STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on April 18, 2013

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
Maureen F. Harris
James L. Larocca
Gregg C. Sayre

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

ORDER MODIFYING CERTAIN ENERGY EFFICIENCY PORTFOLIO STANDARD (EEPS) PROGRAMS

(Issued and Effective April 25, 2013)

BY THE COMMISSION:

INTRODUCTION

In this order, the Commission (i) denies Orange & Rockland Utilities, Inc.’s (O&R), New York State Electric & Gas Corporation’s (NYSEG), Rochester Gas and Electric Corporation’s,(RG&E) and Niagara Mohawk d/b/a National Grid’s (Niagara Mohawk) requests to increase budgets for their Small Business Direct Install (SBDI) programs; (ii) grants all Program Administrators (PAs) the discretion to allow customers with average demands of up to 110 kW to participate in their SBDI programs; and (iii) authorizes all PAs to adjust SBDI program rebates, on a per customer basis, up to 70% of project installation costs.

BACKGROUND

By order issued June 23, 2008, the Commission created an Energy Efficiency Portfolio Standard (EEPS) for New York State to develop and encourage cost-effective energy efficiency programs.[1] The Commission directed the New York State Energy Research and Development Authority (NYSERDA) and the six large investor-owned electric utilities to submit electric energy efficiency program proposals. Gas utilities serving more than 14,000 customers were also directed to submit proposals for residential heating, ventilation and air conditioning (HVAC) energy efficiency programs. In 2009, the Commission approved a number of utility administered energy efficiency programs, including electric SBDI programs for commercial customers with average demand loads of less than 100 kW.[2]

On October 25, 2011, among other actions, the Commission reauthorized most of the EEPS programs it had previously approved,[3] including O&R's, NYSEG/RG&E's and Niagara Mohawk's SBDI programs for the period 2012 through 2015. The October 25, 2011 order also directed program administrators to submit any program modifications that would result in substantial impacts on targets and budgets by March 31, 2012.[4] In response, NYSEG and RG&E filed petitions on March 30, 2012

[1] Case 07-M-0548, Energy Efficiency Portfolio Standard (EEPS), Order Establishing Energy Efficiency Portfolio Standard and Approving Programs (issued June 23, 2008).

[2] Case 08-E-1003,et al., Energy Efficiency Portfolio Standard (EEPS), Order Approving "Fast Track" Utility-Administered Electric Energy Efficiency Programs with Modifications (issued January 16, 2009), and Case 08-E-1127, et al., Energy Efficiency Portfolio Standard (EEPS), Order Approving Certain Commercial and Industrial Customer Energy Efficiency Programs with Modifications and Addressing Independent Program Administrator Filings (issued November 13, 2009).

[3] Case 07-M-0548, supra, Order Authorizing Efficiency Programs, Revising Incentive Mechanism, and Establishing a Surcharge Schedule (issued October 25, 2011).

[4] Id., p. 12.

and O&R and Niagara Mohawk[5] filed petitions on April 2, 2012, proposing substantial modifications to their SBDI programs.

SUMMARY OF PETITIONS

O&R

O&R's April 2, 2012 petition regarding its SBDI program requests: (i) an increase to the program's approved cost of savings from $302 per MWh[6] to $355 per MWh; and (ii) discretion to increase the maximum demand eligibility limitation by no more than 10%. O&R states that all utility PAs are spending at a faster rate than the originally approved cost of savings. O&R claims that without a budget increase, it will need to continue targeting larger, higher usage customers in order to achieve established savings target, but claims the majority of those customers have already participated in the program. O&R states that smaller projects typically cost more per MWh because fixed costs are spread over smaller savings. O&R asserts that more efficient but more expensive cost-effective lighting measures are often rejected to avoid exhausting program funds before meeting targets, resulting in lost savings opportunities. In addition, O&R claims that as lighting standards increase over the next four years, the cost to implement all lighting programs will increase.

In its petition, O&R states that the February 17, 2012 order reviewed its SBDI program's historical spending for the period January 2010 through November 2011 and recognized the need to increase the program budget. The analysis in that order

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5 On May 9, 2012 Niagara Mohawk filed an erratum to its April filing to correct a number of minor round-off errors in certain dollar amounts and to properly title certain tables. The filing did not change Niagara Mohawk's proposals or the arguments supporting them.

6 Case 07-M-0548, supra, Order Approving Utility Target Adjustments (issued February 17, 2012).

eliminated the high cost reported for December 2011 as an anomaly. O&R asserts that the December costs were not an anomaly but a result of delayed invoices that artificially understated the dollar per MWh cost in prior months. O&R indicates that including these costs in the calculation results in a cost per MWh of $373 for the relevant period.

O&R states that it has worked with its consultant to redesign its SBDI program at a cost of $355 per MWh and requests an annual budget increase of approximately $600,000 for each of the years 2012 – 2015 to accommodate that cost per MWh. In addition, O&R requests the discretion to allow customers whose average demand falls outside the eligibility criteria (currently 100 kW) by up to 10% to participate in its SBDI program. O&R asserts that there may be circumstances where a customer exceeds the maximum eligibility limit due to an anomaly in its billing history, but would still be an excellent candidate for the program.

NYSEG/RG&E

Concerning the companies’ SBDI programs, NYSEG/RG&E’s March 30, 2012 petition seeks: (i) authority to adjust incentive levels, on a per customer basis, up to 70% of project costs; and (ii) an increase in program funding to $355/MWh for all program administrators. NYSEG/RG&E state that their SBDI programs currently provide participants a fixed incentive amount of 70% of the project installation costs, but have come to recognize that not all customer participation requires such a high incentive. In addition, NYSEG/RG&E state that having a high fixed incentive level prevents the programs from offering more expensive but cost effective measures in order to avoid exceeding current budget authorizations.

NYSEG/RG&E claim that despite strong efforts to control costs, they were unable to achieve the target cost of savings of $269/MWh during 2009 – 2011, although the total budget was not exceeded. NYSEG/RG&E state that the current budget requires the companies to focus on high savings lighting projects. In addition, NYSEG/RG&E express concern that the programs will exhaust the market potential for higher saving projects before 2015, requiring an increasing percentage of higher cost projects if the programs are to continue to acquire savings. NYSEG/RG&E state that this will increase the difficulty of achieving full savings targets within the approved budgets.

NYSEG/RG&E also assert that other factors, such as rising costs, the composition of the companies' service territory, and the necessity for increased outreach and education efforts due to market saturation, will put pressure on SBDI programs costs. NYSEG/RG&E request the budgets be increased to provide program funding of $355/MWh for all program administrators. To provide for this level of funding, NYSEG and RG&E propose annual budget increases (2012 through 2015) of approximately $2.8 million and $1.3 million, respectively. NYSEG/RG&E's annual savings targets would remain unchanged.[7]

[7] In its March 30, 2012 petition, NYSEG incorrectly stated its proposed annual savings targets for 2012 - 2015 as 31,530 MWh and its proposed spending for the same period as $11,193,150. Staff confirmed with the company that its proposal is to maintain its annual savings target at 32,326 MWh and increase its annual spending to $11,475,730 for the period 2012 – 2015.

Niagara Mohawk

Niagara Mohawk's April 2, 2012, petition requests, among other things,[8] a modification to its Small Business Services Energy Efficiency program (SBS program) to increase its approved cost of savings from $267 per MWh to $355 per MWh. The SBS program is Niagara Mohawk's SBDI program for commercial customers with electric loads less than 100 kW.

In its petition, Niagara Mohawk states that although its SBS program allows for incentives to be paid at 70% of project costs, it has paid an average of approximately 65% due to budgetary restrictions. Niagara Mohawk states that an increase in its funding levels for its SBS program will allow it to provide average customer incentives of 70% of the overall project cost.

Niagara Mohawk claims that total program costs per MWh increased 4% from program year 2010 to 2011, while incentive costs increased 7% and energy savings per participant decreased from 21.988 MWh to 19.604 MWh, more than 10%. Niagara Mohawk states that incentive cost increases that are higher than average project cost increases over the same period could indicate a need to increase incentives as the market is saturated.

Niagara Mohawk states the prime market for the SBS Program is its service classification No. 2 – Demand (SD2). These customers have higher energy consumption and provide the best opportunity for energy savings among eligible customers. The company further claims that 70% of the over 10,000

[8] Niagara Mohawk's requests for an increase in funding to its electric mid-sized C&I program and to combine its mid-sized and large electric C&I programs into a single program were considered in a February 19, 2013 order. See Case 07-M-0548, supra, Order Addressing Block Bidding and Other Utility Energy Efficiency Portfolio Standard Proposals (issued February 19, 2013).

participants in the SBS program are SD2 customers. Niagara Mohawk states that as the program continues it will have to seek participants with lower consumption levels and less energy savings potential resulting in higher program costs. For these reasons, Niagara Mohawk requests an annual budget increase of approximately $8 million for its SBS program which would provide funding at a rate of $355 per targeted MWh.

NOTICES OF PROPOSED RULE MAKING

Notices of Proposed Rulemaking concerning requests for modifications to the SBDI programs were published in the State Register on May 9, 2012 [SAPA 07-M-0548SP51], [SAPA 07-M-0548SP62], and [SAPA 07-M-0548SP64]. The minimum time period for the receipt of public comments pursuant to the State Administrative Procedure Act (SAPA) regarding these notices expired on June 25, 2012. Multiple Intervenors submitted comments as described below.

SUMMARY OF COMMENTS

On June 25, 2012, Multiple Intervenors (MI) filed general comments in response to various petitions by PAs seeking EEPS program changes, including the O&R, NYSEG/RG&E, and Niagara Mohawk petitions described here. MI objects to any budget and savings target changes that increase program costs. In addition, MI objects to any modifications unless and until the Commission confirms that the programs will remain cost effective. MI also argues that any over collection of EEPS funds be returned to ratepayers.

DISCUSSION

O&R’s request for discretion to allow customers with demand up to 10% over the existing program eligibility limit

(100 kW) to participate in its SBDI program is reasonable and will be approved. We will also authorize the same flexibility for all other PA's SBDI programs. Permitting discretion to raise the limitation where a good candidate for the program would otherwise not qualify will increase the potential participants in the program. It will also give the PAs an appropriate level of flexibility to deliver the energy efficiency services that better meet the needs, and savings potential, of individual customers. We are aware that granting this discretion for SBDI programs results in the potential for business customers to be eligible to participate in both an SBDI program as well as a mid-sized commercial program. PAs are directed to ensure that customers within the demand range of 100 kW to 110 kW be afforded the choice to participate in either an SBDI program or a mid-sized commercial program, but not both.

NYSEG/RG&E's request for authorization to modify their SBDI rebate structure from a fixed 70% of project cost to rebates of up to 70% is reasonable and we approve it. We will also authorize the same flexibility for all other SBDI programs. Currently, most SBDI program rebate levels are fixed at a certain percentage of the project cost.[9] Allowing PAs the flexibility to adjust incentive levels[10] to avoid over incentivizing projects should help manage program costs and provide for the inclusion of more costly measures without spending above authorized levels.

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[9] Case 08-E-1003 et al., Energy Efficiency Portfolio Standard (EEPS), Order Approving "Fast Track" Utility-Administered Electric Energy Efficiency Programs with Modifications (issued January 16, 2009).

[10] The PAs currently have the flexibility to lower rebates or incentive levels within an entire program offering, as appropriate, but the authorization of that flexibility does not appear to contemplate what we authorize here – adjustments on a per customer or per project basis as needed.

Requests by O&R, NYSEG/RG&E, and Niagara Mohawk to increase their SBDI budgets are not sufficiently supported by the petitions and will not be approved at this time. Analysis of SBDI performance data submitted by the petitioners in their monthly scorecard reports, annual reports, and incentive filings show that during the period 2009-2011, for most PAs, the cumulative costs of SBDI programs were decreasing and approaching the authorized target spending levels. During 2012, some SBDI programs experienced increased costs, while others incurred lower costs.

It is premature to increase the level of funding available to PAs to achieve the authorized targets for 2012 – 2015. While trying to achieve their targets for 2012, PAs were simultaneously trying to close out projects that had been committed prior to December 31, 2011. With most projects committed prior to December 31, 2011 now complete, 2013 should be more representative of a normal year and a better basis to make decisions related to adjusting budgets and/or savings targets.

PAs are encouraged to continually look for ways to optimize their programs and offer new measures or other program improvements to maximize the effectiveness of program funds. In addition, it is our hope that the flexibility granted herein, related to rebate levels and the maximum demand eligibility requirement for SBDI programs, in addition to the streamlined process to add measures to existing programs authorized in the June 20, 2011 order,[11] will enable PAs to more readily achieve their savings targets within the authorized budgets.

[11] Case 07-M-0548, supra, Order Approving Modifications to the Energy Efficiency Portfolio Standard (EEPS) Program to Streamline and Increase Flexibility in Administration (issued June 20, 2011).

We share MI's concerns that modifications to approved programs should not be made without consideration of the impact on cost and program effectiveness. The modifications approved here do not change the overall budgets or targets for these programs. At this time, for the same reasons we stated in the October 25, 2011 order, we decline to conduct a comprehensive evaluation of the Total Resource Cost for each minor program change.[12]

SEQRA FINDING

Pursuant to our responsibilities under the State Environmental Quality Review Act (SEQRA), in conjunction with this order we find that programs modified here are within the overall action previously examined by us in Case 07-M-0548 and will not result in any different environmental impact than that previously examined. In addition, the SEQRA findings of the June 23, 2008 order in Case 07-M-0548 are incorporated herein by reference and we certify that: (i) the requirements of SEQRA, as implemented by 6 NYCRR part 617, have been met; and (ii) consistent with social, economic, and other essential considerations from among the reasonable alternatives available, the action being undertaken is one that avoids or minimizes adverse environmental impacts to the maximum extent possible.

CONCLUSION

For the reasons discussed above, the Commission denies the requests from O&R, NYSEG, RG&E and Niagara Mohawk to increase the budgets for their SBDI programs. The Commission approves O&R's request to allow, at its discretion, customers whose demand exceeds the current eligibility limit by up to 10% to participate in its SBDI program and authorizes all PAs

[12] Case 07-M-0548, supra, Order Authorizing Efficiency Programs, Revising Incentive Mechanism, and Establishing a Surcharge Schedule (issued October 25, 2011), p. 6.

administering SBDI programs to modify those programs similarly. The Commission also approves NYSEG/RG&E's request to revise the rebate structure in their SBDI programs to allow for incentives of up to 70% of project installation costs rather than a fixed 70%, and authorizes all PAs to make such a modification to their SBDI programs.

The Commission orders:

1. Orange & Rockland Utilities, Inc.'s (O&R), New York State Electric & Gas Corporation's (NYSEG), Rochester Gas and Electric Corporation's,(RG&E), and Niagara Mohawk Power Corporation d/b/a National Grid (Niagara Mohawk) are authorized to modify their Small Business Direct Install (SBDI) programs in the manner described in the body of this order. The program modifications may be applied immediately.

2. Within 60 days of the issuance of this order, O&R, NYSEG, RG&E, and Niagara Mohawk, as well as other PAs who wish to modify their SBDI programs as authorized herein, are directed to submit revised implementation plans reflecting the approved modifications.

3. The Secretary is authorized to extend the deadlines set forth in this order.

4. These proceedings are continued.

By the Commission,

(SIGNED) JEFFREY C. COHEN
Acting Secretary