STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on February 12, 2009

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.

ORDER ON REHEARING DENYING IN PART AND GRANTING IN PART PETITION FOR RECONSIDERATION

(Issued and Effective February 13, 2009)

BY THE COMMISSION:

INTRODUCTION

On August 22, 2008, the Commission issued an order[1] establishing a policy governing the award of performance incentives to electric utilities for their administration of energy efficiency programs (Incentives Order). The Incentives Order established maximum potential incentive levels, including the potential for negative adjustments, and a process for determining actual incentive awards. On September 19, 2008, Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (Con Edison/O&R) filed a Petition for Reconsideration. Con Edison/O&R requested reconsideration regarding three aspects of the Incentives Order: (1) the basis on which incentives are to be calculated; (2) the ability to

[1] Case 07-M-0548, Energy Efficiency Portfolio Standard Proceeding, Order Concerning Utility Financial Incentives (issued August 22, 2008).

bank or borrow achievements from year to year; and (3) the scope of the demand-reduction incentive. Upon rehearing and reconsideration of the Incentives Order, for the reasons described below, the Commission denies the relief requested with respect to the first and third issues, but revises the terms of the Incentives Order with respect to the annual accounting of energy efficiency achievements, such that Calendar Years 2009 and 2010 will be considered on a cumulative basis.

NOTICE OF PROPOSED RULEMAKING

A Notice of Proposed Rulemaking concerning the petition was published in the State Register on October 15, 2008. The minimum period for the receipt of public comments pursuant to the State Administrative Procedure Act (SAPA) expired on December 1, 2008. Comments were received from the National Association of Energy Service Companies (NAESCO) and the New York City Economic Development Corporation (the City). The comments received are summarized below.

BASIS FOR ESTABLISHING INCENTIVE LEVELS

In the Incentives Order, three alternative bases for establishing incentives were considered. The Commission determined that basing incentives on net savings has the potential to be a very efficient method, but declined to adopt that method, citing administrative complexities, relative lack of utility experience administering programs, reliance on volatile commodity prices, and uncertain avoided cost estimates. Rather, a method based on estimates of statewide program costs was adopted.

Con Edison/O&R argue that, because avoided cost estimates are used in the benefit-cost analysis of programs, there is no reason not to use them in calculating incentive awards. They also argue that the Commission has used 5% as a standard for “threshold materiality” and that this would imply a minimum of $22.5 million in potential incentives for their programs, versus the maximum available under the Incentive Order of approximately $16 million. Con Edison/O&R further argue that the administrative obstacles to the net savings method can be resolved by establishing a working group.

The City of New York argues that awarding incentives on a net-benefit basis would promote more programs that produce on-peak reductions, because those programs would tend to produce greater customer savings. Noting that we have already provided special incentives for peak reduction programs with a peak coincidence factor of less than 0.25, the City argues that programs with a peak coincidence factor between 0.25 and 1 would benefit from awarding incentives on a net-benefit basis.

Discussion

The avoided costs argument of Con Edison/O&R is misplaced for two reasons. First, avoided cost estimates must be used in estimating benefits and costs of proposed programs, but they do not need to be used in awarding incentives. To the extent that avoided cost estimates are inherently uncertain, the effect of the uncertainty is mitigated by not using avoided-cost estimates in calculating incentives.[2] Second, as it was pointed out in the Incentives Order, using net benefits as a basis for incentives would mean that swings in commodity prices may have more effect on incentive awards than actual utility performance.

The "materiality" standard to which Con Edison/O&R refer is used in considering utility requests for deferral of extraordinary expenses. The primary purpose of that materiality

[2] Another concern raised by the net benefits approach is that it would create a bias toward higher avoided cost estimates in utilities’ efficiency program proposals. This in turn could make it more difficult to accurately assess the benefits and costs of utilities’ proposals.

requirement is to limit the circumstances where future regulatory assets are created, thereby placing more emphasis on utility cost control to mitigate unusual events as a means to maintain utility earnings. That standard is not applicable to utility performance incentives. Performance incentive levels are generally customized to relate directly to the cost of the activity that is the subject of the incentive, as we have done here and as we have done in the past for customer service and safety and reliability incentives.

As to the proposal to create a new working group, this proceeding already has generated eight working groups, two advisory groups, and multiple related proceedings, while numerous issues remain to be resolved. Establishing a working group to revisit incentives would not alleviate administrative burdens, but rather would exacerbate them.

The City's desire for even more peak reduction incentives is noted. However, we have already established that peak reduction will be an important factor in selecting efficiency programs for approval. This was established in the program Screening Criteria detailed in our Order of June 23, 2008 (EEPS Order).[3] In our judgment, this is sufficient to promote peak-reducing programs with peak coincidence factors of greater than 0.25.

For these reasons, we decline to amend our determination regarding the basis for establishing incentive levels.

[3] Case 07-M-0548, Energy Efficiency Portfolio Standard Proceeding, Order Establishing Energy Efficiency Portfolio Standard and Approving Programs (issued June 23, 2008), Appendix 3.

SCOPE OF THE DEMAND REDUCTION INCENTIVE

In the Incentives Order, we established a maximum of $5 million per year in additional incentives available in the Con Edison service territory for efficiency programs that reduce peak load. In order to focus this incentive on programs that will have the greatest impact on peak loads, the metric for measuring utility performance for such additional incentive is achieved peak-hour megawatt reductions, defined as the savings of four times or more megawatt-hours during the hour of system peak than savings during an average hour of the year for the program (i.e., the peak coincidence factor must be 0.25 or less).

Con Edison/O&R question the use of a peak coincidence factor in establishing the special incentive for demand-reducing programs. NAESCO further argues that all peak reductions should be encouraged, not merely reductions from programs that only produce the highest level of peak reductions. Con Edison/O&R and NAESCO also request that the demand-reduction incentive be applied to programs targeted to reducing transmission and distribution infrastructure investments.

Discussion

The Screening Criteria, discussed above, already establish a competitive advantage for programs that reduce peak demand. Applying the special demand-reduction incentive only to programs with the best peak coincidence factor will focus this limited incentive mechanism on the programs that will have the most direct impact on peak demand. Applying the $5 million maximum amount to a much broader range of programs would dilute the impact on peak demand. In our judgment the Screening Criteria are also adequate to address the issue of reducing transmission and distribution infrastructure investments, and we choose not to dilute the effect of the limited demand-reduction incentive, which is intended to address system peak.

BANKING AND BORROWING MEGAWATT-HOUR REDUCTIONS

In the Incentives Order, it was decided that incentive determinations will be made based on annual accounting of measures installed or performed. Con Edison/O&R argue that results cannot be controlled with precision from year to year, that an annual accounting requirement is not flexible enough to accommodate the needs of program administrators, and that inability to bank reductions is indefensible where utilities face negative adjustments for failure to meet targets. Con Edison/O&R suggest that megawatt-hour achievements be subject to banking and borrowing from year to year. At a minimum, Con Edison/O&R suggest that banking be allowed in limited amounts, for example up to 33% per year. The City of New York and NAESCO agree with Con Edison/O&R that annual accounting does not provide enough flexibility. They do not support banking of reductions, but rather propose that accounting be performed over the three-year period of the program instead of annually.

Discussion

It is important for programs to operate steadily on a year-to-year basis, in order to maintain continuity for program contractors. Moreover, we remain concerned that banking and borrowing of reductions would create incentives for utilities to delay implementation of measures, or to shift priorities among programs in order to maximize incentives or minimize negative adjustments, rather than to achieve balanced program goals approved by the Commission. Allowing year-to-year variations as great as 33% would not allay these concerns.

As to the argument that inability to bank reductions is indefensible where utilities face negative adjustments for failure to meet targets, we note the inconsistency from the other Con Edison/O&R assertion that the currently authorized incentive levels do not rise to the threshold “materiality” level. Because positive and negative award potentials are symmetrical, the threat of negative adjustments might also be considered immaterial by the companies. Although we do not agree that the incentive levels are immaterial, the cautious approach to incentive levels that we adopted in the Incentive Order lends further support to our decision to hold utilities accountable on an annual basis.

For these reasons, we decline to alter our general decision regarding the banking and borrowing of reductions. We will, however, amend the rule for purposes of the initial years of program administration. We recognize the difficulty cited by Con Edison/O&R in managing results from year to year, as it applies to the start-up period of a program. For efficiency programs initiated in Calendar Year 2009, incentive determinations for 2009 and 2010 will be made based on an accounting of measures installed or performed cumulatively in Calendar Years 2009 and 2010 applied against a cumulative program target through 2010. For Calendar Year 2011 and beyond, incentive determinations will be made based on annual accounting of measures installed or performed applied against annual incremental program targets. However, this merging of 2009 and 2010 targets for incentive purposes will not relieve a utility of its obligation to implement energy efficiency programs on a timely basis in 2009. If we determine that a utility has delayed implementation unreasonably in 2009, we may disqualify that utility from earning any positive performance incentives for either 2009 or 2010.

SEQRA FINDINGS

In the Incentives Order, we found that the incentive policies adopted in that Order would not result in any different environmental impact that that previously examined in this proceeding. The further action taken in this Order will not result in any different environmental impact. The SEQRA findings of the June 23 Order and the Incentives Order 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.

The Commission orders:

1. The Petition for Reconsideration of Consolidated Edison of New York, Inc. and Orange and Rockland Utilities, Inc. is granted in part to the degree that, for efficiency programs initiated in Calendar Year 2009, incentive determinations for 2009 and 2010 will be made based on an accounting of measures installed or performed cumulatively in Calendar Years 2009 and 2010 applied against a cumulative program target through Calendar Year 2010. This merging of 2009 and 2010 targets for incentive purposes will not relieve a utility of its obligation to implement energy efficiency programs on a timely basis in 2009. In all other respects, the Petition for Reconsideration is denied.

2. For Calendar Year 2011 and beyond, incentive determinations will be made based on annual accounting of measures installed or performed applied against annual incremental program targets.

3. This proceeding is continued.

By the Commission,

(SIGNED) JACLYN A. BRILLING
Secretary