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October 15, 2007

VIA LIST SERVE
Hon. Eleanor Stein
Hon. Rudy Stegemoeller
Administrative Law Judges
State of New York Department of Public Service
Three Empire State Plaza
Albany, NY 12233

Re: Case 07-M-0548 - Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio Standard

Dear Administrative Law Judges Stein and Stegemoeller:

Pursuant to the *Ruling Setting Collaborative Agenda and Modifying Comment Schedule*, issued September 13, 2007 as supplemented by the October 1, 2007, letter from your honors, I am enclosing the *Comments of Joint Utilities in Response to Ruling Setting Collaborative Agenda and Modifying Comment Schedule*.

Sincerely,

Amy A. Davis

cc: Secretary Jaclyn A. Brilling (via Federal Express)
List Serve

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio Standard	:	Case 07-M-0548

COMMENTS OF JOINT UTILITIES IN RESPONSE TO RULING SETTING COLLABORATIVE AGENDA AND MODIFYING COMMENT SCHEDULE

Dated: October 15, 2007

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio Standard	:	Case 07-M-0548

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I. PRELIMINARY STATEMENT

Central Hudson Gas & Electric Corporation ("Central Hudson"), Consolidated Edison Company of New York, Inc. ("Con Ed"), KeySpan Energy Delivery New York and KeySpan Energy Delivery Long Island (collectively, "KeySpan"), National Fuel Gas Distribution Corporation ("NFG"), New York State Electric & Gas Corporation ("NYSEG"), Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid"), Orange and Rockland Utilities, Inc. ("O&R") and Rochester Gas and Electric Corporation ("RG&E") (collectively, the "Joint Utilities") hereby submit their comments in reply to the *Ruling Setting Collaborative Agenda and Modifying Comment Schedule*, issued September 13, 2007, in the above-captioned proceeding (the "Notice"), as supplemented by the October 1, 2007 letter from Administrative Law Judges Eleanor Stein and Rudy Stegemoeller (the "ALJs letter"). The Notice and ALJs Letter asked for comments on the "fast track" proposal contained in the August 28, 2007 *Staff Preliminary Proposal for Energy Efficiency Program Design and Delivery* (the "Staff Report").

As stated in their previous filings in this proceeding, the Joint Utilities support the State's goal to reduce electricity usage by 15% by 2015 and to establish a suitable gas target. However, achievement of this ambitious goal requires that the Joint Utilities provide a significant contribution through program administration at the retail customer level. As they have explained in their prior filings, the Joint Utilities are uniquely positioned to administer retail customer energy efficiency programs and they all have proven track records demonstrating their ability to effectively administer such programs.

The Joint Utilities welcome the evaluation of the proposed "fast track" programs outlined in the ALJs Letter to the parties, and intend to participate constructively in the evaluation of those programs in the working groups. Consideration of the 'fast track" programs in this case should, however, not delay or foreclose options being presented for the Commission's consideration in other proceedings. The Joint Utilities believe that utilities can contribute to achieving the State's goals in the short term through participation in administration of both Staff-identified "fast track" programs and individual utility-designed energy efficiency proposals that have been filed in other cases. Nothing done in this case should prejudice the consideration of energy efficiency proposals filed in other contemporaneous cases.

The Joint Utilities are committed to working collaboratively with the parties in this proceeding and in individual-utility cases to develop and implement programs that will help to achieve the State's ambitious energy efficiency goal. The Joint Utilities believe that their proposal will provide the best opportunity to achieve that goal. Indeed, the achievement of the State's energy efficiency goal requires collaboration among all market participants. Importantly, all market participants will play a role in the design, implementation and delivery of energy

efficiency programs. In that way, consumers can best be assured that they will realize the benefits of the energy efficiency measures they fund.

II. INTRODUCTION

This case presents the Administrative Law Judges, the parties, and the Commission with significant challenges. As stated (p. 5) in the Staff Report:

> Clearly, the EPS Proceeding will be a complex undertaking and will require thoughtful planning, communication, and extensive coordination among the many entities that are or will be delivering energy efficiency programs and among inter-related proceedings.

The Joint Utilities agree. These concerns dovetail with the Joint Utilities' view that they have short-term roles in the administration and delivery of energy efficiency programs broadly, including "fast track" programs identified by Staff and utility-designed proposed energy efficiency programs.

In a Ruling issued on September 13, 2007, Judge Stein stated at page 4:

> parties should comment on those programs identified by Staff, or considered by other parties, as fast track. In particular, parties should identify those existing programs susceptible to immediate, additional investment to realize efficiency gains and garner public attention for efficiency programs in 2008. As to these programs only, parties may file comments on the Staff Proposal no later than October 15, 2007.

In the ALJs Letter, the Judges specified the type of information that was required. Specifically, the Judges stated that:

> Regarding any such proposed ["fast track"] programs, [the parties should] provide detailed discussion of the following:
>
> - whether, and to what extent, such program is presently oversubscribed;
> - demonstrated effectiveness of such program;
> - incremental benefits expected from such program if funding levels were increased in the near term;

- cost of putting such program on fast track;
- sources of funds that can be accessed on a fast track basis, including accelerated use of uncommitted SBC funds, and methods of cost recovery; and
- administrative barriers, if any, to prompt expansion of such program, including process steps that would be necessary to secure and establish funding.

The Joint Utilities concur that this type of factual information needs to be developed in this case to permit rational assessment of the desirability of denominating any particular proposal as "fast track." Additionally, as is recognized in the ALJs Letter, this information has not yet been provided for the "fast track" programs contained in the Staff Proposal. Developing such information is likely to require significant effort and is an essential component of the determination of which programs should be offered.[1]

In general terms, the Joint Utilities agree that the preliminary listing of types of programs identified by Staff may be considered for further evaluation as "fast track" programs, as long as that consideration will not prejudice utility energy efficiency-related filings that are currently pending before the Commission in other cases, which should proceed on an equivalent "fast track" basis.[2] The necessary review by the parties and consideration by the ALJs of all aspects of the proposed "fast track" programs can take place on an expedited basis in the Working Groups established in this case, along with expedited review of the pending utility energy efficiency-related proposals that are before the Commission in other cases. This is a procedural

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[1] The Joint Utilities expect to contribute to such an effort. The Joint Utilities assume that the status quo for funding of any "fast track" programs supported through the SBC will continue pending completion of the "fast track" process. If there is any danger that any particularly valuable program may run out of funding authorization, the sponsor/administrator of that program could always seek relief from the Commission.

[2] Moreover, as a matter of fairness and reciprocity, just as Staff has invited significant expedited efforts by the parties to evaluate Staff's "fast track" proposals, it should be expected that Staff will make reciprocal significant efforts to facilitate expedited consideration of the pending utility filings.

path, indeed, the only procedural path, that will reasonably move this case forward, while not creating prejudice for utility-proposed programs that will also help to achieve the State's goal.

As more particularly explained in these comments, the Joint Utilities agree that approving energy efficiency programs as soon as possible will further the goal of reducing energy use sooner rather than later. Indeed, as noted throughout these comments, certain individual utilities have filed energy efficiency programs, in some instances predating the commencement of this proceeding. Some of these filings are now pending before the Commission, and additional utility filings may also be made in the future. Because these programs can provide a meaningful contribution to achievement of near-term energy efficiency savings, and, importantly, have (or will) be subject to Commission scrutiny, the Joint Utilities are concerned that those proposals may not be promptly considered on their merits simply because of the pendency of this proceeding and the need to reach a decision on the "fast track" programs.

The Commission must not ignore these individual utility proposals, give undue preference to the programs identified in the Staff Report or permit those programs listed by Staff to be expanded without first being evaluated using the Commission's existing standards. While the Joint Utilities certainly understand the desire to move forward quickly, that desire for speed should not override the fundamental need to assess programs.

The Joint Utilities' comments herein focus on the near-term in response to the direction in the ALJs Letter. However, as the ALJs and parties are likely aware from the "model" submitted to Working Group 1 by the Joint Utilities on Friday, October 12, 2007, that document reflects the Joint Utilities' preferred long-term structure. Accordingly, to provide context for the comments

offered herein, a copy of that submission is included in these comments as Appendix 1 for the convenience of the parties.[3]

III. DISCUSSION

In its May 17, 2007, *Order Instituting Proceeding*, the Commission stated that "realizing the State's energy efficiency potential and reducing New York's electricity usage 15% from expected levels by 2015 are in the public interest." The Joint Utilities endorse the Commission's goal to realize the benefits associated with energy efficiency initiatives and support the Commission's efforts to identify those programs that can be made available in the near-term and on a longer term basis. The Joint Utilities, therefore, urge the Commission to consider and approve utility-proposed programs as expeditiously as possible.

It is important that the "fast track" process support the implementation of a comprehensive, long-term process to develop an energy efficiency policy for the State. The fundamental underpinning of that foundation is the Joint Utilities proposal whereby they play a more active role in the design, implementation and delivery of energy efficiency products and services.

The Commission has supported implementation of individual utility programs as part of its overall energy efficiency initiatives. Thus, the Commission should make clear that new programs can be approved in utility-specific proceedings and should authorize implementation of

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[3] The key components of the model sponsored by the Joint Utilities, including, the roles of the utility, NYSERDA and other third parties and prior experience with the model, are identified in the Appendix 1. The Joint Utilities anticipate that this model will be discussed in the ongoing collaborative process. While the Joint Utilities recognize that the Commission is addressing "fast track" measures in this part of the case, the Commission must consider such measures in the context of how they relate to, and support, the State's ultimate goal to achieve "15 by 15."

utility-sponsored programs now under consideration in utility-specific cases.[4] By taking such actions, the Commission will have in place a solid framework for the achievement of the State's energy efficiency goal.

The Joint Utilities propose that individual utility programs now pending before,[5] or subsequently filed with,[6] the Commission should be given Commission consideration in those proceedings. The individual utility programs recently approved by the Commission[7] should be implemented following the timeframes adopted for those programs. Because such programs have been, or will be, subject to Commission review in those proceedings where they can best be

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4 When approving energy efficiency programs, the Commission should, at the same time, provide funding and cost recovery mechanisms and appropriate incentives.

5 Cases 05-E-0934 *et al.*, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Central Hudson Gas & Electric Corporation for Electric Service. On September 25, 2007, Central Hudson filed its *Petition on Behalf of Central Hudson Gas & Electric Corporation for Expedited Approval of Interim Energy Efficiency Programs, Deferral Accounting, Revenue Decoupling Mechanisms and an Economic Incentive.* Case 07-E-0523, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison. On May 4, 2007, Con Ed proposed a plan to achieve 500 MWs of permanently-installed energy efficiency by 2016 through a combination of targeted and non-targeted demand reduction measures. Case 06-E-1433, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Orange and Rockland Utilities, Inc. for Electric Service, Phase II. On September 7, 2007, O&R submitted a proposed energy efficiency plan.

6 NYSEG and RG&E anticipate that they will submit proposed energy efficiency programs to meet the needs of consumers in its service areas in conjunction with other key initiatives. These initiatives would be designed to meet the Commission's objective to achieve near-term energy efficiency savings. The Commission has pending before it proposals from NYSEG and RG&E to implement advanced metering infrastructures. Expeditious Commission approval of these initiatives will provide a key component of an overall energy efficiency strategy and form part of the framework for NYSEG and RG&E to implement energy efficiency programs.

7 Case 03-G-1671, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Gas Service. On June 22, 2007, the Commission issued an order adopting a gas efficiency program for Con Edison. Case 06-G-1185, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York for Gas Service and Case 06-G-1186, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery Long Island for Gas Service. On July 18, 2007, the Commission adopted interim gas efficiency programs to be put in place prior to the 2007-2008 winter season. Case 07-G-0733, Petition of Niagara Mohawk Power Corporation to Implement a Low-Income Gas Customer Energy Efficiency Program. On September 18, 2007, the Commission approved the extension of a low-income gas customer efficiency program for eligible gas heating customers of National Grid for an additional 12 months. Case 07-G-0141, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of National Fuel Gas Distribution Corporation. On September 20, 2007, the Commission adopted the Conservation Incentive Program proposed by NFG for the 2007-2008 winter heating season as a first step to introducing energy efficiency measures in the service area of NFG.

viewed in the context of the unique circumstances existing in those areas in which each program would be offered, no separate analysis in this generic case is warranted. Reviewing these programs in both the individual utility proceedings where they are pending or have been approved, and reviewing them separately in this proceeding, would insert unnecessary delay and leave unclear which proceeding will be determinative.

While the immediacy with which a program might be commenced (or continued) is a relevant factor in evaluating the desirability of a proposed program, that alone is not determinative of whether the program should be endorsed as a "fast track" program in this case. The Commission should also determine which entity is best positioned to administer the program and achieve efficiency over the long run. The program must also be shown to pass the Commission's applicable standards applied in the same fashion the Commission has applied them to utilities. Additionally, consideration should be given to how benefits to consumers can be maximized through alternative models for program administration. As the Judges recognized in their letter, which required "detailed" information, it would not be appropriate to ratify or fund such programs in this case simply because they already exist. Because programs designated as "fast track" could continue for some period of time past this initial timeframe, the Commission must take particular care to ensure that the most appropriate entity administers the program and that only those initiatives that provide sufficient benefits and are consistent with the State's long-term plan are designated "fast track" programs. Accordingly, any programs proposed for "fast track" status in this case should be subjected to the detailed review contemplated by the ALJs Letter.

IV. CONCLUSION

As noted in these comments, the State's 15 by 15 goal represents an ambitious target. The Joint Utilities will work collaboratively with the parties in this proceeding and in individual-utility cases to develop and implement programs designed to meet the State's energy efficiency goal. Utility proposals pending in other cases should be considered as expeditiously as possible. By endorsing the approach offered in these comments, the Joint Utilities expect that consumers will realize significant energy efficiency benefits.

Respectfully submitted,

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Dated: October 15, 2007

Cc: Secretary Jaclyn A. Brilling (via Federal Express)
ALJ Eleanor Stein (via List Serve)
ALJ Rudy Stegemoeller (via List Serve)
List Serve

Appendix 1. Joint Utilities Proposed Model

I. Introduction

The objective of the Joint Utilities Model (JU) model is to institute a comprehensive long term energy efficiency strategy to achieve the State's energy efficiency goals and to implement energy efficiency measures that are cost effective, reliable, and feasible, while transforming energy markets. Because the challenge placed in front of all of us by the Governor, the Commission, and most importantly, the businesses and residents of New York State, is so great, the Joint Utilities believe that the capabilities of all potential contributors to the EPS will be essential to its success. The JU model respects and draws heavily upon the strengths of all participants. It also recognizes the importance of achieving a balance between flexibility and discipline, planning and responsiveness, and simplicity and comprehensiveness.

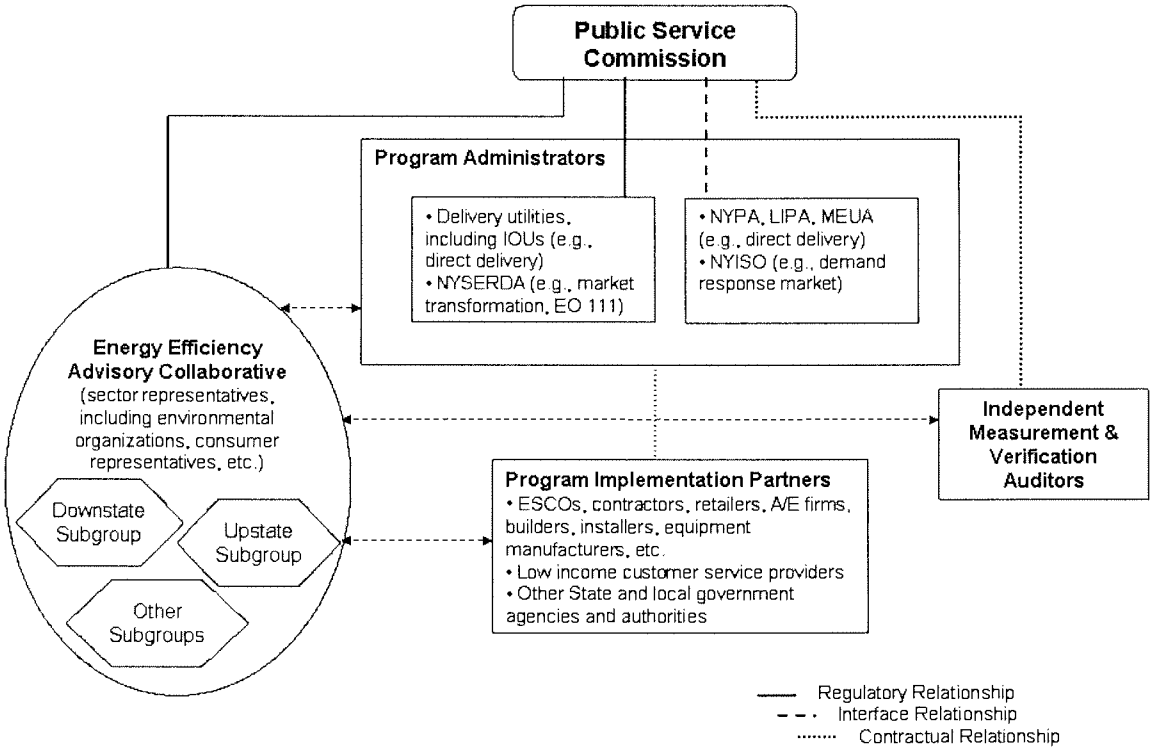
This model is based on several assumptions.

- First, the Joint Utilities have simply assumed that adequate achievable energy efficiency potential currently exists, and that this proceeding will include quantitative analyses addressing these matters.
- Second, although governmental and private parties obviously differ from each other in relation to their non-profit or for-profit natures, and require differing treatment to recognize their differing status, all program administrators have been assumed to be subject to identical reporting and evaluation methods.
- Third, although advisory collaboratives are expected to be of great assistance in the design, planning, implementation, and evaluation of EPS-related activities, these collaboratives will not have the authority to mandate studies, methodologies, or structures, and will not have the authority to direct the actions of EPS participants.
- Fourth, this proceeding will clarify the EPS targets, accountability for the EPS, the types of resources that will or will not qualify for EPS consideration, and the costs and benefits to be taken into account when selecting and approving individual EPS programs for implementation.

II. Brief Description of the Model

Figure 1 illustrates the JU model.

Figure 1. Joint Utilities Model



III. Relevant Regulatory and Institutional Context

Governor Spitzer has established a target for the State to reduce electric energy usage 15% by 2015. This goal has been described by DPS Staff as "the most ambitious, in terms of total energy savings, of any program in the nation." In establishing this proceeding, the Commission made a finding that "realizing the State's energy efficiency potential" is in the public interest. The Commission also stated:

> New York State possesses sufficient potential energy efficiency resources to meet its forecast electricity needs and to reduce electric usage by 15% of projected levels by the year 2015. In this proceeding, targets should also be established and programs designed to optimize the State's efficient use of natural gas. To attain this goal, changes in appliance and building efficiency standards, Long Island Power Authority (LIPA) and New York Power Authority (NYPA) participation, State facility efficiency measures and the New York City sustainability program will also be essential.

By agreement of the parties in Working Group 1, proposed models should also address the roles of existing energy efficiency providers, such as the delivery utilities, NYSERDA and ESCOs.

The JU model leverages the ability of all these parties and opportunities to meet the State's and customers' needs. The model also makes use of the strong New York tradition of collaboration. By treating investments in energy efficiency on an equal footing with other investment alternatives through regulatory incentive structures, utility business decisions can be effectively aligned with New York's energy efficiency objectives, and each utilities' considerable resources can be brought to bear to improve customers' energy efficiency.

IV. Role of the Parties

New York Public Service Commission (NYPSC or Commission)

The NYPSC will have ultimate authority for approval of the plans developed by the Commission-regulated Program Administrators. The Joint Utilities understand that certain Program Administrators are not regulated by the Commission; the level of cooperation from these parties in this proceeding suggests that they are likely to agree to share their plans with the Commission and collaborate in the EPS design, goal-setting, and verification process.

The Commission's approval of energy efficiency plans is consistent with its legislative authority over utility rates and rate structures, utility cost recovery, evolving decoupling mechanisms and shareholder incentives.

Specific elements subject to the Commission's review and/or approval may include:

- Overall efficiency goals and objectives and their ability to be achieved
- Programs, targets and overall budgets for efficiency for each utility and/or other administrators
- Measurement and verification protocols for determining energy savings including attribution of savings to various program administrators
- Program evaluation efforts and results
- Rate treatment, decoupling mechanisms and utility incentive structures to support vibrant energy efficiency program design and results
- Funding mechanisms and cost recovery

The Commission will also oversee the activities of the Independent Measurement and Verification Auditors.

The Commission will conduct a "mid-course" review of the EPS in 2011 involving all parties, or earlier if warranted.

Program Administrators

Program Administrators would have primary responsibility for achieving the EPS objectives. Program Administrators include the delivery utilities, NYPA, LIPA, municipal utilities, NYSERDA, and NYISO. Each of these entities bring valuable strengths to the EPS: NYSERDA is nationally known for its market transformation work (e.g., building codes, appliance standards, upstream supplier, manufacturer relationships, installer and builder training), the gas and electric

utilities and power authorities have critical customer and local area relationships and infrastructure as well as extensive experience with delivering operating results, and NYISO has a thriving demand market. All these assets must be combined to fully meet the high expectations of New York State and the energy consumers of New York.

The Joint Utilities anticipate that specific targets and metrics will be established for each Program Administrator. Each Program Administrator would produce annual plans and reports. Program Administrators would work closely together and provide support to each others' programs, particularly in cases where service territories or target markets overlap, and where direct delivery programs and market transformation activities present opportunities for synergy.

Energy Efficiency Advisory Collaborative (EEAC or Collaborative)

The EEAC will consist of representatives of the parties significantly committed to increasing energy efficiency in NY. Included on the Collaborative will be representatives of: electric utilities, including NYPA and LIPA; gas utilities; ESCOs; municipal utilities; NYSERDA; DPS staff; the City of New York; low income service providers; community based efficiency organizations; environmental organizations; and others as shall be determined by the Commission. It would have separate working groups for upstate and downstate given the differences between those two areas. The recommended makeup of the EEAC will be established collaboratively in the EPS proceeding.

The EEAC would:

- Establish an agenda for periodic exchange of information by all interested parties concerning Energy Efficiency ("EE") "best practices," evolving trends, and "problems";
- Respond to PSC requests for information concerning industry-wide matters of interest;
- Guide the development of reports or other information to assist on-going EPS program development;
- Conduct an annual EE seminar similar to that sponsored by the NYISO on July 19-20, 2007.

Although energy efficiency research, development, and demonstration would remain an important NYSERDA responsibility separate from the EPS, the EEAC may also explore the potential for new technologies to contribute to the state's energy efficiency goals.

Program Implementation Partners

A wide variety of energy service companies, businesses, agencies, government, manufacturers, not-for-profit entities, low-income service providers, community-based organizations, and others will be essential to the success of the EPS. These participants will partner with Program Administrators to enable the success of design, planning, load and market research, marketing and customer recruiting, implementation and delivery, evaluation, measurement and verification, and other EPS-related tasks.

These participants should also be represented on the EEAC.

Program Administrators may also partner with one another.

The Joint Utilities appreciate that forms of EPS-related markets (e.g., block solicitations, standard offers, white tags, NYISO market participation) have been suggested by various parties to this proceeding. Although considerable clarification and development of the practical aspects of such markets will be necessary before decisions can be made concerning implementation, the Joint Utility model would also be compatible with such markets.

Independent Measurement & Verification Auditors

Measurement and verification will be a responsibility of the Program Administrators, based on the guidelines developed in this proceeding. Program Administrators will also be responsible for load and market research needed to support program design, customer recruiting, performance forecasting, and performance measurement.

Independent reviews of Program Administrator measurement and verification would be in the interests of all parties. These independent auditors should be accountable directly to the Commission. Auditors should publish the results of their evaluations annually in a report to the Governor that will be an important input into the Commission's mid-course review in 2011.

V. Experience to Date

Experience with this model is based on similar successful models in operation in several states regionally and nationally over many years.

Major strengths of model

- Strong collaborative process, broad commitment by policy makers, and inclusion of diverse proposals and ideas
- Integration of energy efficiency within utility operations; seamless service to customers
- Established utility relationships with business customers through account managers and established relationships with market participants within the territory
- Established NYSERDA market transformation focus
- Substantive role for all interested energy efficiency service providers while achieving aggressive energy efficiency goals
- Consistency with the approach currently in place for NYPA, LIPA, and municipalities
- Coordination of efficiency efforts with distribution system needs and integration with long-term system planning
- Robust community based program elements
- Diversity of program concepts and marketing
- Efforts tailored to the specific geographic market
- Established process with appropriate checks and balances

Major weaknesses of model

- Coordination and collaboration among the parties may take time
- Demands on time and resources of the Commission and staff

VI. Feasibility and Means of Adapting Model to New York State

The Joint Utilities' model establishes a comprehensive, long-term, dynamic, and sustainable approach to energy efficiency in New York. Because the program is based upon an established utility regulatory model with PSC jurisdiction, review and approval, it is less vulnerable to short-term funding uncertainties than other proposals.

This model provides for a role for all interested parties and requires a committed effort by all parties to collaborate effectively to develop structures and mechanisms to reach consensus on the approach to energy efficiency at all levels including State-wide, utility specific, and community based.