STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on August 18, 2011

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
Maureen F. Harris
Robert E. Curry, Jr.
James L. Larocca

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

CASE 08-E-1003 - Petition of Orange and Rockland Utilities, Inc. for Approval of an Energy Efficiency Portfolio Standard (EEPS) "Fast Track" Utility-Administered Electric Energy Efficiency Program.

CASE 08-E-1007 - Petition of Consolidated Edison Company of New York, Inc. for Approval of an Energy Efficiency Portfolio Standard (EEPS) "Fast Track" Utility-Administered Electric Energy Efficiency Program.

CASE 08-E-1127 - Petition of Consolidated Edison Company of New York, Inc. for Approval of an Energy Efficiency Portfolio Standard (EEPS) Utility-Administered Electric Energy Efficiency Program.

CASE 09-G-0363 – Petitions for Approval of Energy Efficiency Portfolio Standard (EEPS) Gas Energy Efficiency Programs.

ORDER GRANTING REHEARING, REAFFIRMING UTILITY SHAREHOLDER INCENTIVES FOR 2009 THROUGH 2011, AND ADJUSTING CERTAIN PROGRAM TARGETS AND BUDGETS

(Issued and Effective August 22, 2011)

BY THE COMMISSION:

INTRODUCTION

In this order, the Commission grants rehearing of a December 21, 2010 Order[1] in this proceeding; reaffirms the regime for Energy Efficiency Portfolio Standard (EEPS) utility shareholder incentives for the years 2009 through 2011; and adjusts energy savings targets and budgets for certain EEPS programs administered by Consolidated Edison Company of New York, Inc. (Con Edison) and Orange and Rockland Utilities, Inc. (O&R). The programs with such adjustments include the Con Edison electric Appliance Bounty Program (residential), Residential Direct Install Program, and Commercial and Industrial Equipment Rebate Program; the Con Edison gas Commercial Gas Efficient Equipment Rebate Program; and the O&R electric Commercial Existing Buildings Program.

BACKGROUND AND SUMMARY OF PETITIONS

When EEPS programs are approved or modified, the Commission sets target energy savings for each year, and annual budgets. Some adjustments to what is set by the Commission can be made by the Director of the Office of Energy Efficiency and Environment (OEEE Director) in certain circumstances. In addition, a process has been established to consider whether revisions made to the Technical Manual (used to guide the calculation of savings from particular efficiency measures) require revisions to individual program targets. It is expected that the process will result in a downward revision of many

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[1] Case 07-M-0548, et al., Energy Efficiency Portfolio Standard (EEPS), Order Combining Incentive Targets, Clarifying Incentive Mechanism Details and Establishing Implementation Advisory Group (issued December 21, 2010).

targets by the Commission as the higher accuracy of the Technical Manual revisions is applied.

In regard to meeting the targets, the six electric utilities (Central Hudson Gas & Electric Corporation [Central Hudson], Con Edison, O&R, Niagara Mohawk Power Corporation [Niagara Mohawk], New York State Electric & Gas Corporation [NYSEG] & Rochester Gas and Electric Corporation [RG&E]) are all subject to a mandatory utility shareholder incentives regime based on a rate of $38.85 per megawatt-hour. This figure was derived from an estimate of 20 basis points on the return on equity of the state’s electric utilities. New York State Energy Research and Development Authority (NYSERDA) administers electric energy efficiency programs that represent 45% of the EEPS electric spending. NYSERDA's programs are not subject to an incentives regime. Therefore, 55% of the EEPS electric spending and 100% of the EEPS utility-administered EEPS electric spending is subject to the incentives regime. Con Edison is also subject to a separate peak load reduction incentive for New York City at a maximum of $5 million per year.

Seven gas utilities (Con Edison, O&R, Niagara Mohawk, NYSEG, RG&E, KeySpan Gas East Corporation [KEDLI] & The Brooklyn Union Gas Company [KEDNY]) are subject to a voluntary utility shareholder incentives regime (the utilities could elect not to participate) based on a rate of $3.00 per incremental Mcf. This figure was derived from an estimate of 19 basis points on the return on equity of the state’s gas utilities and 10% of the estimated program costs. Central Hudson, Corning Natural Gas Corporation (Corning) and St. Lawrence Gas Company, Inc. (St. Lawrence) administer gas energy efficiency programs that represent 1% of the EEPS gas spending. Central Hudson, Corning and St. Lawrence elected to not participate in the gas incentive program. NYSERDA administers gas energy efficiency programs that represent 51% of the EEPS gas spending. NYSERDA's programs are not subject to an incentives regime. Therefore, 48% of the EEPS gas spending and 98% of the EEPS utility-administered EEPS gas spending is subject to the incentives regime. NFG administers some gas efficiency programs as part of a rate plan that are not part of EEPS.

The energy incentives are to be applied symmetrically, positive and negative, on a sliding scale relative to the percent of efficiency targets achieved. The positive incentive scales between 100% and zero for performance from 100% to 80%. Performance between 80% and 70% (the "deadband") earns no positive or negative incentive. The negative incentive scales between zero and 100% for performance from 70% to 50%. Performance below 50% earns a 100% negative incentive. The measurement period for performance is the aggregate of calendar years 2009 through 2011. In 2012, when the incentives are to be calculated, the utility program administrators are allowed to plead for adjustments to forgive under-performance on a program by program basis that can be linked to poor economic climate for such programs. The incentives are to be calculated based on the aggregate performance of the overall portfolio of programs, but the Commission reserved the right to cap or weight the contribution of individual programs in the portfolio if the utility placed undue emphasis on one or more programs at the expense of a balanced portfolio.

The New York City peak load reduction incentive is positive only and is applied at the rate of $100,000 per megawatt up to a maximum of $5 million and 50 megawatts.

In December of last year, the Commission combined the 2009-2010 energy savings targets with the 2011 energy savings targets for incentives calculation purposes to give the utilities more time to overcome challenges and to eliminate the need to give any future consideration to the following factors that the utilities allege affected their performance: (a) the number, nature and magnitude of changes to proposed programs that were adopted; (b) the length of the approval process for energy efficiency programs; (c) the alleged lack of participation by potential implementation contractors in the RFP (request for proposals) processes; and (d) the effect of currently moderated fuel and energy costs on demand for energy efficiency. As noted above, the Commission was persuaded that it may be necessary in applying incentives and assessing portfolio performance to consider the effect of the depressed economic situation existing during 2009 and 2010, but the burden of proof of an effect is on the utilities to demonstrate concretely on a program by program basis such an effect. If a utility wants to preserve a claim in that regard, it was directed to first explore the issue of how to quantify and present such a claim, preferably in the first quarter of 2011, with the Implementation Advisory Group.

Con Edison/O&R submitted a petition seeking rehearing of the December 21, 2010 EEPS Order. Con Edison/O&R seek (a) general adjustments to the energy savings targets or the deadline to achieve the targets; (b) adjustments specifically to certain program-specific targets;(c) further consideration of negative factors affecting utility performance; and/or (d) in the alternative, waiver of the utility shareholder incentives for the period 2009 through 2011. The petition also seeks some miscellaneous clarifications.

Con Edison/O&R state that the Commission committed an error of fact when it determined that 2009-2011 energy savings target could be achieved by the end of 2011, without either adjustments to the energy savings targets to reflect the factors that have negatively affected their ability to achieve their energy savings targets or extending their deadline to achieve the targets. Con Edison/O&R claim that the economic climate remains difficult and energy prices remain low, and the 2011 annual targets themselves pose a significant challenge under the current framework. They believe the framework does not leave reasonable room to “make up” for the 2009-2010 shortfall in 2011; the added time by itself does not make it feasible, or even possible, to do so.

Con Edison/O&R also claim that the Commission did not address the effects of program changes and delayed approvals that resulted in their inability to achieve their energy savings targets. Con Edison provides the example of “the Commission’s disallowance of the electric measure for high efficiency fixtures/design that meets federal code” in Con Edison’s C&I Equipment Rebate Program, and states the associated target reduction reflected in that order significantly understates the amount associated with the measure, thereby resulting in an inflated savings target. Another example given is, due to changes in savings calculations for refrigerators, refrigerators were removed from the Multifamily Energy Efficiency Program. Con Edison/O&R claim that as a result the program is less attractive to the rent stabilized and rent controlled markets that the program was designed to reach.

Con Edison’s Appliance Bounty, Residential Direct Install and Residential Air Conditioning programs, filed in September 2008, were not approved until January 2010. According to Con Edison/O&R, the programs were designed to be implemented and jointly marketed in coordination with the HVAC electric and gas programs, approved a year earlier; this bifurcation and delay vitiated plans for joint marketing using the Direct Install program to drive customers to other residential programs. Con Edison was not allowed to bundle the programs for marketing purposes until July 2010, leaving only six months to implement and achieve targets that were proposed for a longer time frame and that assumed seasonal buying. Con Edison submitted a petition to reduce the savings accordingly, but it has not been acted upon.

The petition states that O&R had requested a budget of $16.7 million for its Small Business Direct Install program to achieve an energy savings target of 35,900 MWh, but the program was approved with a budget of $9.1 million, a funding decrease of 46 percent, while the energy savings target was only reduced 4.4 percent to 34,345 MWh. According to O&R, it submitted a petition to develop a Small Business Direct Install program based on reasonable per MWh costs that accurately reflects the rural and suburban nature of its service territory and that is based on the actual economic energy efficiency potential identified in its market potential study, but it has not been acted upon. Con Edison/O&R claim that the reduced budget, combined with other factors including program delays and the economy, make it unlikely that O&R will be able to reach its energy savings target.

Con Edison/O&R state that the Commission did not approve the C&I programs, filed in September of 2008, until October 2009 (for Con Edison’s Prescriptive Rebate Program and O&R’s Existing Building Program) and November 2009 (for Con Edison’s Custom Program). Con Edison asserts that implementation and marketing plans for the programs were not approved until the end of March, 2010 (Note: contrary to the assertion, no approval was required for the implementation plans). Con Edison/O&R claim that the delays resulted in opportunities to save energy that are lost forever and achieved savings are far below the energy saving targets for the programs. The energy savings targets were not adjusted to reflect the very late start.

Con Edison/O&R further claim that the energy savings targets are too aggressive to be realistically achievable, as demonstrated by a Global Energy Partners energy efficiency potential study for Con Edison completed in June 2010 (Global Study) that concludes that EEPS targets are consistently higher than mid-level estimates of realistic achievable potential through 2011 and move toward convergence in 2016 and later.

Con Edison/O&R ask that the Commission take several actions: 1) allow consideration of negative factors on the ability to achieve energy savings targets when it applies incentives and assesses portfolio performance; 2) extend the 2009 – 2011 energy savings targets through 2012, or 3) in the alternative, waive incentives for 2009 – 2011 for all or some of Con Edison/O&R' programs.

Con Edison/O&R also seek Commission approval for greater flexibility in the administration of EEPS programs, including the authority to reallocate funds between Con Edison C&I prescriptive and custom programs without limit. They claim that Con Edison cannot predict precisely which energy efficiency measures in the programs will attract customer interest, and budget flexibility is needed to respond to market conditions quickly in a manner that is not possible if seeking Commission approval for program changes continues to be required. Con Edison/O&R request that the Commission grant to DPS Staff the flexibility and authority to allow program changes that will increase the likelihood of utilities being able to achieve their 2009-2011 energy savings targets.

Con Edison/O&R seek clarification of the role of the EEPS Implementation Advisory Group (IAG), specifically whether the IAG will address the plan and scope for post-2011 EEPS programs. They recommend that the IAG discuss collaboratively post-2011 EEPS planning as soon as possible, and address the need for establishing appropriate program budgets and setting energy savings targets that are realistically achievable.

Con Edison/O&R seek clarification of the procedure for adjustments to program targets due to changes in the EEPS Technical Manual, and urge an expedited process. They state that the sooner the know whether certain program targets are overstated, the sooner they can make rational decisions about which programs should be continued as is, expanded or reduced in scope as they consider opportunities for program improvements. Con Edison/O&R identify one such issue for which they seek prompt resolution that affects 2011 program planning assumptions: the cooling load hours for room air conditioners. Con Edison/O&R ask that the Commission establish a process in which utilities may ask for expedited action on requests for reductions to targets due to Technical Manual changes and receive a Staff recommendation within 15 days.

Con Edison/O&R request that the Commission approve certain program modifications on an expedited basis. Con Edison seeks an increase from 75 units to 200 dwelling units in the cap on the size of buildings that are eligible for its Multifamily Building Energy Efficiency Program, claiming it would provide an opportunity to achieve substantial additional electric and gas energy savings and progress towards its targets. Con Edison also seeks to add freezer recycling to its Appliance Bounty program.

Con Edison proposes to modify its electric and gas Commercial and Industrial Custom Efficiency Programs to increase the existing per-project customer incentive caps of $250,000 for electric projects and the $100,000 for gas projects to $1,000,000 and $500,000, respectively. Con Edison/O&R claim that the proposed incentive cap increases would have the greatest impact on energy savings while keeping a sufficient proportion of funds available for smaller projects. Con Edison also proposes to be allowed to combine the prescriptive and custom program budgets for each fuel to increase flexibility and permit better responses to the marketplace.

O&R proposes to increase the customer rebate levels for its C&I Existing Buildings Program to allow it to compete on an even playing field with NYSERDA. It claims that the differences in incentives between the programs are too great to be addressed by the flexibility to change incentive levels with Staff approval that is currently available. O&R requests that its rebates be increased to match NYSERDA's rebates, and that funding be increased to cover the higher rebate levels, or, alternatively, that NYSERDA's rebates be adjusted to reduce their levels or to target other markets.

The Con Edison/O&R petition also requests action on other related Con Edison/O&R petitions. In Cases 08-E-1003 and 08-E-1007, Con Edison/O&R filed a petition dated February 17, 2009 that requests to have program funding reviewed against service territory wage rates and adjusted as appropriate. Con Edison/O&R state that measures, rebates, and incentives for the residential HVAC programs should be revised to reflect market conditions in individual service territories. Con Edison requests revisions to energy savings targets for its Residential HVAC and Small Business Direct Install Programs. Con Edison seeks to have the program start dates moved from April 1, 2009 to June 1, 2009 to allow for adequate lead time between Commission approval and operation of new programs. Con Edison seeks to be permitted to integrate its gas and electric energy efficiency programs for marketing purposes. Con Edison/O&R propose they should be allowed to reduce the notification period for Staff review of minor program changes to 30 days from 90 days, and that such changes should be allowed to take effect if no objections are raised. Con Edison/O&R state that should the Commission decline to make the proposed changes that the incentives and penalties should be revisited. In Case 08-E-1127, Con Edison submitted a petition dated November 23, 2009, and requests to have the energy savings target for its C&I Equipment Rebate Program reduced to account for the disallowed electric measure for High Efficiency Fixtures/Design that meets federal code. Also in Case 08-E-1127, Con Edison filed a petition dated February 3, 2010, and requests modifications to the start date, energy savings targets and budgets for the Appliance Bounty and Residential Direct Install Programs. In Case 07-M-0548, Con Edison/O&R filed a petition dated November 17, 2010, and seek clarification of the energy savings calculations for various measures, including refrigerator recycling, equivalent full load hours for commercial buildings and interaction factors, window film, air leakage sealing and opaque shell insulation, and room air conditioning recycling, and adjustment to the calculation of equivalent full load hours for room air conditioners.

NOTICE OF PROPOSED RULEMAKING

A Notice of Proposed Rulemaking concerning the EEPS modifications under consideration here was published in the State Register on March 16, 2011 [SAPA07-M-0548SP32]. The minimum period for the receipt of public comments pursuant to the State Administrative Procedure Act (SAPA) regarding that notice expired on May 2, 2011. The comments received are addressed as set forth below.

SUMMARY OF COMMENTS

Comments were received from National Grid and Con Edison/O&R. National Grid supports retaining the incentive mechanism and allowing certain program savings targets to extend through 2012. National Grid states that an additional year would allow the utility program administrators to build on operational momentum and move beyond the effects of the poor economy and other factors that existed at program launch and that are beyond their control to influence. National Grid supports the request to grant DPS Staff, and in turn program administrators, increased flexibility for reallocating budgets among EEPS programs. National Grid supports the request to increase the size of eligible buildings for utility multifamily building programs from the current cap of 75 dwelling units to something substantially greater. National Grid suggests that the cap may need to be greater than the 200 units proposed by Con Edison/O&R, and suggests that the IAG membership be consulted on what an appropriate cap should be. National Grid also supports making certain changes to utility prescriptive rebate levels to match those offered by NYSERDA, or reducing NYSERDA’s rebate levels to address the customer confusion that inequities in rebate amounts have created. National Grid recommends that in the longer term, NYSERDA and the utilities should have more unique offerings such that overlap and customer confusion is minimal. The comments of Con Edison/O&R restate the positions given in the petition summarized above.

DISCUSSION OF SPECIFIC PROGRAM TARGETS AND BUDGETS

Con Edison’s Appliance Bounty Program (electric)
Con Edison's Residential Direct Install Program (electric)

These programs were designed to be implemented and jointly marketed using the Residential Direct Install program to drive customers to other residential programs. Con Edison was not allowed to bundle the programs for marketing purposes until July 2010, so the targets and budgets should be adjusted downward to reflect a July 1, 2010 and not an April 1, 2010 start date. The change in start date is also justified by a delay we required to avoid conflict with a NYSERDA program funded through the American Recovery and Reinvestment Act of 2009. The revised budgets and targets are shown in the Appendix.

O&R Small Business Direct Install Program (electric)

Staff advises that the targets are achievable within the budgets given. O&R and Con Edison had submitted similar programs for our approval, but the O&R proposal was at a substantially higher cost per MWh than all other similar utility program proposals. The budget amount was reduced to bring it in line with Con Edison’s program. At the same time, we suggested O&R and Con Edison consider working together to administer a joint program, and we note that they both hired the same implementation contractor. We also note that while the original program was launched offering motors, refrigeration, and lighting measures, the program as implemented has been substantially a lighting-only program, and lighting measures in the commercial sector represent the largest area for potential savings according to the market potential study. Accordingly, we see no reason to make further adjustments to the energy savings targets as they appear to be achievable within the budgets.

O&R's Commercial Existing Buildings Program (electric)
Con Edison's C&I Equipment Rebate Program (electric)
Con Edison's Commercial Gas Efficient Equipment Rebate Program

O&R's Commercial Existing Buildings Program, and Con Edison's Commercial and Industrial Equipment Rebate and Commercial Gas Efficient Equipment Rebate Programs had marketing plans that were not approved until March 2010. Their budgets and savings targets shall be reduced to account for an April 1, 2010 start date instead of January 1, 2010. Con Edison is incorrect in its assumption that the 27% reduction in both the C&I Equipment Rebate Program budget and MWh target are related to the removal of the lighting measure. Rather, the dollar reduction was part of an effort to allocate available funding across various programs and the reduction in the target was directly related to the funding change. We, however, understand Con Edison's desire to reduce the program's target by the full amount of the originally proposed savings from the eliminated measure but will require that the full amount of the associated program expense also be eliminated from the program budget. Staff has worked with Con Edison to determine the full amount of the target and budget reductions related to the eliminated measure and reports that they are, respectively, 19,885 MWh and $11,404,737. We therefore direct that the targets and budgets be further reduced by those amounts to reflect the difference between the reductions ordered in our October 23, 2009 Order and the full amounts related to the eliminated measure. The revised budgets and targets are shown in the Appendix.

Con Edison’s C&I Custom Program (gas & electric)

Con Edison’s Commercial and Industrial Custom Programs are forecasted by Con Edison to reach 100% of their cumulative 2009-2011 target. Since the targets appear to be achievable within the existing budgets, there is no need to consider adjustments.

Con Edison's Residential Air Conditioning Program (electric)

Con Edison’s arguments regarding the appropriateness of the Equivalent Full-Load Hours (EFLH) (cooling) for room air conditioners, as adopted for use in the Technical Manual in the October 18, 2010 EEPS Order is no longer an issue. In the January 25, 2011 EEPS Order we established revised regional values for the EFLH (cooling) to replace the single statewide value adopted on October 18, 2010. In the January 25, 2011 EEPS Order we also adopted updated savings targets for O&R calculated with the appropriate regional value for EFLH (cooling). Staff has informed us that Con Edison has proposed an adjustment to this program’s target in the context of the process we established to identify all target revisions that would result from revisions to the Technical Manuals. Staff has reviewed those proposals and notice of Staff’s recommendations is scheduled for publication in the State Register.

Con Edison's Electric Residential HVAC Program
Con Edison's Small Business Direct Install Program (electric)
O&R's Electric Residential HVAC Program
O&R's Small Business Direct Install Program (electric)

The proposal to extend the start date for these programs from April 1, 2009 to June 1, 2009 may have been reasonable if the utilities had remained subject to a performance incentive mechanism under which they were accountable for meeting 2009 annual energy savings targets. In our December 21, 2010 EEPS Order, however, we extended the initial incentive performance period from 2009 to the end of 2011, which allows sufficient opportunity for Con Edison/O&R to overcome any disadvantage that may have occurred due to a two-month delay in 2009 program operations. Also, O&R’s Residential HVAC program has been discontinued and the associated 2009 energy savings target has been eliminated. Adjustments to the 2009 energy savings targets for these programs are not warranted and will not be made.

Con Edison Multifamily Energy Efficiency Program (electric)

Con Edison/O&R claim that the removal of refrigerators as an eligible program measure resulted in Con Edison’s inability to achieve the program energy savings target. The claim is not adequately supported. The petition states that the removal of the measure has made the program less attractive to its targeted market, but there is no showing of the amount of reduction in energy savings that can be achieved due to removal of the measure, or that the program targets cannot be met with the remaining energy efficiency measures. No adjustment to the program targets is warranted or will be made.

DISCUSSION OF OTHER ISSUES

Rebate Levels

O&R’s request for greater flexibility to change customer incentive levels for the Commercial and Industrial Existing Buildings Program has already been addressed, at least in part, by the June 20, 2011 EEPS Order that granted program administrators greater flexibility in the administration of EEPS programs, including changes in customer incentives. In addition, after the Con Edison/O&R petition was filed, the EEPS Implementation Advisory Group (IAG), that was established in the December 21, 2010 EEPS Order, was initiated and now meets regularly. The IAG is the forum for discussion by the program administrators of conflicts that exist between programs, and for attempting to reach consensus on the potential resolution of such conflicts, including inconsistencies in customer incentive levels. O&R should pursue the means available to it through the provisions of the June 20, 2011 EEPS Order and the IAG to address this issue before it is brought to the Commission for a decision.

Multifamily Unit Cap

Data provided in Appendix A of the January 20, 2011 Petition indicates that the average size for a participating gas building would be 50 units and the average size for an participating electric building would be 60 units. Given those average sizes, there does not appear to be a compelling basis for expanding the cap from 75 to 200 units as requested. We decline to make a change in the cap at this time.

Adding Freezers

No action is needed on Con Edison's request to expand the Appliance Bounty Program to include freezers. Our June 20, 2011 EEPS Order already provides for such flexibility.

Per-Project Incentive Caps

The per-project incentive caps are intended to ensure that the incentive budgets are not exhausted by a small number of customers. Con Edison requested to raise the per-project incentive caps for the C&I Custom Program from $250,000 electric/$100,000 gas to $1,000,000 electric/$500,000 gas. Con Edison's Custom Programs are forecasted to reach 100% of their cumulative 2009-2011 target. Since the targets appear to be achievable with the existing caps, there is no need to consider adjustments at this time.

Increased Flexibility

Con Edison's request to have prescriptive and custom budgets combined to increase flexibility fails to address our desire that Con Edison maintain a balanced portfolio between customer segments and would undermine the maintenance of an appropriate share of funding for smaller usage customers. Therefore, we shall not grant the request.

Proposed Change in Notification Period for Staff Review of Minor Program Changes

We have provided greater flexibility to program administrators to make program changes than was available to Con Edison/O&R when the utilities submitted this request. These include delegation to the Director of the Office of Energy Efficiency and Environment the authority to approve certain changes to program budgets, energy savings targets and customer incentive levels proposed by utility program administrators. We also gave further flexibility and autonomy to all program administrators to add certain energy efficiency measures to approved EEPS programs and to reduce customer incentive levels. Those provisions supersede the procedure for making minor program revisions provided by the January 16, 2009 EEPS Order.

We do not find it necessary to provide further flexibility to program administrators to modify programs at this time.

EEPS Targets Compared to Con Edison's Potential Study

We are not convinced with regard to the Con Edison/O&R assertion that the energy efficiency study performed by Global Energy Partners for Con Edison and dated June 2010 demonstrates that the EEPS goals are too aggressive to be reasonably achievable. Con Edison/O&R state that the Global Study concludes that the "EEPS goals are consistently higher than mid-level estimates of realistic achievable potential through 2011 and move toward convergence in 2016/17/18". We note that the Global Study shows in Table ES-15 a comparison of Global's results, as well as the results from a potential study performed for the Department of Public Service by Optimal Energy, with EEPS goals. That table shows the estimate of the aggregate Con Edison territory Maximum Achievable Potential (MAP) through 2011 to be 3,324 GWh by Global and 3,400 Wh per Optimal. The cumulative Realistic Achievable Potential (RAP) per the Global Study is described as 948 GWh through 2011 as compared to a total Con Edison territory goal of 1,961 GWh as computed by Global[2]. The conclusion that would be suggested is that the Con Edison territory goal is somewhere between the RAP and the MAP and therefore too high. However, an examination of the Optimal energy potential study shows that 3,400 GWh estimate was incorrectly described by Global as Optimal's MAP and was in fact an estimate of the RAP. Therefore, the two studies do not support each other but lead to divergent results which bound the aggregate EEPS/SBC3 goal established for the Con Edison service

[2] Global's estimate includes the initial EEPS Con Edison service territory goal, plus Global's estimate of the SBC III goal based on NYSERDA's statewide goal times the ratio of Con Edison funding to statewide funding.

territory. We therefore find that documentation provided in the Global Study, as corrected, does not support the conclusion that the Con Edison EEPS goal is too aggressive to be reasonably achievable.

Role of the Implementation Advisory Group (IAG).

The Implementation Advisory Group was given a specific charge in the December 21, 2010 EEPS Order where we stated that it would advise Staff on implementation issues and assist in program coordination among program administrators. We have been advised that the group has been very active in discussing such issues, including some that have been raised in the White Paper that Staff has prepared to help outline a roadmap for continuing the EEPS process post-2011. A notice seeking comments on the issues discussed in the White Paper has been published in the State Register and we urge Con Edison, O&R and all interested parties to file comments on post-2011 issues in that context.

Technical Manual

Regarding the Con Edison/O&R request for expedited processing of target adjustments due to changes in the EEPS Technical Manual, that process is currently underway through publication of a notice of all applicable utility target adjustments recommended by Staff in the State Register as envisioned by the process we previously outlined. We shall consider such adjustments after the required comment period has elapsed.

“Fast Track” Electric Programs Measures and Rebates

The proposal to establish program measures, rebates and incentives for the “Fast Track” electric programs that reflect conditions in individual service territories has some merit. We have already addressed this issue by providing greater flexibility to program administrators modify program offerings to add measures to programs and to adjust customer incentive/rebate levels. In that regard, Con Edison and O&R can apply the provisions of the June 20, 2011 EEPS Order.

UTILITY SHAREHOLDER INCENTIVES

We established the system of shareholder financial incentives for utility-administered electric energy efficiency programs to promote better program performance, to motivate utilities to pursue efficiency programs as a resource option, and as a tool to hold utilities accountable for meeting energy savings targets. In December 2010, we recognized that it takes considerable time and effort to start up new programs and the short timeframes allowed by us were purposefully ambitious. In that regard, we combined the 2009, 2010 and 2011 energy savings targets to create a single 2009-2011 target to give the utilities all of 2011 to catch up with the targets. We noted that we expected the utilities to redouble their efforts and meet that challenge, but we also allowed that it may be necessary in applying incentives and assessing portfolio performance to consider the effect of the depressed economic situation existing during 2009 and 2010, with the burden of proof of an effect to be on the utilities to demonstrate concretely on a program by program basis such an effect. We also established a process, that as noted above is currently underway, for any program administrator that believes the changes made to date in the Technical Manual caused particular program targets to now be overstated to make their case for lower targets to Staff in a cooperative manner in the Implementation Advisory Group. As discussed above, Staff has compiled the requests and formulated a recommendation on the need for restated targets for notice in the State Register for comment before we take action upon it. Finally, in this order, we are addressing claims that specific Con Edison and O&R targets need adjustment.

While the Con Edison/O&R petition is primarily seeking adjustments to the program targets, which we have addressed above, it also seeks a review of our incentives regime. At our request, Staff has compiled forecasts from the utility program administrators to test our assertion that the utilities could ramp up their activities in 2011 to sufficiently catch up on the cumulative 2009 through 2011 targets. It appears from the forecasts provided by the utilities that performance during 2011 in general is at a substantially higher rate than in prior years and they are indeed making substantial progress towards the targets. The tables below summarize the forecast of cumulative achievement levels for 2009 through 2011. It should be noted that the "targets" used in the tables were adjusted down to account for the adjustments we are approving in this order, and were also adjusted down to reflect Staff's recommendations regarding adjustments warranted due to changes in the Technical Manual. As noted above, we have not yet considered Staff's recommended adjustments due to changes in the Technical Manual, but those adjustments are included as a proxy for the action we may take in the future. Our conclusion after examining the tables is that the performance levels forecasted by the utilities are not so far from the targets as to warrant a reconsideration or adjustment to the incentives regime. However, we also note that the poor economic conditions of 2009 and 2010 are continuing through 2011.

The utilities should prepare their calculations of incentives awards, positive and negative, in the manner previously described in Commission orders and should include in such filings any request that in applying incentives and assessing portfolio performance we consider the effect of the depressed economic situation existing during 2009 through 2011, with the burden of proof of an effect to be on the utilities to demonstrate concretely on a program by program basis such an effect. We also note that despite our decision in the December 21, 2010 Order described above where we combined the 2009-2010 energy savings targets with the 2011 energy savings targets for incentives calculation purposes to give the utilities more time to overcome challenges and to eliminate the need to give any future consideration to the following factors that the utilities allege affected their performance: (a) the number, nature and magnitude of changes to proposed programs that were adopted; (b) the length of the approval process for energy efficiency programs; (c) the alleged lack of participation by potential implementation contractors in the RFP (request for proposals) processes; and (d) the effect of currently moderated fuel and energy costs on demand for energy efficiency, we shall remain open to further consideration of such factors (and new factors) in the filings, but only if they are based on new and compelling arguments. The filings covering the period 2009 through 2011 may be filed as soon in 2012 as they are ready, but should be filed no later than April 1, 2012. After they are received, a notice regarding the filings will be published in the State Register and the Commission will consider them for award (positive or negative) and collection through the System Benefits Charge (SBC) after the required comment period has elapsed. Staff and the utilities should discuss the process for deferring potential shareholder incentives and collecting them through the SBC at an upcoming meeting of the Implementation Advisory Group (IAG).

Forecast Incentives on a Cumulative 2009 - 2011 Basis

Electric Program Administrator	2009-2011 Targets (MWh)	2009-2011 Forecast Savings (MWh)	Forecast % of Targets	Award ($) (Positive or negative)
Central Hudson	62,277	58,722	94%	$1,728,903
Con Edison	409,491	236,834	58%	$(9,675,466)
Niagara Mohawk	497,243	462,460	93%	$12,561,293
NYSEG	98,787	62,917	64%	$(1,210,935)
O&R	46,118	22,305	49%	$(1,782,788)
RG&E	60,947	49,543	81%	$152,564

Gas Program Administrator	2009-2011 Targets (MMBTU)	2009-2011 Forecast Savings (MMBTU)	Forecast % of Targets	Award ($) (Positive or negative)
Con Edison	549,549	283,128	52%	$(1,570,568)
Niagara Mohawk	661,170	776,989	118%	$2,044,999
NYSEG	284,897	209,736	74%	$0
RG & E	501,547	471,907	94%	$1,092,902
KEDLI	297,800	277,647	93%	$609,429
KEDNY	512,845	368,479	72%	$0
Orange & Rockland	26,828	26,828	100%	$82,979

SEQRA FINDINGS

Pursuant to our responsibilities under the State Environmental Quality Review Act (SEQRA), in conjunction with this order we find that programs approved 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: (1) the requirements of SEQRA, as implemented by 6 NYCRR part 617, have been met; and (2) 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 practicable.

CONCLUSION

For the reasons discussed above, the Commission makes modifications to the EEPS utility shareholder incentives, and approves adjustments to the targets and budgets of specific EEPS programs, where deemed warranted.

The Commission orders:

1. System Benefits Charge (SBC) funding adjustments for Energy Efficiency Portfolio Standard (EEPS) programs being administered by Consolidated Edison Company of New York, Inc. (Con Edison) and Orange and Rockland Utilities, Inc. (O&R) are approved by program as set forth in the Appendix to this order. The annual program budgets, evaluation budgets, and energy savings targets for the programs shall be as set forth in the Appendix to this order.

2. Con Edison and O&R shall, within 30 days of the issuance of this order, submit updates to their implementation plans incorporating these adjustments.

3. The electric SBC collections are augmented such that during the remainder of calendar year 2011, the level of overall SBC electric revenue collections is decreased by $15,769,431, such decrease in collections to be implemented in the manner shown in Table 5 of the Appendix to this order.

4. The gas SBC collections are augmented such that during the remainder of calendar year 2011, the level of overall SBC electric revenue collections is decreased by $799,376, such decrease in collections to be implemented in the manner shown in Table 6 of the Appendix to this order.

5. Each utility affected by this order shall file tariff amendments and/or statements on not less than 30 days' notice to become effective October 1, 2011, incorporating the

revisions described herein. The requirements of Section 66(12)(b) of the Public Service Law as to newspaper publication of the changes proposed by these filings is waived.

6. The utilities should prepare their calculations of incentives awards, positive and negative, covering the period 2009 through 2011 and may file them as soon in 2012 as they are ready, but they shall be filed no later than April 1, 2012.

7. The Secretary at her sole discretion may extend the deadlines set forth herein.

8. These proceedings are continued.

By the Commission,

Jaclyn A. Brilling

Digitally Signed by Secretary
New York Public Service Commission

JACLYN A. BRILLING
Secretary

Table 1

Original Electric Program Costs and Savings Targets

Con Edison	**April 1, 2010 through December 31, 2010**	**2011**	**Total 2010-2011**	**% of Budget**
Appliance Bounty Program (Residential)				
Savings (MWh)	3,763	13,177	16,940	
Program & Administration Costs	$1,587,857	$4,318,293	$5,906,150	95.00%
Evaluation/M&V Costs	$83,571	$227,279	$310,850	5.00%
Total Budget	**$1,671,428**	**$4,545,572**	**$6,217,000**	**100.00%**

Con Edison	**April 1, 2010 through December 31, 2010**	**2011**	**Total 2010-2011**	**% of Budget**
Residential Direct Installation Program				
Savings (MWh)	1,363	5,517	6,880	
Program & Administration Costs	$1,167,686	$2,862,214	$4,029,900	95.00%
Evaluation/M&V Costs	$61,457	$150,643	$212,100	5.00%
Total Budget	**$1,229,143**	**$3,012,857**	**$4,242,000**	**100.00%**

Con Edison	**2010**	**2011**	**Total 2010-2011**	**% of Budget**
Commercial and Industrial Equipment Rebate Program				
Savings (MWh)	66,574	66,574	133,148	
Program & Administration Costs	$35,605,994	$35,605,994	$71,211,988	95.00%
Evaluation/M&V Costs	$1,874,000	$1,874,000	$3,748,000	5.00%
Total Budget	**$37,479,994**	**$37,479,994**	**$74,959,988**	**100.00%**

O&R	**2010**	**2011**	**Total 2010-2011**	**% of Budget**
Commercial Existing Buildings Program				
Savings (MWh)	7,229	7,229	14,458	
Program & Administration Costs	$2,070,347	$2,070,347	$4,140,694	95.00%
Evaluation/M&V Costs	$108,966	$108,966	$217,932	5.00%
Total Budget	**$2,179,313**	**$2,179,313**	**$4,358,626**	**100.00%**

Table 2

Revised Electric Program Costs and Savings Targets

Con Edison	**July 1, 2010 through December 31, 2010**	**2011**	**Total 2010-2011**	**% of Budget**
Appliance Bounty Program (Residential)				
Savings (MWh)	2,508	13,177	15,685	
Program & Administration Costs	$1,058,571	$4,318,293	$5,376,864	95.00%
Evaluation/M&V Costs	$55,714	$227,279	$282,993	5.00%
Total Budget	**$1,114,285**	**$4,545,572**	**$5,659,857**	**100.00%**

Con Edison	**July 1, 2010 through December 31, 2010**	**2011**	**Total 2010-2011**	**% of Budget**
Residential Direct Installation Program				
Savings (MWh)	908	5,517	6,425	
Program & Administration Costs	$778,457	$2,862,214	$3,640,671	95.00%
Evaluation/M&V Costs	$40,971	$150,643	$191,614	5.00%
Total Budget	**$819,428**	**$3,012,857**	**$3,832,285**	**100.00%**

Con Edison	**April 1, 2010 through December 31, 2010**	**2011**	**Total 2010-2011**	**% of Budget**
Commercial and Industrial Equipment Rebate Program				
Savings (MWh)	41,408	55,211	96,619	
Program & Administration Costs	$22,061,138	$29,414,852	$51,475,990	95.00%
Evaluation/M&V Costs	$1,161,112	$1,548,150	$2,709,262	5.00%
Total Budget	**$23,222,250**	**$30,963,002**	**$54,185,252**	**100.00%**

O&R	**April 1, 2010 through December 31, 2010**	**2011**	**Total 2010-2011**	**% of Budget**
Commercial Existing Buildings Program				
Savings (MWh)	5,421	7,229	12,650	
Program & Administration Costs	$1,552,760	$2,070,347	$3,623,107	95.00%
Evaluation/M&V Costs	$81,724	$108,966	$190,690	5.00%
Total Budget	**$1,634,484**	**$2,179,313**	**$3,813,797**	**100.00%**

Table 3

Original Gas Program Costs and Savings Targets

Con Edison	**2010**	**2011**	**Total 2010-2011**	**% of Budget**
Commercial Gas Efficient Equipment Rebate Program				
Savings (Dekatherms)	55,381	55,381	110,762	
Program & Administration Costs	$3,037,625	$3,037,625	$6,075,250	95.00%
Evaluation/M&V Costs	$159,875	$159,875	$319,750	5.00%
Total Budget	**$3,197,500**	**$3,197,500**	**$6,395,000**	**100.00%**

Table 4

Revised Gas Program Costs and Savings Targets

Con Edison	**April 1, 2010 through December 31, 2010**	**2011**	**Total 2010-2011**	**% of Budget**
Commercial Gas Efficient Equipment Rebate Program				
Savings (Dekatherms)	41,535	55,381	96,916	
Program & Administration Costs	$2,278,218	$3,037,625	$5,315,843	95.00%
Evaluation/M&V Costs	$119,906	$159,875	$279,781	5.00%
Total Budget	**$2,398,124**	**$3,197,500**	**$5,595,624**	**100.00%**

Table 5

Downward Adjustments to EEPS Collections from Electric Ratepayers by Service Territory

	2010	2011
Con Edison	$0	($15,224,602)
O&R	$0	($544,829)
TOTAL	$0	($15,769,431)

Table 6

Downward Adjustments to EEPS Collections from Gas Ratepayers by Service Territory

	2010	2011
Con Edison	$0	($799,376)
TOTAL	$0	($799,376)