STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on April 15, 2010

COMMISSIONER 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 DENYING PETITION FOR A DECLARATORY RULING

(Issued and Effective April 19, 2010)

BY THE COMMISSION:

In our June 2008 Order establishing the Energy Efficiency Portfolio Standard (EEPS),[1] the Commission considered some parties’ arguments that energy efficiency programs should be funded, in the first instance, by the proceeds of auctions under the Regional Greenhouse Gas Initiative (RGGI), rather than by ratepayers. At that time, the Commission concluded that “[b]oth the funding available to NYSERDA from RGGI, if any, and the uses of that funding, remain speculative. The Commission will take developments in the RGGI initiative into account as they occur, and as appropriate, may consider the potential for

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

RGGI-funded energy efficiency measures to be substituted for programs and expenditures authorized herein."[2]

On February 24, 2009, Multiple Intervenors (MI), an unincorporated association of approximately 50 large industrial, commercial and institutional consumers of electricity, filed a petition for a declaratory ruling (the Petition) in this proceeding, pursuant to Commission Rule of Procedure 8.1.[3] MI sought to offset some of the electric customer funding requirements established in this proceeding with RGGI auction proceeds.

The Petition is premised upon the anticipation of annual revenues to be derived from New York State participation in RGGI, a multistate cap-and-trade program that commenced auctioning carbon credits in 2008. According to MI, RGGI rules require auction proceeds to be dedicated to energy efficiency improvements in the State. MI proposes that EEPS funding be reduced in proportion to RGGI proceeds to reduce the burden on ratepayers and avoid duplication of funding and programs. Specifically, MI requests that the Commission issue a declaratory ruling to reduce the approved annual EEPS funding from approximately $330 million to approximately $110 million.

BACKGROUND

RGGI and the Authority to Disburse Auction Proceeds

Pursuant to a Memorandum of Understanding (MOU) entered into by ten Northeastern and Mid-Atlantic states in December 2005, New York has agreed to limit and ultimately reduce emissions of carbon dioxide (CO_2) from certain power plants within its borders. RGGI established a regional cap on CO_2 emissions of approximately 188 million tons, with a

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[2] Id., p. 34.

[3] 16 NYCRR Part 8.

proportionate share of roughly 64 million tons allocated to New York State: its CO_2 “budget.” Participating states have implemented a regional cap-and-trade program based on quarterly auctions for allowances for greenhouse gas emissions.

The RGGI Model Rule required each participating state to adopt an internal regime, either statutory or regulatory, to implement its own cap and trade program for CO_2 consistent with the MOU. Accordingly, both the New York State Department of Environmental Conservation (DEC) and the New York State Energy Research and Development Authority (NYSERDA) have adopted regulations governing the implementation of RGGI.[4] Each year New York issues a number of tradable allowances: one allowance permits the emission of one ton of CO_2 for one year, to cover electric generating units that must obtain allowances equal to their CO_2 emissions within a three-year compliance period. These allowances have been sold at auction, in a process managed by NYSERDA and described under DEC and NYSERDA regulations.

The proceeds generated by these auctions are managed from a NYSERDA account and disbursed solely by NYSERDA pursuant to its Operating Plan and regulations. The NYSERDA regulations state that proceeds from the sale of allowances will be used to “. . . promote and implement programs for energy efficiency, renewable or noncarbon emitting technologies, and innovative carbon emissions abatement technologies with significant carbon

[4] See, DEC CO_2 Budget Trading Program Regulations, 6 NYCRR Part 242 (establishing the cap-and-trade provision), NYSERDA rules on the CO_2 Allowance Auction, 21 NYCRR Part 507 (establishing administrative procedures for the auction process and providing for the use of proceeds from the sale of the allowances).

reduction potential.”[5] The NYSERDA Operating Plan, approved by its Board of Directors on April 27, 2009, provides:

> RGGI auction proceeds will not be used to replace existing programs or program goals, including the System Benefits Charge, Renewable Portfolio Standard, Weatherization Assistance Program, Energy Efficiency Portfolio Standard, and various transportation programs funded by the federal Congestion Mitigation and Air Quality Improvement Program. Rather, these programs are designed to create synergies with existing efficiency and clean energy programs and encourage redefinition of program goals in the context of a more comprehensive climate change strategy.[6]

The Disposition of RGGI Proceeds

Since the commencement of the RGGI auctions, the resultant proceeds have been tapped or otherwise encumbered for a variety of uses other than those intended by the Operating Plan. In January 2009, Indeck Corinth, L.P. challenged the legality of RGGI. Parties to the litigation entered into a consent decree in December 2009, approved by Albany County Supreme Court. The pendency of the litigation cast uncertainty over the availability of auction proceeds.[7]

On October 13, 2009, the Green Jobs/Green New York bill was signed into law, directing NYSERDA to establish revolving loan and green jobs training programs to retrofit existing homes, using $112 million of RGGI auction proceeds to

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[5] See, NYSERDA regulations governing the auction procedures, e.g., 21 NYCRR Part 507.4(a) (“The Authority will establish and administer the Account in accordance with the provisions of 6 NYCRR Part 242-1.2(35) and 242-5.3(a)”); and the April 2009 Operating Plan, at http://www.nyserda.org/RGGI/Files/Final%202009-2011%20RGGI%20Operating%20Plan.pdf, updated March 2010 at http://www.nyserda.org/RGGI/Program%20Planning/revised_rggi_summary_march1.pdf (Operating Plan).

[6] Operating Plan, p. p-2.

[7] Indeck Corinth, L.P. v. David A. Paterson, et al., Supreme Court, Albany County (Index No. 5280-09).

leverage private investment.[8] Finally, on December 4, 2009, the New York State Legislature enacted numerous deficit reduction measures that included the transfer of $90 million in RGGI auction proceeds to the General Fund.[9]

THE PARTIES' POSITIONS

In MI's view, the RGGI proceeds should no longer be considered speculative. Several RGGI auctions have taken place since the 2008 Order. MI asserts that the Commission should issue a declaratory ruling offsetting EEPS funding levels by approximately $220 million annually.

MI additionally asserts the likelihood that RGGI will generate considerable revenue at reliable levels through 2014. MI's calculations are that RGGI will generate more than $220 million annually in funding that should be made available for energy efficiency purposes. MI reasons that New York's consumers would pay the cost of RGGI allowances through wholesale electricity prices, and that they should receive the benefits of RGGI in reductions to the EEPS charges reflected on their bills.

MI views the revenues generated by RGGI as an effective substitute for ratepayer funding for energy efficiency. The purpose of RGGI, as stated by MI, is to provide additional funding for energy efficiency initiatives. MI cites regulations implementing RGGI to the effect that funding derived from the sale of allowances is to be used primarily to fund energy efficiency programs to reduce end-use consumption. In MI's view, this purpose is duplicative of the purposes of EEPS.

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[8] See, http://www.state.ny.us/governor/press/press-1013091.html.

[9] See, e.g., S.B. 66023, 232 Leg. Sess., Second Spec. Sess. (NY 2009), available at http://open.nysenate.gov/legislation/bill/S66023.

MI also invokes the comparatively high electricity prices in the state in stating its view that implementing both EEPS and RGGI was unnecessarily burdensome and duplicative. MI urges its view that notwithstanding claimed benefits of EEPS and RGGI, these programs will increase the cost of electricity for customers.

The petition is opposed by Department of Public Service Staff (Staff); no other parties commented. In Staff's view, NYSERDA has sole jurisdiction over RGGI funds, and therefore the Commission has no mechanism to ensure funding of EEPS if it relied upon RGGI, rather than ratepayer, funding.

DISCUSSION AND CONCLUSION

We share MI's concerns. As state and federal programs to improve energy efficiency, encourage development of renewable means of electric generation, and reduce greenhouse gas emissions proliferate, some overlap is unavoidable. In some instances, for example, federal energy efficiency plans may supplement, but they do not supplant state EEPS initiatives. Where identified, the agencies charged with implementation of state programs should take appropriate steps to ensure funding is not duplicative and that ratepayers are protected from unnecessary charges. The Commission will examine specific opportunities to avoid inappropriate duplication as they arise, and we reiterate the 2008 Order to the effect that we will consider the potential for specific energy efficiency measures to be substituted for EEPS expenditures, where duplicative.

A blanket offset of EEPS funding to reflect total RGGI auction proceeds, however, is not the method to achieve this goal. The proceeds from RGGI, and their uses, remain to some extent uncertain, if not speculative. Indeed, in the March 2010 Revised RGGI Operating Plan, NYSERDA revised downward the estimates of program funding available through March 2012, from

$525 million to $302 million.[10] As indicated by the last year's allocation of RGGI proceeds, those funds are subject to redistribution for a wide range of purposes by the legislative and executive branches, not all related to energy efficiency.

Further, the purposes of RGGI and EEPS overlap, but are not identical. The RGGI proceeds are to be used for broader purposes: to promote and implement programs for energy efficiency, renewable or non-carbon emitting technologies, and to develop innovative carbon emissions abatement technologies with significant carbon reduction potential.[11] In addition, RGGI proceeds may be used for many energy efficiency purposes not subject to the jurisdiction of the Commission: to reduce use of fuels other than jurisdictional fuels; and to address greenhouse gas emissions in transportation or other sectors not subject to Commission oversight.

MI seeks to clarify that its petition would not require the Commission to impose any authority over RGGI funds. MI seeks instead to have the Commission reduce EEPS collections from customers, in anticipation that the same purposes would be achieved using RGGI funds for energy efficiency. However, MI also argues that it should be mandatory that those auction proceeds be used to offset the incremental costs of EEPS to electricity consumers. This relief is unavailable in a declaratory ruling by this Commission, as the operation of RGGI and the allocation and disbursement of RGGI funds are governed by NYSDEC and NYSERDA regulations.

The EEPS programs approved by the Commission rely upon regulatory consistency and funding predictability over a period

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[10] Since proceeds from the sale of allowances can vary with each auction, the budgets for programs described in the Operating Plan are an estimate.

[11] 21 NYCRR 507.4(d).

of years to succeed and yield the expected energy efficiency benefits. At this time, for the program overall, EEPS funding is the most effective method to attain these objectives. Accordingly, the Petition of Multiple Intervenors for a Declaratory Ruling is denied.

The Commission orders:

1. The Petition of Multiple Intervenors, Inc., dated February 24, 2009, for a declaratory ruling to offset some of the electric customer funding requirements established in this proceeding with RGGI auction proceeds, is denied.

2. This proceeding is continued.

By the Commission,

(SIGNED) JACLYN A. BRILLING
Secretary