. Based on the 2002 State Energy Plan, energy consumption is expected to grow at over 1.3 percent annually over the next six years. To meet this increasing demand, additional generation and a greater emphasis on energy efficiency are required.

Energy prices are at record levels. The price of oil has increased from $28 per barrel in 2000 to approximately $65 per barrel in August of 2005. Similarly, natural gas prices have risen from $3.50 to over $9.00 per decatherm when Staff issued its Proposal,[7] to over $14.00 per decatherm today. These energy price increases have resulted in rising electricity prices for all New Yorkers. Although all customers will be

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6 Staff Proposal, pp. 11-12.

7 Id., p. 13.

impacted, these increases will be particularly difficult for low-income customers. The SBC program has a significant low-income component that helps to reduce the energy cost for low-income consumers.

Staff's Proposal demonstrates that the SBC provides significant benefits to all New Yorkers. We recommend that the Commission approve the Staff Proposal with the changes identified herein.

In our Initial Comments, we explained that although there has been significant progress in transitioning to competition, the marketplace still does not fully provide the products that are funded by the SBC, and hence there is a continuing need for SBC energy efficiency and load reduction programs.[8] In Point I, we explain that this assessment is properly reflected in the Staff Proposal and that we support Staff's recommendation regarding SBC funding levels and the extension of the SBC program.

In Point II, we briefly discuss Staff's major findings and recommendations that we support, using the subheadings used in the Staff Proposal. In Point III, we discuss the DPS Staff recommendations that we do not support. We recommend that SBC funds not be used for Transmission and Distribution (T&D) related Research and Development (R&D). We also recommend that the SBC Advisory Group be provided additional resources to properly fulfill its role as an independent evaluator of the SBC program.

Finally, in Point IV, we discuss some other concerns related to the SBC program.

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8 CPB Initial Comments, p. 2.

## I. THE CPB CONCURS WITH STAFF'S RECOMMENDATION TO EXTEND THE SBC FOR ANOTHER 5-YEAR TERM AT CURRENT FUNDING LEVELS, AND URGES ITS ADOPTION BY THE COMMISSION.

### A. Status of Transition to Competitive Markets

The Commission in approving SBC II in January 2001[9] recognized that although progress had been made towards retail competition, certain public benefit programs would still not be provided by the energy marketplace during the transition to full retail competition. In particular, it noted that competitive markets were not ready to provide energy management services to small and medium sized energy consumers, affordable energy for low-income consumers and R&D. It appears that since 2001 there has been further progress towards achieving retail competition, however, once again the marketplace is not fully ready to provide energy efficiency programs, research and development (including environmental and renewable resource research), and energy affordability for low income utility customers.[10]

SBC programs have provided substantial benefits to all energy consumers in New York State.[11] They have resulted in annual reduced electricity use of 1,400 GWh as of year-end 2004. Additionally, peak demand has been reduced by approximately 860 MW, thereby helping to ameliorate New York's electricity supply shortfall. These programs have also been estimated to save New York's electric, oil and gas customers $198 million annually in lower fuel bills. Over the last eight years, SBC programs have

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9 SBC Extension Order .

10 Staff Proposal, pp. 11 -12.

11 Id., pp. 5 -6.

created an average of 4,800 jobs annually. Finally, SBC programs have also reduced annual air emissions substantially by reducing nitrogen oxide (NOx) emissions by 1,280 tons, sulfur dioxide (SO2) emissions by 2,320 tons and carbon dioxide (C02) emissions by one million tons.[12]

We agree with the Commission's policy statement issued in August 2004 and cited in Staff's proposal, that while considerable progress has been made in restructuring the electricity industry, there is "much work remaining to be done."[13] As Staff observes, while approximately 55 percent of commercial/industrial consumers are purchasing electricity from non-utility suppliers, only 6 percent of residential customers have migrated to ESCOs. Clearly market-based programs for energy efficiency have not developed for smaller customers. Similarly, the market has not shown the capability to deliver appropriate R&D programs or to provide affordable energy services for low-income consumers. We believe that ESCOs will generally not be ready to provide these services for residential and low-income customers for some time to come.

Overall, although progress has been made, the market does not now fully provide services that are currently funded by the SBC. The CPB therefore supports the recommendation of Staff that the SBC program be extended for another five years at current funding levels, consistent with the recommendation in our Initial Comments.

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12 Id.

13 Id., p. 12.

### B. Rising Energy Demand, Rising Energy Prices and Electric Price Volatility Require the Continuation of the SBC Program

As noted by Staff, this summer New York State set a new electric consumption record when peak load reached an hourly average of 32,075 MWs. The previous peak set in August 2001 was 30,982 MWs. Electric consumption is expected to keep growing in New York. According to the 2002 State Energy Plan, electricity consumption is expected to grow at over 1.3 percent annually in the 2006-2011 period. Energy efficiency may not be enough to satisfy this additional demand; however, it will go a long way to reduce the need for new generating capacity. Staff also observes that New York's siting law has not been renewed.[14] The lack of a streamlined "one-stop" process that avoids governance by local zoning regulations could seriously delay the timely construction of new generation capacity, hence further increasing the need for energy efficiency measures that are part of the SBC program. The CPB continues to support the expenditure of SBC funds on electric peak demand reduction and/or distribution generation programs.

Staff also points out the challenge of volatile and rising electricity prices that are not just a New York problem but a world-wide phenomena.[15] Fuel prices used to generate electricity have doubled and in some cases trebled over the last few years. A barrel of oil has increased from $28 in 2000 to approximately $65 in August 2005. Over the same period, natural gas prices have gone from $3.50 per decatherm to over $9.00 per decatherm. More recently, it has reached $14.00 per decatherm. Although high

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14 Id., p. 12.

15 Id., p. 13.

electricity prices impact everyone, they are particularly hard on low-income and fixed income consumers.

Rising energy demand, rising energy price and increased price volatility further justify continuing the SBC program for an additional five years, as CPB recommended in our Initial Comments and DPS Staff recommends in its proposal.

### C. Cost Effectiveness of SBC Programs

The Commission increased funding for the program evaluation process from 0.4% of total program funding under SBC I to approximately 2.0% of total program funding under SBC II. This allowed NYSERDA, with assistance from the Advisory Group and Staff, to conduct a far more thorough and comprehensive evaluation of SBC programs.[16] It also enabled NYSERDA to hire evaluation contractors with national reputations to conduct the evaluation process.

The SBC Advisory Group found the evaluation report to be a "comprehensive, objective and professional effort."[17] Staff stated the following regarding the latest evaluation report:

> NYSERDA's current more comprehensive and sophisticated evaluation approach is better able to capture the program impacts and gives Staff increased confidence in the reliability of the program results.[18]

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[16] Evaluation Report.

[17] SBC Advisory Group's transmittal to the Public Service Commission, May 19, 2005.

[18] Staff Proposal, p. 9.

We agree with both the SBC Advisory Group and Staff that NYSERDA and the independent evaluation consultants did an excellent job. More importantly the cost-effectiveness analysis that is a critical element of the evaluation process shows that even under the most conservative measures, i.e., comparing total cost of the measures to the benefits limited to the value of the energy and capacity saved by the measures, the overall New York Energy $mart programs achieved a benefit/cost ratio of 2:1 and that all the three major program areas (business/institutional, residential, low-income) achieved a benefit/cost ratio of at least 1:1. Including potential benefits beyond energy savings, as many advocate, results in benefit/cost ratios that are significantly higher.[19]

The results of a detailed and comprehensive cost-effective analysis based on 18 major Energy $mart Programs shows that the SBC program is working and is further justification for its renewal.

## II. THE CPB SUPPORTS MOST OF STAFF'S MAJOR RECOMMENDATIONS

### A. Program Consolidation

Based on results of the Evaluation Report that indicated that program participants would prefer a simplified approach to access NYSERDA's program offering, Staff recommends a complete review of the entire SBC program portfolio to identify opportunities for consolidation and simplification.[20] Staff gives the example of

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[19] Id., p 11.

[20] Id., p 16.

NYSERDA's multifamily building programs that deal with financing, metering and comprehensive energy management. Currently these are separate programs. Staff recommends that these programs be consolidated into a single program to better serve multifamily building owners/managers and also make the administration of these programs easier for NYSERDA. Staff also recommends that consolidation of programs should be accompanied by increased coordination of marketing and a simplified program monitoring and application database. The CPB agrees with all of these recommendations.

## B. Renewable Resources

In our Initial Comments, we explained that the Renewable Portfolio Standard ("RPS") addresses the funding required to provide incentives for increased procurement of renewable generation, while SBC supports enhancement of renewable infrastructure development.[21] The need for renewable resources infrastructure has not been supplanted by RPS and should continue to be served by SBC programs. Staff agrees with that position.

The establishment of a RPS applicable to all electric suppliers, including ESCOs, does not create a new policy objective for the SBC program. Through its End-Use Renewables Program, its Wholesale Renewables Program and its research and development efforts, the SBC program is already pursuing increased use of renewable energy, and has achieved some significant positive results.

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[21] CPB Initial Comments, p. 7.

Funding provided for the RPS program addresses only procurement of renewable energy. Therefore, there may be no overlap between the SBC's marketing and research and development programs for renewable energy, and the new RPS. It may be the case, however, that to provide the level of assistance that will be required by the market to achieve the benchmarks established by the RPS, SBC program priorities will require some realignment. CPB expects that this is a subject that should, and will, be addressed in considerable detail by the program manager and the SBC Advisory Group.

C. Demand Response Programs

Staff regards programs designed to reduce peak load demand as critical elements of the SBC program portfolio.[22] We completely agree. To further enhance demand response resources to meet the needs of growing peak demand, Staff recommends increased emphasis on retail time sensitive electricity pricing, load shedding and distributed generation. We support all these efforts.

The CPB strongly urges Staff and NYSERDA to employ renewed emphasis on peak load pricing strategies to help reduce peak loads. While peak load pricing has generally been implemented for large customers through demand charges,[23] substantial opportunities remain to reduce peak load for smaller commercial and residential

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22 Staff Proposal, p. 18.

23 Typically, time-of-use ("TOU") rates benefit larger use residential customers since the monthly customer charge is large in comparison to the normal residential rate (mainly related to the cost of the TOU meter) and sufficient kWhs must be shifted off peak to pay for this additional cost before any net savings can be realized.

customers. Moreover, marketers do not currently offer competitive packages incorporating peak load pricing for smaller customers.

The CPB recommends that voluntary TOU pricing be given renewed emphasis. Currently, all utilities are required to offer TOU options to residential customers[24] although this effort has been little emphasized or publicized.

While such TOU rates remain available and are supposed to be periodically publicized,[25] such rates have neither been updated nor promoted in recent years. Typically, they were established in electric restructuring settlements for individual utilities with little change from the earlier mandatory rates for high-use customers. Further, the mandatory nature of the earlier TOU rates apparently created some hardship for residential and religious customers whose load shifting ability was limited, but the rates are now entirely voluntary -- and we believe they should remain so.

Several steps need to be undertaken to that end. First, TOU rates should be updated by each electric major utility on a class revenue-neutral basis based on current cost studies. For instance, the costs of meters used in current cost studies (and reflected in rates) are probably invalid since meter costs have declined generally in recent years. Such updates could be made to prior studies without necessitating new TOU cost-of-service studies. While complete new TOU cost-of-service studies may be needed at some point, the CPB recommends that adjustments be made to existing studies so that optional residential TOU rates are in place as soon as possible.

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[24] Public Service Law § 66(27).

[25] Id.

Second, institutional barriers that currently impede marketers from offering TOU rates need to be addressed. ESCOs may not be able to offer TOU pricing economically without substantial coordination with utilities and generators. Staff and NYSERDA can identify and address any institutional constraints regarding TOU rates.

Clearing the institutional barriers for marketers to offer TOU rates would not only address the peak load problem, but would expand their service offerings while potentially lowering rates -- a goal of the Commission.[26] Additional offerings could also encourage further customer migration to ESCOs.

Third, outreach and education efforts regarding TOU rates should be undertaken. Education about, and promotion of, TOU rates could aid marketer efforts to encourage customer migration and also publicize the existing TOU offerings of the electric utilities for customers that do not choose to obtain service from an ESCO.

In sum, we recommend that the Commission and NYSERDA add a TOU rate promotional program, that the institutional barriers that prevent marketers from offering this option be addressed, and that the traditional TOU voluntary offerings of the utilities be updated and publicized as well as a part of the overall peak reduction goal.

## D. Natural Gas

Staff recommends that the Commission postpone a decision regarding the potential expansion of SBC to gas customers, until after the completion of the Gas

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[26] Case 94-E-0952, Competitive Opportunities, Opinion No. 96-12 issued May 20, 1996, p. 26.

Statewide Study.[27] The Statewide Study, funded by NYSERDA, is an expansion of the study of natural gas energy efficiency that is part of the current gas rate plan for Con Edison.[28] The study will include an examination of gas price reduction benefits, gas usage and bill reduction benefits, environmental and other societal benefits, potential program designs, lost revenue recovery mechanism recommendations, quantification of program costs and comparison of the costs and benefits of each proposed program. Staff believes that the comments submitted by parties did not contain the information that this study will make available and that this information will be extremely helpful to the Commission. We agree with Staff's recommendation that the Commission's determination regarding the extension of SBC to gas customers should wait for the results of the Statewide Study.

## III. SBC FUNDS SHOULD NOT BE USED FOR T&D RELATED R&D AND THE SBC ADVISORY GROUP SHOULD BE GIVEN ADEQUATE RESOURCES TO FULFILL ITS INDEPENDENT ROLE.

### A. Transmission and Distribution (T&D) Research and Development (R&D)

Staff points out that T&D related R&D has declined significantly both nationally and in New York State.[29] In New York, current spending on T&D related R&D is approximately half the level in the early 1990's. This is happening at a time when steadily increasing electricity demand in the state may require major upgrades in the

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27 Staff Proposal, p. 20.

28 Case 01-G-1671, Order Approving Joint Proposal, September 7, 2004.

29 Id., p. 17.

T&D infrastructure. Staff recommends the use of a limited amount of SBC funds for T&D-related R&D.

The CPB continues to oppose the use of SBC funds for T&D related R&D as we did in our Initial Comments.[30] The Commission in approving SBC II, rejected the use of SBC funds for T&D-related R&D.[31] T&D is a utility responsibility and the Commission must ensure that adequate R&D expenditures are being allocated for this purpose. Shifting this responsibility in part or in whole to SBC would give a free pass to the utilities and be detrimental to the proper development of T&D technologies. T&D are core utility businesses and R&D related to these functions should fully remain with the utilities.

## B. Evaluation and Monitoring

While acknowledging the significant improvement of the evaluation effort during SBC II over that conducted during SBC I, Staff recommends a streamlining of the evaluation process that will make it easier for NYSERDA to administer and Staff to review the process.[32] Staff recommends that the details of the revised evaluation and reporting plan be developed along with the SBC III operating plan. We support Staff's proposal.

Staff, however, did not address the CPB proposal for a modest increase in the evaluation budget to be used for increasing the resources available to the Advisory

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30 CPB Initial Comments, p. 14.

31 SBC Extension Order.

32 Staff Proposal, pp 18-19.

Group to properly carry on its responsibilities of an "Independent Program Advisor."[33] We believe that an objective evaluation of the effectiveness of SBC programs is essential to assuring that New York consumers are getting what they pay for -- to assuring, in effect, that the rates they pay to support public benefit programs are just and reasonable. The significant increase in funding for measurement and verification efforts approved as a part of SBC II has improved the evaluation of SBC programs substantially, but CPB believes even more effort may be worthwhile. Currently, only two percent of SBC program funds are allotted for the evaluation of program effectiveness and cost benefit analysis. The CPB is aware that funding for these efforts in comparable programs in other states is higher, sometimes considerably so. Consequently, we recommend that the Commission approve at least a modest increase in the percentage of funds allocated for program evaluation.

As we explained in our Initial Comments, a portion of the increase in funding for measurement and verification efforts should be set aside for use by the SBC Advisory Group. Under the terms of the Memorandum of Understanding ("MOU") currently in effect between the PSC, DPS and NYSERDA, it is the responsibility of NYSERDA to assure "appropriate auditing of all programs" and to arrange "for the evaluation of all programs."[34] When the evaluation is complete, NYSERDA prepares a draft report which is submitted to the SBC Advisory Group as the "Independent Program Evaluator." The SBC Advisory Group performs "a fnal review of the draft program evaluation" and submits its comments on NYSERDA's draft in a report to the DPS and the PSC.

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[33] CPB Initial Comments, pp. 11-14.

[34] "Second Amendment to Memorandum of Understanding," Section III. F., dated December 14, 2001.

In practice, the SBC Advisory Group is called on for much more than just a final draft review. As noted in the 2004 evaluation report, the group "was involved in developing the scope of work for the evaluation activities and selecting the evaluation contractors ... reviewed and commented on NYSERDA's recommendation ... helped apportion the budget among the contractors ... and helped select the specific evaluation tasks to be completed."[35] All of these are examples of the type of objective input that should be provided by an "Independent Program Evaluator."

The CPB is concerned, however, that the SBC Advisory Group does not have the resources necessary to consistently make an informed contribution to the evaluation process. The group has no budget and no staff. Its members are voluntary and meet only a few times per year. Consequently, as a practical matter, the SBC Advisory Group is highly dependent on the information presented to them by NYSERDA or its contractors.

The CPB has no hesitation in stating that NYSERDA does an excellent job as SBC administrator, running its programs efficiently and professionally and with thorough regard for the need for objective verification and measurement of results. Still, if the SBC Advisory Group is not able to provide an effective independent review, NYSERDA's contractors and consultants may perceive themselves accountable primarily to the administrator of the programs they are evaluating. This would inherently hinder the <u>achievement</u> of objectivity, regardless of how strongly such objectivity may be desired.

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35 2004 SBC Evaluation Report, p. ES-1.

Therefore, the CPB recommends that the PSC modify the Staff Proposal, to provide the SBC Advisory Group the resources necessary to enable them to obtain expert assistance in carrying out their functions. This funding should be a portion of the modest increase in the percentage of funds allocated to program evaluation that we recommend.

## IV. OTHERS CONCERNS WITH STAFF'S PROPOSAL.

As stated earlier, overall we support Staff's Proposal to extend the SBC program for five additional years at current funding levels. However, in addition to the two Staff recommendations that we oppose as discussed in Section III, we have some additional concerns regarding Staff's proposal.

### A. Revised Goals for the SBC Program

We commend Staff for proposing revised goals for the SBC program that attempt to more accurately reflect the current energy environment. However, we suggest some modifications. First, we whole heartedly agree with Staff's second goal to reduce the energy burden for consumers, particularly low-income households, to temper the effect of energy price volatility. However, we would like to broaden the criteria to not only shelter low-income households from the effects of price volatility but from also the effect of high energy prices. Increases in the price of oil and gas that we discuss infra, are expected to increase customer bills by 25% to 35% this winter. These increases are on top of approximately 20% bill increases over the past two winters. It is imperative that we consider all means to temper the effect of these very substantial increases, especially on low-income households.

Second, as discussed above we do not support the use of SBC funds for T&D related R&D. We propose that the first goal be modified by removing any reference to supporting T&D.

Third, we recommend that all revised goals explicitly state that all SBC programs will be cost-effective. We strongly support the SBC program, however, at a time of high energy prices, it is vital to ensure that all funds are used in as cost effective a manner as possible.

B. Administrative and Evaluation Fees

The table on page 15 of Staff's proposal shows that administration, evaluation and fees total approximately 11.6% of the total SBC III fund that Staff is recommending for the next five-year period from July 1, 2006 to June 30, 2011. However, during SBC I and SBC II, as shown in the table on page 4 of Staff's proposal, these expenses amounted to only 9.6% of total SBC funds. No explanation or explicit mention of the 2% increase in administrative, evaluation and fees is identified in Staff's proposal. If Staff is recommending that the PSC approve an increase in these expenses in this proceeding, the justification should be provided in its proposal

On the current record in this proceeding, there is no rational basis for Commission approval of the proposed 2% increase for administrative, evaluation and fees shown by comparing the tables on pages 4 and 15 of Staff's Proposal. If there is a justification for the increase, it should be provided by Staff and the parties should have an opportunity to comment.

### C. Allocation to Residential Programs

The table on page 15 of Staff's proposal that identifies SBC III spending levels in various categories, does not show the amount of SBC funds that are proposed to be allocated to residential programs. During SBC I and SBC II, as shown on the table on page 4 of Staff's proposal, 17.7% of total SBC funds were allocated to residential programs. While the table on page 15 of Staff's proposal shows the allocation to low-income and R&D under SBC III separately, it lumps together the allocation to business/institutional and residential programs. Although the DPS Staff Proposal contains no narrative that identifies or explains any change from the historical 17.7% allocation to residential programs, it is curious that the proposed allocation to those programs is not identified in the Staff Proposal. Should DPS Staff propose to decrease the percentage of SBC funds that are allocated to residential programs, the parties must be informed of that proposal and provided an opportunity to comment. Absent such a procedure, the Commission should not take any action to approve such a change.

D. Consideration of Allocations in the Con Edison Program.

In Case 04-E-0572,[36] the Commission approved conservation, energy efficiency and load reduction measures that would have the effect of almost doubling SBC-related programs in that Con Edison service territory. It is not clear how these programs are being allocated between business/institutional, residential, low-income and R&D programs. However, we recommend that the Commission's decision regarding the allocation of SBC III funds among these various categories, reflect consideration of how funds are allocated in the Con Edison proceeding. The PSC should not deviate substantially from the overall allocation of funding among the various categories previously adopted for SBC I and SBC II.

E. Only the Most Cost-Effective Projects Should be Approved

Energy prices have increased markedly in recent years, and are now at, or near, record highs. This will have a dramatic impact on the benefit/cost ratio of projects funded by the SBC. Many projects that were not economical may now pass the benefit/cost test. SBC funding, however, has not increased commensurately. Accordingly, we recommend that the PSC direct NYSERDA to continue to ensure that only the most cost-effective project are implemented.

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[36] Case 04-E-0572, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service, Order Adopting Three-Year Rate Plan, March 24, 2005.

F. Collection of SBC Funds

We have two recommendations regarding the collection of SBC funds. First, all customers of electric utilities should fund the SBC program, since the program creates statewide benefits and all should support it. Investments in energy efficiency benefit not only those installing the energy efficiency measures, but all ratepayers. Reduced demand growth, especially during peak periods, puts downward pressure on wholesale prices that benefits all customers. Similarly, energy efficiency investments may defer the need for transmission or distribution system upgrades due to reduction of load growth in congested areas. This again would benefit all ratepayers.

Multiple Intervenors ("MI"), in its March 4, 2005 comments, recommended exempting all industrial users, not just those with NYPA or flex rate contracts. Staff did not address MI's proposal, which apparently indicates that it rejected that proposal. We also oppose MI's proposal and urge the Commission to reject it.

Second, the PSC should expand SBC funding to municipal electric utilities and municipal distribution authorities. Currently, those entities do not collect the SBC and their customers are not eligible for SBC-funded programs. The Commission, in its order extending the SBC program in 2001, rejected suggestions that municipals be included, deciding instead to invite voluntary participation by excluded customers willing to pay the charge in return for program eligibility.[37]

The CPB encourages the Commission to reconsider this position and to mandate collection of the SBC by municipals over which it has rate jurisdiction. This is clearly appropriate from the standpoint of fairness and statewide equity. Many, if not all of the

[37] January 26, 2001 Order, p. 23.

programs funded by the SBC generate benefits that accrue to all electric customers, and indeed, to all citizens of the state. Reductions in environmental impacts, decreases in peak demand, dissemination of energy efficiency information, and market transformation efforts that make new and improved technologies and services more readily available, are obvious examples of the generalized benefits achieved through SBC programs. As to these programs, municipal customers are currently "free riders," and are subsidized by the general body of ratepayers.

As to the participatory programs funded by the SBC, municipal customers are losing out. Businesses and residences that could benefit from efficiency and affordability programs are ineligible for no reason other than their locations. This is particularly unfortunate, in CPB's view, in the case of low-income customers of municipal utilities who are unable to participate in programs that target their specific needs.

## Conclusion

The New York State Consumer Protection Board recommends that the Public Service Commission extend the System Benefits Charge and other SBC-funded public benefit programs as proposed by Staff of the Department of Public Service for an additional five-year term at current funding levels. In addition, the CPB recommends that the Commission adopt Staff's major recommendations with the exception of using SBC funds for transmission and distribution related research and development. We also urge the Commission to adopt our recommendation for additional resources for the SBC Advisory Group as well as other recommendations discussed in Section IV of these comments.

Respectfully submitted,

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