July 13, 2012

VIA EMAIL: secretary@dps.ny.us

Hon. Secretary Jaclyn A. Brilling
New York State Public Service Commission
3 Empire State Plaza
Albany, NY 12223-1350

Re: **CASE No. 07-M-0548 Proceeding on Motion of the Commission Regarding and Energy Efficiency Portfolio Standard – Petition for Modification of EEPS Program Budgets and Targets**

CASE No. 10-M-0457 In the Matter of the System Benefits Charge IV

Dear Secretary Brilling:

Enclosed for filing in the above proceedings are the joint comments of Pace Energy and Climate Center, Northeast Energy Efficiency Partnerships, Natural Resources Defense Council, and Sierra Club.

Please contact us if there are any questions regarding these comments. Thank you for your assistance.

Very truly yours,

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BEFORE THE NEW YORK
PUBLIC SERVICE COMMISSION

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

CASE 10-M-0547 -	**In the Matter of the System Benefits Charge**

Comments of

NEEP, NRDC, Pace Energy and Climate Center, and Sierra Club

Regarding

NYSERDA Petitions re Modification of EEPS Program Budgets and Targets and Allocation of Uncommitted Funds to support CHP and Workforce Development

July 13, 2012

Introduction

> *. . .since the Commission's establishment of the initial EEPS programs and targets, there have been significant changes in the regulatory "rules of the game", the impacts of which could not be anticipated, much less incorporated, in the development of the initial EEPS targets.*[1]

On behalf of Northeast Energy Efficiency Partnerships (NEEP),[2] Pace Energy and Climate Center, NRDC and the Sierra Club, thank you for the opportunity to provide comments on NYSERDA's *Petition for Modification of Energy Efficiency Portfolio Standard Budgets and Targets* (Case No. 07-M-0548) and the related petitions for allocation of uncommitted EEPS and SBC III funds to support the Combined Heat and Power (CHP), workforce development and strategic initiatives; all filed on March 30, 2012.

In addition to our following comments on the proposed modification of targets, we support NYSERDA's request for reallocation of funds to support CHP (with the caveats mentioned below) and Strategic Initiatives in Case Nos. 10-M-0547 and 07-M-0548, as well as the proposal to fund workforce development initiatives.

New York has long been a national leader in delivering innovative, cost-effective efficiency programs—most recently illustrating its strong commitment to such programs in the October Orders establishing solid funding streams for an SBC IV through year end 2016 and maintaining robust budgets for an EEPS II through year end 2015. As the record reflects, our organizations have been strongly supportive of SBC and EEPS programs since they were initially proposed and established, and we commend Governor Cuomo and the Commission for taking this bold and essential step to ensure the state remains a leader on efficiency and clean energy.

However, while establishing collections and robust dollar budgets to support these programs is an essential precursor to any effective efficiency portfolio, it is but the first step in a much longer and more complex process, one that we have closely watched unfold since the inception of EEPS four years ago. And while there have been some improvements in implementing programs and ensuring ratepayers are realizing the benefits of these investments on the ground, there remain fundamental challenges to achieving "15 by '15"; challenges that can only be overcome if major reforms are made to the EEPS structure. While some factors that have led to shortfalls in savings achieved are outside the control of the Commission, DPS staff or program administrators—namely the economic downturn—many elements of the EEPS that have contributed to target shortfalls *are* within the control of the Commission and DPS Staff, and have remained largely unchanged despite the repeated comments of our organizations and many other stakeholders.[3]

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[1] *NYSERDA Petition for Modification of Energy Efficiency Portfolio Standard Budgets and Targets(Petition),* Case No. 07-M-0548, filed March 30, 2012, at 6.

[2] These comments are offered by NEEP staff and do not necessarily represent the view of NEEP's Board of Directors, sponsors or underwriters.

[3] Of the ten bullet points NYSERDA lists on pg 6 of its petition, five are entirely under the control of the Commission. These include: introduction of multiple energy efficiency program administrators targeting the same customers; shifting of focus in lighting from the compact fluorescent market to the solid state market; introduction

We are extremely troubled and disappointed that NYSERDA – a committed and successful administrator of energy efficiency programs with a proven track record – sees the need to so drastically reduce their EEPS savings targets. However, given the regulatory framework under which NYSERDA is being required to operate, we understand many of the justifications provided in their Petition for Modification. Simply put, it appears that NYSERDA is left with few alternatives other than to propose a modification of their savings targets and shifting of budgets. Indeed, to continue claiming that present targets could be met under the existing EEPS structure would be naïve, and result in flawed public policy. Our core concern, however, is the manner in which the Commission is approaching the issue of targets: rather than essentially creating a scenario in which program administrators are left with few options but to propose drastically reduced targets in the face of unworkable protocols, **all parties should be focusing on how to remedy the problems that have led us to this point so that any target reductions are minimized or avoided**. Though some minor target reductions may ultimately be justified due to the economic downturn, the magnitude of those reductions could be significantly reduced if the drivers of those projected shortfalls were addressed head on.

We cannot go back and correct past missteps; we can only move forward under DPS Staff's repeated approach of "continuous improvement," an approach we wholeheartedly support. With that in mind, we again implore the Commission to address some core EEPS issues that continue to hold the program back and have resulted in the current state of affairs.

While there are many important policy and programmatic issues addressed in the related petitions, our comments focus on the issues that we see as most important in determining whether New York State is able to meet its goals under the EEPS and the broader 15 x '15 Initiative.

The following is a brief summary of those concerns/suggestions:

1) Reduce customer confusion and counterproductive competition: *Limiting competition between NYSERDA and utilities in the same energy efficiency markets will reduce customer confusion and counterproductive outcomes that result from multiple program administrators targeting the same projects, thereby helping both NYSERDA and the utilities achieve their respective EEPS targets;*

2) Reconsider changes to the lighting program: *Completely shifting the focus of lighting programs from the compact fluorescent market to the solid state market is premature given the present lack of saturation by CFLs in the lighting market;*

3) Reform administrative framework: *The current regulatory framework continues to hinder the achievement of EEPS goals due to overly cumbersome administrative requirements, a perpetually changing technical manual, the application of a benefit cost screening formula that systematically undervalues EE benefits, and by requiring overly burdensome data reporting protocols.*[4]

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of the Technical Manual and its effects on the calculation of savings and what can be claimed; introduction of stricter program evaluation standards and new evaluation results; and increased data collection and reporting.

[4] We continue to fully support rigorous evaluation, monitoring and verification budgets and protocols. Indeed, these are an essential component of any well-designed efficiency portfolio. However, it appears that the current system of

Multiple Program Administrators competing in the same market space is not working

As in past comments, we reassert that a program delivery structure in which many different parties are responsible for similar program offerings creates customer confusion, results in program overlap, and, in the end, undermines the ability to reach full savings potential. Duplicative steps – such as buildings data needing to be entered multiple times to capture various opportunities rather than taking a concerted whole-building approach – is one example of what occurs when programs offered by both NYSERDA and the utilities are not operated under a cooperative umbrella, with opportunity for advanced coordination. This situation in the end will continue to waste ratepayer dollars, create tension between the program administrators who operate in the same or similar spaces, and undercut the many benefits that efficiency holds for the state. It also makes the program administrators (PAs) less nimble than in states where specific resource acquisition and market transformation programs are delivered by the same administrators, and are able to better respond and adjust to external factors like changing economic realities or customer demands.

Ideally, the efforts of program administrators, whether NYSERDA, utilities or a combination thereof, would be much more fully integrated and coordinated than they are at present. While the Implementation Advisory Group was meant to help serve this function, it is our understanding that efforts at coordination are falling far short of what is needed. Especially because of its complicated program delivery system, **we believe that it would be an enormous improvement for New York to create a formal and permanent structure akin to the stakeholder advisory boards that operate in neighboring states including Massachusetts, Connecticut, Rhode Island and Maine.** Such a board could contain representatives from the gas and electric utilities, NYSERDA and parties who represent the interest of business, low-income and other residents, the efficiency sector, environmental advocates and various relevant state agencies. In our experience, the best-functioning boards are those with paid expert consultants who can advise on technical issues.

Under this revised structure, the Public Service Commission could set robust savings targets based upon input from experts and stakeholders, but allow a significant degree of flexibility among the PAs on how to meet those goals, while still maintaining the sufficient regulatory oversight that ensures ratepayer dollars are being invested wisely.

Residential Lighting

We believe the PSC's 2011 decision to end programs for standard CFLs was premature, and out of step with other states in the region, and the country. This move continues to undermine the state's 15 by '15 goals as well as NYSERDA's savings targets, and leaves significant cost-effective savings potential untapped. Recent data on the Northeast regional estimate of sockets with high efficiency lighting is 36 percent (27 percent CFLs, 1 percent LED, 8 percent linear fluorescents). The 2010 CFL Socket Survey for New York State is 32 percent (excluding Long Island). NEEP's Residential Lighting Strategy

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reporting data may be so time consuming that it further slows progress by program administrators towards achieving their savings targets. Thus we recommend revisiting these protocols and streamlining them based on PA feedback, while retaining the necessary elements to ensure the Commission continues to receive sufficient data.

recommends that 90 percent of sockets should be filled with high efficiency lighting by 2020 (at a minimum of 45 lumens/watt). This leaves about 60 percent of New York sockets with inefficient bulbs, making the claim of market transformation unconvincing and the decision to end programs promoting spiral CFLs ill-advised.

Currently, NYSERDA’s point-of-sale lighting budget only supports LEDs and specialty CFLs, both of which require significantly higher per unit incentives. While supporting these next generation, highly efficient lighting resources is essential, doing so while completely abandoning more cost-effective spiral CFLs reduces the savings that could potentially be gained by supporting a greater variety of high efficiency lighting. In short, we agree with NYSERDA’s position as enunciated it its petition that the PSC’s decision on lighting is resulting in higher costs, decreased savings, and missed opportunities. A better approach would be to include LEDs and specialty CFLs *as well as* continuing to support spiral CFLs, and we recommend that the Commission invite NYSERDA to propose a program that better reflects the current status of this market; one that requires some support for emerging technologies but also recognizes the need capture low cost opportunities that will otherwise be lost. The facts do not support the Commission order to remove CFL installations from the NYSERDA and utility EEPS programs.

Regulatory Issues

We understand from NYSERDA’s petition and from our communications with utility program administrators that the burden on data collection—specifically the frequency and detail of this reporting—has been a problem, and takes away from their ability to focus on program delivery and customer service. Additionally, such burdens have been far greater in New York than in other high-achieving efficiency states. While we commend the Commission for its efforts to ensure public understanding of the progress being made to reach energy efficiency goals, that attempt needs to be balanced with a realistic assessment of how much information is sufficient to meet public good goals, while not hindering the ability of program administrators to deliver on programs due to excessive reporting requirements.

While oversight and coordination are necessary, we believe that regulators should focus more on the “what” and less on the “how” of efficiency goals. Program administrators should be able to move reasonable volumes of funding between program budgets and be able to propose and have quickly reviewed any mid-term program modifications. While some progress has been made in the past couple of years in this area, the changes to date have not gone far enough to reduce the administrative logjams that slow implementation and jeopardize the achievement of 15 x ’15. A well-functioning stakeholder board as mentioned above could facilitate such changes and reduce undue burdens while ensuring the wise use of ratepayer dollars.

Attribution vs. “Lost Savings” and Revive discussions of the non-jurisdictional wedges

As NYSERDA correctly points out, “In some cases, the energy efficiency savings attributable to specific actions are not actually lost, but they can no longer be counted by NYSERDA or other Program

Administrators toward realization of our EEPS targets." [5] From a broader state energy/public policy perspective, we are much less concerned with who receives "credit" for savings than ensuring we in fact achieve the savings themselves. To that end, we support NYSERDA's suggestion that the Commission consider establishing a new non-jurisdictional wedge that could account for savings achieved as result of market transformation.[6] While such an exercise may require some time and resources to achieve, we believe it is worth pursuing.

In addition, we again call on the Commission to revisit the non-jurisdictional wedges of its original 15 x '15 Order. While we recognize the statutory limitations on the Commission to enforce the savings assumed to be achieved by NYPA, LIPA, Codes and Standards, etc., these wedges can and must be better integrated into the process. This may ultimately require Governor Cuomo to take a more "hands-on" approach to the state's comprehensive energy efficiency efforts, but in the meantime the Commission can and should provide stakeholders and the public at large with regular updates on where things stand with those other important initiatives.

On Reallocation of Funds

We support NYSERDA's request to reallocate uncommitted SBC funds for CHP (Case No. 07-M-0548) and for Strategic initiatives including Advanced Clean Power, Smart Grid and Advanced Building under the Technology and Market Development portfolio. These all appear to be reasonable, appropriate and well-considered uses of ratepayer funds that will help meet the state's efficiency and clean energy targets.

In particular, we applaud a stronger emphasis on deep energy savings pilots. With aggressive savings goals and the plan to harness the power of efficiency to help meet customer energy demand far into the future, it is vital that programs drive for deeper and more holistic approaches to saving energy. However, as is well-noted, deeper is not cheaper. It will take research, pilots and indeed the freedom for trial and error to determine the procedures and technologies that will bring down the cost of deep energy programs in the future. Such work is the essence of NYSERDA's market transformation charge, and we support the commercial and industrial High Performance New Construction Program which targets these deeper and more innovative energy savings projects.

We also support NYSERDA's "Recommended Proposal" to fund CHP by utilizing Master Meter, Benchmarking, and uncommitted funds, **provided that specific funds for benchmarking are not decreased, but are (at a minimum) maintained as part of the transfer of the Benchmarking and Operations Efficiency program to the FlexTech program**. New York will struggle to achieve its '15 by '15' target without a robust initiative to address market barriers to increased energy efficiency. Benchmarking energy consumption is a critical element needed to address those barriers, as it helps to increase transparency and create greater demand for energy efficiency. It is also important that NYSERDA ensures that it has an adequate budget to still fulfill the objectives of its Electric Reduction

[5] Petition at 6.

[6] Petition at 7. "Future analysis may be appropriate to identify and quantify an additional non-jurisdictional wedge (e.g., a market transformation wedge) that captures these real but unclaimed savings".

for Master-Metered Buildings Program, as programs to reduce electricity use in multifamily buildings where residents currently do not pay for their electricity usage are critical.

Beyond these specific programmatic positions, we are troubled by the fact that budgets in both electric and gas programs were so grossly underspent. Again, while we understand the reasons presented on page six of the Petition and that the economic downturn has posed a significant challenge to securing projects, a significant percentage of the other drivers mentioned are directly attributable to the regulatory framework set forth by the Commission, notably administrative burdens – far above and beyond what are required of program administrators in other leading efficiency states – along with the problem of multiple program administrators targeting the same customers. Taking immediate steps to correct these will expedite the time it takes to collect ratepayer dollars and reinvest them in EEPS programs, which is essential to ensuring we both achieve the state's ambitious targets and galvanize public support for these efforts.

Conclusion

In summary, we acknowledge the very challenging environment that NYSERDA and the other PAs are operating under, and we urge the PSC to take steps to create a more effective policy framework. New York has had—and should continue to have—some of the leading efficiency and clean energy programs in the nation. The Commission took some productive initial steps to improve the capacity of the EEPS program administrators to deliver energy efficiency savings at least cost, but those steps are only start; additional reforms are essential and must be adopted without delay.

We appreciate this opportunity to comment, and look forward to working with Commission, DPS staff, NYSERDA, and the utilities in order to ensure we do in fact get to 15 x '15, and continue to pursue a robust efficiency portfolio beyond 2015.