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BY ELECTRONIC MAIL

October 15, 2007

Eleanor Stein
Rudy Stegemoeller
Administrative Law Judges
New York State Department of Public Service
Three Empire State Plaza
Albany, New York 12223

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

Dear Judges Stein and Stegemoeller:

Attached in response to the Ruling Setting Collaborative Agenda and Modifying Comment Schedule, issued on September 13, 2007, as modified by your letter of October 1 in the above-referenced matter, please find the Comments of the New York State Energy Research and Development Authority (“NYSERDA”) regarding fast-track program opportunities. As a member of the EPS Collaborative, NYSERDA will be presenting a separate EPS planning document, which contains considerable information and includes detailed fast-track proposals, at the meeting of EPS Working Group 1 tomorrow. We intend to provide that document as a supplement to these Comments after making any revisions that may result from tomorrow’s discussions with the Working Group 1 Collaborative members.

Very truly yours,

/s/

Peter R. Keane
Senior Counsel

cc: Active Part List, by electronic mail

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**NYSDERDA RESPONSE TO NEW YORK STATE DEPARTMENT OF PUBLIC SERVICE
STAFF PRELIMINARY PROPOSAL FOR ENERGY EFFICIENCY PROGRAM DESIGN AND
DELIVERY DATED AUGUST 28, 2007**

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I. General Comments

NYSERDA's comments with regard to the fast-track programs presented in the Department of Public Service Staff's Proposal, filed on August 28, 2007, include the following general principles that should be considered in the implementation of any fast-track program portfolio.

I.1. Programs should be whole-building and should incorporate electric, gas, and oil savings measures and practices

The greatest energy savings can be achieved through a whole-building approach to delivering efficiency services where numerous available funding sources can be combined and per building efficiency savings can be maximized.

The Staff Proposal notes that a whole-building approach to providing electric, gas, and oil savings is being implemented by NYSERDA for the residential market. NYSERDA feels it is important to stress that residential consumers should receive comprehensive analyses of their homes with improvements prioritized based on payback and financing in a single package. Piecemeal measure-by-measure programs offered in any sector dissipate the effectiveness of programs and diminish energy savings. This separation could be construed, by participating implementation service contractors, as indicating the State's lack of firm commitment to market transformation efforts and could threaten the success of infrastructure development efforts that have been pursued over the past six years.

Staff proposes certain "model programs" to be implemented as fast-track programs based on similar successful programs offered in other markets. Those programs, however, are being delivered in utility regions without whole-building market transformation efforts. Attention should be focused on the potential confusion that would occur if additional layers of programs were introduced in regions where market transformation programs are already being offered. Overlapping programs with diverse funding sources can disrupt infrastructure development efforts, cause consumer confusion, and negatively impact cost-benefit results. Efforts must be made to ensure that programs are complementary and support one another regardless of the entity acting as administrator.

The Staff Proposal recommends separate gas programs. Whole-building, all-fuels programs will be more efficient to implement and effective for maximizing participant and societal benefits.

There is some confusion among recommendations in the Staff Proposal. NYSERDA concurs with the statement in the Proposal, "If LDC representatives and NYSERDA representatives are separately marketing similar programs and contacting customers for participation, it will lead to customer confusion and possible negative attitudes toward energy efficiency programs." NYSERDA is concerned that recommendations in Section IV of the Proposal for implementing rebate-type programs could create lost opportunities. As noted above, efforts must be made to ensure that programs are complementary and support one another regardless of the entity acting as administrator.

Customers are best served on a whole-building, fuel-neutral basis, and consideration

should be given to serving all gas customers — not limiting the focus to firm customers — since limiting services to firm customers will restrict the available efficiency savings and potentially depress total resource cost measures.

I.2. Residential QA/QC is important

NYSERDA's market-based programs include quality control and quality assurance efforts that are typically not included in simple rebate programs. These important activities ensure that projected savings are being realized and that consumer health and safety issues are properly addressed. Without an adequate QA/QC program, improper sizing, substandard installation, and improper setting of controls could significantly reduce energy savings and potentially cause health and safety problems. These conditions are seen far too often in residential installations, where the lack of certification standards permits work to be accomplished by contractors who are not properly trained.

I.3. Incentives need to be aligned

NYSERDA concurs with the statement in Staff Proposal's General Principles that incentives need to be aligned with customers' needs. They should be designed to elicit the desired actions and to be consistent with current market conditions and program objectives. The discussion of incentives states that they should not exceed the incremental cost of installing a measure. However, customer needs and desired actions sometimes dictate otherwise. As noted in the *Real World Experience* section of the Staff Proposal that addresses the small business direct installation program, one leading program pays nearly all of the measure costs while another pays roughly 50 percent of the costs. Incentives can be higher than incremental cost to attract participants to a program, and in such cases, these programs can still be cost effective. The size of the incentive should reflect the needs of the program, or, stated another way, program incentives will differ depending on the outcomes desired from implementation of particular programs.

It also bears stating that the ENERGY STAR label is not effective for all product categories. Cost and energy savings associated with ENERGY STAR products are relatively low, and many products are, therefore, ineligible for NYSERDA incentives. Also, ENERGY STAR labels are not available in some large energy consuming product categories (*e.g.*, commercial furnaces, boilers, and chillers; commercial/industrial lighting equipment).

I.4. Research and Development is Essential Even in the Short Term

Recognizing that the EPS initiative is appropriately focused on programs that deliver near-term energy reductions in support of the ambitious 15 by 15 energy efficiency goal, NYSERDA would be remiss if it did not emphasize that achievement of this goal is possible because past and current research and development investments have produced technologies that are commercially viable and available to support the important 15 by 15 initiative. Continuing investment in research and the development, advancement, and further commercialization of resulting technologies are absolutely necessary to sustain the benefits of the 15 by 15 initiative and to achieve a clean energy future for all New Yorkers.

In addition to the fast-track programs identified in Staff's Proposal, seeding research,

development, and market transformation efforts in 2008 is essential in order that advanced technologies and infrastructures will exist to deliver additional savings in the 2011 to 2015 timeframe.

I.5. Structural Issues that must be addressed for successful achievement of the 15 by 15 goal

Metering is hampered by a host of regulatory uncertainties that must be addressed before consumers can fully benefit from strategies like time-of-use rates. In the same vein, better access to utility customer information including billing data and customer identification is needed for successful marketing and program deployment. These issues become increasingly critical as more aggressive energy efficiency goals are established.

II. Energy Efficiency Programs that Can Be Implemented Quickly

In response to the September 13, 2007 *Ruling Setting Collaborative Agenda and Modifying Comment Schedule*, NYSERDA's comments are presented below with respect to the specific fast-track programs presented in Staff's Proposal filed on August 28, 2007.

II.1. New Building Construction¹ — Single and Multifamily Housing (electric and gas)

NYSERDA's new construction program for multifamily buildings began in fall 2006 and incorporates many of the fast-track program features described in Staff's Proposal. NYSERDA has completed the pilot program (Staff's 4th bullet) on new construction of all types of multi-unit residential buildings. NYSERDA's new construction program is a collaboration with the New York State Division of Housing and Community Renewal, the Enterprise Community, and the Housing Finance Agency and provides added value by incorporating green measures into new buildings.

The desired program elements for one-to-four family buildings currently exist in NYSERDA's programs so developing a new program is not necessary.

II.2. Statewide Residential Point-of-Sale Lighting Program (electric)

NYSERDA concurs with the upstream approach described for this program and is already working with the New York State Department of Environmental Conservation and retailers on educating consumers on the proper disposal of CFLs.²

II.3. Residential Central Air Conditioning – Efficient Equipment and Quality Installation (electric)

NYSERDA has two statewide programs — New York ENERGY STAR® Labeled Homes

¹ The reference in Section IV.A.1. of the Staff Proposal is erroneous with respect to ResTech and the Comprehensive Energy Management (CEM) program, which were existing programs that have been subsumed under NYSERDA's multifamily program.

² Staff states that at least 14 manufacturer partners are participating in NYSERDA's program. As of September 2007, 23 lighting manufacturer partners and several major retail chains are participants in the program.

Program and Home Performance with ENERGY STAR® — that service homes with central air conditioning.

II.4. Home Performance with ENERGY STAR® (electric and gas)

As noted in Staff's Proposal, NYSERDA is currently operating this program and is the logical entity to oversee its expansion.

II.5. Residential Retrofit Program (mostly gas)

The program described in this section is consistent with the recently introduced tiered Home Performance with ENERGY STAR® program, except that NYSERDA's program includes additional contractor certification and QA and QC services that ensure savings. As a separate program, a retrofit option provides little of value, decreases the potential for energy savings, competes with NYSERDA's existing programs, and would confuse consumers trying to determine which program is right for them.

The "success" achieved by the type of program described by Staff is in utility regions that do not have fully-established Home Performance with ENERGY STAR® programs. The potential negative impacts of introducing retrofit programs in a market where the Home Performance with ENERGY STAR® program already exists is not addressed by Staff.

Consideration should be given to viewing the Consolidated Edison Company of New York, Inc. (Con Edison) Gas Efficiency Program, the System Wide Electric Demand Reduction Program, and "Interim" gas programs as enhancements to the existing whole-building programs that NYSERDA is administering in the single and multifamily markets.

II.6. Residential Efficient Appliances and Equipment Purchases Program (gas)

This program should be abandoned in favor of the tiered Home Performance with ENERGY STAR® program and should provide larger incentives to encourage installation of higher efficiency equipment.

Most of the products listed in this initiative are eligible measures under the Home Performance with ENERGY STAR® program and can be included in a reduced interest rate financing package. Income eligible consumers receive additional subsidies on their Home Performance with ENERGY STAR® improvements.

Offering point-of-sale rebates on equipment is a piecemeal approach that will provide minor increases in energy efficiency but will not achieve the significant reductions needed to meet stated goals. Equipment installations without shell improvements will not provide consumers with the greatest achievable benefits and the absence of information will not make them aware of potential savings.

Competition between offering equipment rebates and a whole-house approach in the same markets can lead to disintegration of the home performance infrastructure as easy rebates lure contractors away from the more comprehensive approach, setting back by years market transformation efforts and diminishing the ability to achieve of goals. Utilities that offer equipment rebate programs in other states do not have established Home Performance with ENERGY STAR® programs.

II.7. Low Income Residential Energy Efficiency and Weatherization (electric and gas)

NYSERDA supports expansion of EmPower New York and the Weatherization program that provide services to low-income households. NYSERDA also offers the Multifamily Performance Program which has a low-income component that provides higher incentives to low-income buildings than to market-rate buildings while offering a comprehensive approach to achieving at least a 20 percent improvement in building performance.

II.8. New York City Apartment Building Energy Efficient Program Design (electric and gas)

NYSERDA has a single program which serves all types of multifamily buildings³ — low-income and market rate, new and existing — in New York City and upstate. The Multifamily Performance Program incorporates all of NYSERDA's previous multifamily programs (Assisted Multifamily Program, ResTech, Comprehensive Energy Management, Loan Fund, Direct Install) and provides incentives for all the energy measures, including electric and gas measures, mentioned in the fast-track section; it also provides special incentives for advanced meters, solar installations, and combined heat and power systems. The program recently was recognized by the American Council for an Energy Efficient Environment (ACEEE) as an exemplary program and a model of best practices for programs across the nation.

The notion that a fast-track program could be best implemented by an entity that has no current infrastructure in place is counterintuitive. In addition, market confusion will likely arise as building owners and operators try to determine whether the whole-building Multifamily Performance Program or the New York City Apartment Building program is best suited to their needs. At a minimum, to achieve the State's aggressive energy-saving goals, a comprehensive approach is needed, rather than simply changing out equipment by measure.

II.9. Small Business Direct Installation Program (electric and gas)

NYSERDA's Mobile Energy Clinic provides energy efficiency services to small businesses in Central New York and the Finger Lakes region. Businesses in strip malls, small convenience stores, laundromats, and non-chain restaurants are targeted. The current program could be expanded statewide. This type of program could be effectively delivered by utilities using statewide protocols.

II.10. Solicitation to Meet Need for a Block of Energy Efficiency (electric and gas)

NYSERDA has successfully implemented a comparable program: the Aggregated Load Reduction Program (ALRP) and plans to develop and issue a second RFP for energy efficiency in the near term. NYSERDA issued a solicitation through which four large-scale contractors were selected to provide blocks of energy reductions (from 6 to 14 megawatts per contractor) at multiple facilities in the Con Edison service territory. A total of 37 megawatts of load reduction is under contract and being

³ The Staff Proposal is in error in its statement that the several programs targeting multifamily buildings mostly serve townhouses and low rise buildings and that no current program targets high rises.

delivered through a variety of demand management strategies.

II.11. Commercial Building Retrocommissioning (electric and gas)

NYSERDA's Building Performance and Financing Program is an example of current retrocommissioning practice in New York. The Building Performance Program for Con Edison's customer facilities funds up to 100 percent of the costs of retrocommissioning. Also performance incentives paid to providers cover a portion of the services needed to implement retrocommissioning projects and monitor results of facility improvements for selected customers.⁴ In addition to using experienced retrocommissioning providers to deliver services, performance incentives are used to fund operator training and update documentation and performance monitoring which are necessary to ensure that savings persist over a two-year period.

Energy efficient retrocommissioning analyses are also provided by NYSERDA's flexible technical assistance program.

II.12. Commercial Target Sectors (electric and gas)

Based on NYSERDA's successful experience with its Energy Smart Schools Program for elementary and secondary schools, sector-based efforts in commercial real estate, industry, colleges and universities, health care, municipalities, water and wastewater treatment facilities, and the hospitality sector are being aggressively pursued. Sector-based programs offer significant potential and are most effective when the entity servicing a sector has access to core programs, services, and incentives that address a sector's particular needs. Keys to successful sector-based programs include appropriate partnerships and effective packaging.

To be successful, a fast-track approach to a statewide customer-oriented, sustained, sector-based effort for existing facilities would: (1) quickly identify the needs of each sector based on recent experience; (2) leverage existing partnerships with sector stakeholders; and (3) provide financial incentives and technical assistance for cost-effective improvements through established programs .

NYSERDA's Energy Smart Schools Program has provided multi-faceted services and support to New York schools since 1996. The program provides numerous services and was recently recognized by ACEEE with a 2007 Exemplary Program Award.

II.13. Commercial Lighting Rebate Program (electric)

NYSERDA agrees with Staff that, "The most effective energy efficiency programs appear to be those that send a clear message to customers about how they can take action and simplify participation." Three of the proposed fast-track programs are anticipated to have significant activity in lighting for the commercial sector: the Small Business Direct Installation Program, the Solicitation to Meet Need for a Block

⁴ Commercial facilities (1) larger than 500,000 square feet in the Con Edison service territory (New York City, the Bronx, and Kings, Queens , Richmond, and Westchester Counties), (2) with peak electric demand of at least 1,500 kilowatts, and (3) high normalized demand.

of Energy Efficiency Funds, and the Commercial Lighting Rebate Program.⁵ While lighting is important — it accounts for roughly 40% of commercial electricity consumption — and competition among the programs for customers may be desirable, simultaneous marketing of three separate fast-track lighting programs could engender significant confusion and lead to customer inaction.

NYSERDA currently offers incentives for installation of efficient lighting through the Enhanced Commercial/Industrial Performance Program⁶ and the prescriptive lighting component of the Peak Load Reduction Program.

The most effective measures to improve lighting efficiency and gain energy savings will need to go beyond technology change outs and address design considerations. NYSERDA's Small Commercial Lighting Program and the regional Design Lights Consortium High Performance T8 effort are examples of two current activities supporting this type of effort. The Small Commercial Lighting Program does not offer rebates, as was misstated in the Staff Proposal; it is a market transformation program offering information, guidance and incentives to lighting practitioners on effective, energy efficient lighting solutions. This program just received an Exemplary Program Best Practice Award from the American Council for an Energy-Efficient Economy (ACEEE).

On a regional basis, NYSERDA helped launch and participates in a current regional Design Lights Consortium effort led by the Northeast Energy Efficiency Partnerships and supported by U.S. DOE to increase the availability and market adoption of High Performance T8 systems. Through this effort, sponsors have started to increase availability of commodity fixtures with high performance ballasts and lamps. U.S. DOE grant support ends in December 2007.

II.14. Flex Tech Including Industrial Process Improvements (electric and gas)

NYSERDA concurs with Staff's recommendation to capture the significant opportunities in process improvements. Performance-based incentives for process improvements should be provided directly to manufacturers for measured and verified electricity and fossil fuel savings. NYSERDA's flexible technical assistance program has received numerous ACEEE awards for providing industry with efficient process and system analyses. These efforts can be used to launch greatly expanded process and system savings in industry. Municipal water and wastewater systems also present significant opportunities.

III. Cross-Cutting Programs — All Sectors

III.1. Appliance and Equipment Standards and Building Codes⁷

In the Proposal, Staff recommend separating the Energy Code from the New York

⁵ Staff's description of the Commercial Lighting Rebate Program appears to be inaccurate.

⁶ Smart Equipment Choices is now a part of the Enhanced Commercial/Industrial Performance Program.

⁷ The Standards and Codes energy and peak demand savings numbers in Attachment 3 are 10 percent higher than the numbers presented in Section IV.

building code. Such separation would allow updates to be made independently but would not necessarily speed or simplify the process.

With respect to the section “Current Practice in New York,” it should be noted that further state-specific amendments to the New York Energy Code are now being developed by the New York Department of State, with the hope of developing an updated Code in 2008.

In addition, the following activities are important components of successful Code and Standards development and enforcement processes:

- New York should seek to influence the ASHRAE standard-setting process and participate in International Energy Conservation Code (IECC) committees to develop energy standards that are effective for the state.
- Expanded training should be made available for building code inspectors in addition to the routine training that is currently offered, and funding should be available for more in-depth training as well.
- Ongoing support should be provided for certification, compliance, enforcement, and data gathering activities for appliance standards.