

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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

RULING ON THE STATUS OF THE RECORD  
AND ON SCHEDULE

(Issued January 24, 2008)

ELEANOR STEIN and RUDY STEGEMOELLER, Administrative Law Judges:

INTRODUCTION

Following the completion of the Working Group reports and the plenary collaborative session to discuss them, we have reviewed the entire record established in this proceeding to date. This ruling represents our conclusions as to the status of the record, and includes decisions on the plethora of pending motions and requests. It also establishes a roadmap to bring to the Public Service Commission recommendations on the critical design issues in a timely and comprehensive way.<sup>1</sup>

I. THE FAST TRACK

One focus of this proceeding to date has been a set of Department of Public Service Staff (Staff) proposals to institute an early "Fast Track:" a set of measures intended to augment existing energy efficiency programs with new or expanded initiatives to facilitate the State's ultimate success in reaching the 15% energy reduction goal by 2015. The Staff Preliminary Proposal for Energy Efficiency Program Design and

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<sup>1</sup> In Case 07-M-0548, Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio Standard, Order Instituting Proceeding (issued May 16, 2007)(Instituting Order), this case is referred to as the "EPS" and it has become known by that easily pronounced but inaccurate acronym. To avoid future confusion on the part of customers and the public, we will refer to the proceeding and the project as the EEPS.

Delivery<sup>2</sup> suggested adoption of new and expansion of certain existing programs, leading to a multi-year process to design the overall program.

In its Preliminary Proposal, Staff advocated for expansion of current and new electric efficiency programs at an incremental cost well over \$200 million above current System Benefits Charge (SBC) funding annually. Staff estimated its proposal would attain over 90% of the total program efficiency gains needed by the year 2015. In Staff's view, it could take at least two years to design and implement an overall program structure and design.

After the filing of the Staff Preliminary Proposal examining existing energy efficiency programs and recommending that many be considered Fast Track for early savings, other parties filed their views: a New York State Energy Research and Development Authority White Paper, a Dormitory Authority of the State of New York financing proposal, and proposals to guide the collaborative process by New York City, Joint Utilities, Long Island Power Authority, and the Natural Resources Defense Council/Pace Law School Energy Project/Association for Energy Affordability. Staff requested and was allowed to file reply comments in response to the parties' filings as to the Fast Track issues (along with its own revised proposals on all issues) on November 26, 2007.

Parties filing Fast Track recommendations were: American Lung Association/Environmental Advocates/New York Public Interest Research Group, Conservation Services Group, Current Group, Dormitory Authority of the State of New York, Division of Housing and Community Renewal, Earthkind Energy, Intellidyne, Joint Utilities, Lockheed Martin, Long Island Power Authority, Multiple Intervenors, National Association of Energy Service Companies, Natural Resources Defense Council/Pace Law School Energy Project/Association for Energy Affordability,

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<sup>2</sup> New York Department of Public Service Staff Preliminary Proposal for Energy Efficiency Program Design and Delivery (August 28, 2007)(Staff Preliminary Proposal).

Northeast Energy Efficiency Partnerships, Nucor Steel, New York City, New York Energy Consumers Council, New York Independent System Operator, New York Power Authority, New York State Department of Environmental Conservation, New York State Energy Research and Development Authority, Real Estate Board of New York, and Workforce Development Institute.

In a letter to active parties dated October 1, 2007 we limited consideration of Fast Track proposals to a short list of ongoing, proven cost-effective, measures that were oversubscribed or for which a waiting list of participants existed. Our intention was to identify and put before the Commission, as appropriate, a relatively select menu of proven programs with a relatively modest budget, without compromising the decisions as to the longer-term EEPS design and emphases.

A second Staff proposal was filed on November 26, 2007, limiting to a certain extent the suggested fast track measures. Both Staff proposals were premised upon an imperative to provide funding as quickly as possible to cost-effective energy efficiency programs.

#### Parties' Responses

On October 15, 2007 some parties replied to Staff on Fast Track issues; and several parties proposed additional or substitute Fast Track programs. For example, Dormitory Authority of the State of New York (DASNY) urged inclusion in the Fast Track of its proposal to expand existing private financing through utility billing for its financing of efficiency measures for its not-for-profit and public customers, to significantly reduce that share of the EEPS burden borne by the general body of ratepayers. The New York State Division of Housing and Community Renewal (DHCR) requested additional funding for its weatherization program, anticipating additional gas and electric savings and a much-needed enhancement of its ability to provide weatherization for low income customers, in tandem with companion NYSERDA electric efficiency measures.

In the ruling issued October 31, we established a schedule to consider Fast Track proposals and comments, and

announced our decision to write a recommended decision on those issues only.

In a Revised Proposal and Reply Comments, filed November 26, 2007 (Staff Revised Proposal), Staff responded to parties' Fast Track comments, and modified its list of proposed programs and again recommended substantial new expenditures to achieve a significant portion of the 2015 target. On December 3, 6, and 7, respectively, Joint Utilities<sup>3</sup>, Multiple Intervenors, and Nucor Steel Auburn, Inc. requested permission to file responses to the Staff Revised Proposal. Staff responded on December 7, and on December 11 the City of New York filed opposition to the Joint Utilities' request.

On December 20, the Joint Utilities requested that structure issues and Fast Track issues be placed on the same comment schedule. Joint Utilities expressed concern that their programs proposed in individual utility cases will be put on hold pending adoption of a Fast Track; that insufficient analysis has been done of the funding sources, and comparative cost profiles and efficiency savings potential of utility proposals and Staff's Fast Track proposals. Overall, the Joint Utilities urged that a Fast Track support the implementation of a comprehensive, long-term process to develop an energy efficiency portfolio standard for New York, in which they intend to play a substantial role. In particular, the Joint Utilities objected to adoption of any Fast Track measures outside the context of what entities are best suited to provide specific programs.

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<sup>3</sup> Joint Utilities encompasses Central Hudson Gas & Electric Corporation (Central Hudson), Consolidated Edison Company of New York, Inc. (Con Edison), KeySpan Energy Delivery New York and KeySpan Energy Delivery Long Island (KEDNY and KEDLI), New York State Electric & Gas Corporation (NYSEG), Niagara Mohawk Power Corporation d/b/a National Grid (National Grid), National Fuel Gas Distribution Corporation (National Fuel), Orange and Rockland Utilities, Inc. (Orange and Rockland) and Rochester Gas & Electric Corporation (RG&E).

This request was supported by NRDC/Pace, NYSEG and RG&E on December 27. Joint Utilities, Multiple Intervenors, New York Energy Consumers Council, Real Estate Board of New York, and Nucor Auburn Steel, Inc. expressed reservations regarding the Fast Track proposals. Although the concerns of these parties were not identical, in general they objected to the bifurcation of the proceeding, arguing that the decision on such substantial additional ratepayer funding should not be made absent consideration of the overall program structure. Multiple Intervenors also objected, asserting that the record on rate and bill impacts for this increase in funding was insufficient to support substantial increases through the SBC fund or otherwise.

Staff's responses expressed the urgent need to bolster these programs considerably in order to begin realizing the level of energy savings necessary to meet the goal by the year 2015.

In other filings, NYSERDA and other parties warn of the problem of customer confusion, followed by disillusion with a program characterized by frequent changes of direction, rules, and opportunities for program participation.

#### Discussion and Conclusion

At issue is the advisability of establishing and funding substantial individual energy efficiency measures absent the context of a working overall design and targets for the EEPS program, or specific energy efficiency targets for each utility, for NYSERDA, and for the other participants in reaching the statewide 15 x 15 goal. Parties agree that the task is to design and implement a statewide program with sufficient consistency to avoid confusing consumers. The commitment of a substantial portion of program funding outside the context of efficiency targets and goals for the State and program administrators in effect, even if not in intention, predetermines priorities in advance of Commission adoption of a strategy to attain the 15 x 15 goal.

After analysis of the record to date, we conclude that it lacks sufficient information to support a decision concerning

the rate and bill impacts of the proposed Fast Track measures. While cost and benefit data has been presented on a measure-by-measure basis, we have an inadequate basis to compare the rate and bill impact of the Staff scenario of adopting the proposed Fast Track programs, with other scenarios for program design still under development.

Taking into consideration the record up to this point and the interdependence of many of the principal EEPS design issues, we have reconsidered the recommended decision schedule related to Fast Track proposals. We have concluded that the record as developed to date contains substantial evidence to support preliminary findings on immediate major design issues, including: administration and overall EEPS structure; targets, baseline, and benchmarks for electric energy efficiency gains; certain aspects of cost and benefit analysis; measurement and verification, funding mechanisms and allocation; and the role of new technologies.

The Fast Track proposals would expedite a range of programs, both pre-existing and new, prior to policy determinations that will define the EEPS in the long term. These proposals would represent a strategic commitment of a large portion of resources available to the EEPS, which would be unwise absent a framework to ensure that the investments are consistent with the overall structure of the EEPS.

The Fast Track proposals assume that there would be a significant period of time between Fast Track approval and a Commission decision on the EEPS program as a whole. Given the requirements of SEQRA and the steps necessary to secure funding for NYSERDA, a Fast Track, regardless of when it had been proposed, would not result in actual spending until late in

2008.<sup>4</sup> Based on the schedule established in this ruling, the time period between a Fast Track approval and a more comprehensive Commission order is not substantial enough to warrant committing funds before broad policy determinations are made.

We do, however, fully appreciate the urgency expressed in the Staff proposals. Accordingly, we are compressing the Fast Track and the Long-Term proposals into a single expedited process, intended to reach the Commission on a faster track for decision on the major design issues by mid-2008. This will ensure that proposed substantial funding increases for energy efficiency are authorized in the context of overall program design.

## II. STATUS OF THE RECORD

The record to date includes and incorporates: The Preliminary Staff Report and Initial Staff Proposal; parties' responses to questions posed by Staff and by the ALJs; proposals of the City of New York, DASNY, Joint Utilities, LIPA, NRDC/Pace, and NYSERDA; parties' Fast Track proposals and comments on Staff's Proposal; Draft and Final Reports of Working Groups I, II, III and IV; the Draft Generic Environmental Impact Statement; summaries of regional roundtables around the State; the Clean Energy Collaborative filing; the 2003 electric efficiency potential study and the 2006 gas efficiency potential study by Optimal Energy, Inc.; the Revised Staff Proposal and Supplemental Filing.

While the exchange of party filings was focused largely on the identification of Fast Track programs, the

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<sup>4</sup> The Commission could not act on a Fast Track program prior to adoption of a Final Generic Environmental Impact Statement (FGEIS). Following a decision by the Commission, NYSERDA and the utilities would need to enter into new contracts. Utilities would then need to revise their tariffs so that NYSERDA has a legally enforceable revenue stream. Experience with the SBC and the RPS indicates that this process is likely to require several months following adoption by the Commission.

collaborative process commenced on September 17, 2007, with four working groups meeting intensively to prepare exhaustive reports on, respectively, overall program design and structure; inventory of available energy efficiency measures; definition of baseline, targets and benchmarks, and other measures, with measurement and verification; and emerging technologies, including those focused on demand response and peak load reduction mechanisms. On December 5, 2007, the four Working Groups filed their comprehensive reports, which were discussed at a plenary collaborative meeting on December 15, 2007. The Working Group reports have augmented the record with broad surveys of available design in each category, with certain recommendations. In addition, the Working Groups have identified additional analysis needed to complete their original charges, and requested some additional time to do so: for Working Group I, funding/allocation issues; Working Group II, a technical potential study, evaluation of data issues, and expansion of the program inventory; Working Group III, establishment of a target for gas efficiency, and Working Group IV, refining estimates of costs, benefits and beneficiaries associated with its recommendations. We anticipate the Straw Proposal will solicit participation by parties on further Working Group issues.

The Working Group reports and background information have provided and assessed a range of possible structures, program designs and measures, methods of measurement and verification, and an inventory of available new and emerging technologies for both energy efficiency and load management and reduction. In addition, various parties and groups of parties, including Staff, have at one point or another in the proceeding filed proposals for overall design and identification of programs in proposals, white papers, and consensus proposals. On January 11, 2008, an EPS Administration Consensus Recommendation was filed by NRDC, Pace Energy Project, New York City, Association for Energy Affordability, Inc. (AEA), Con Edison, KeySpan Energy Delivery New York and KeySpan Energy Delivery

Long Island, NFG, National Grid, NYSEG, Orange and Rockland, RG&E, and NYPA (the NRDC/Pace Consensus Recommendation).

At this point in the proceeding, we prefer to incorporate and synthesize the record and parties' exhaustive research and put forth a straw proposal to join issue and focus party comments on a design, as the most efficient method of narrowing options and bringing the entire case - both Fast Track measures and overall design decisions - to the Commission as expeditiously as possible.

We find that this record, with the presentation of additional information and the addition of an on-the-record process to test certain data, to be undertaken by parties as delineated in the process and schedule section below, is sufficient to support recommendations to, and action by, the Commission as to many program design issues. We also expect that ongoing collaborative efforts of parties will continue to enhance and refine the record.

As to the following issues, further record development is necessary prior to Commission action: (1) Rate and bill impacts of costs associated with various scenarios to attain the 15 x 15 target; and (2) quantification of the 2015 target, baseline, and benchmarks necessary to meet the targets for electric and natural gas efficiency. These estimates and forecasts will be presented for party comment in the Straw Proposal. We will draw from the alternatives and inventories developed in the Working Group reports, and the various overall designs advocated for by parties. Based upon our findings and recommendations for design options, the analyses of program and specific targets will be compiled and issued.

These analyses will be the subject of an on-the-record Technical Conference, scheduled below. The purpose of the Technical Conference will be to examine and discuss the Judges' Straw Proposal, and, in addition, any filings to date on these issues of interest to parties for the purpose of testing the Straw Proposal or developing alternatives.

After parties have had a full opportunity, in initial and reply briefs, to comment on the Straw Proposal, as well as on each others' preferences, we will prepare a full report to the Commission on EEPS design, including on the immediate expansion of existing programs. As provided in Commission Rule of Procedure 4.9,<sup>5</sup> the Secretary to the Commission or the Commission itself may direct that this report be issued for exceptions.

### III. DISPOSITION OF PENDING MOTIONS AND REQUESTS

Below is an analysis, discussion and conclusions as to each of the pending motions, responses to motions, and schedule. This Ruling resolves these pending disputes. This, with the currently schedule comment cycle for responses to the NRDC/Pace Consensus Proposal, should clear the way to move on to the next phase of this proceeding. This phase will commence with the issuance by us of a Straw Proposal on critical design issues, to focus, sharpen, and join issue in the comment process. Omnibus comments on the Straw Proposal and, as necessary, other proposals on the record, will augment the record.

#### Requests to Comment on Staff's Revised Proposal

In light of this ruling merging Fast Track with overall program design proposals, we make no separate provision for parties to respond to Staff's Revised Proposal of November 26, 2007, with respect to Fast Track measures. Therefore, regarding the following filings: Joint Utilities, December 3, 2007; Multiple Intervenors, December 6, 2007; Nucor, December 7, 2007; DPS Staff, December 7, 2007; and City of New York, December 11, 2007, the issue has become moot. With respect to the request to comment on other elements of Staff's Revised Proposal, the schedule below provides parties opportunity to comment on all substantive EEPS design issues prior to a Recommended Decision.

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<sup>5</sup> 16 NYCRR 4.9(a), (b).

NRDC/Pace Consensus Recommendation and Central Hudson State-Wide Plan

In our ruling dated January 15, 2008, we provided for party comments on the NRDC/Pace Consensus Recommendation by January 25, 2008. Subsequently, on January 19, 2007, Central Hudson filed its request to submit its own design proposal, styled Central Hudson State-Wide Plan, and the proposal itself. The Central Hudson filing is hereby accepted and parties may submit comments by February 4, 2008, or may comment in briefs as provided in the schedule below. We will not entertain any other party proposals at this time. All parties are invited to share their ideas and express their preferences in the context of and on the schedule for examination of the Straw Proposal and all other proposals, as described above.

Requests to Delay Fast Track Consideration

Regarding the Joint Utilities' request of December 20, 2007; NRDC, NYSEG and RG&E, December 27, 2007, and Staff's response on January 4, 2007, a similar analysis applies. This Ruling largely renders the issues moot. To the extent that any of the issues raised in these requests and responses remain, parties will have an opportunity to comment by identifying such issues prior to the Technical Conference, as provided below.

Discovery Requests

On January 7, 2008 Central Hudson submitted a letter seeking responses from NYSERDA to requests for information submitted December 12, 2007. To date, NYSERDA has not provided the information. Central Hudson's request is granted in part and denied in part, as described below.

Generally, the Commission's discovery rules provide that "parties shall fully disclose to each other, upon request, all information... relevant and material to a proceeding in which they are participating."<sup>6</sup> A threshold issue in considering Central Hudson's request is the extent to which contribution targets offered by LIPA and NYPA will be evaluated in this

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<sup>6</sup> 16 NYCRR 5.1(a).

proceeding and are therefore "relevant and material". The Commission has no jurisdiction over these entities and the manner in which they achieve their share of the state's 15 x 15 energy efficiency goal, and these will not be subject to detailed review. However, all of the contributions by state agencies and authorities described in NYSERDA's filing on behalf of the Clean Energy Collaborative must be taken into account in establishing targets applicable to the utilities and NYSERDA.

Applying this approach to Central Hudson's numbered requests yields the following conclusions:

1. The request for workpapers is reasonable and should be satisfied, to the extent relevant to entities' calculations of their own share of the statewide target.
2. The request for clarification is reasonable and should be satisfied.
3. (a) The request for specific agency/authority targets is reasonable and should be satisfied.  
(b) The request for distinction between peak load reduction and energy efficiency targets is reasonable and should be satisfied.  
(c) The request for peak load reductions resulting from energy efficiency reductions is reasonable and should be satisfied.
4. The requests for cost-to-achieve data and funding commitments should be satisfied only with respect to NYSERDA-administered programs.
5. The requests for assumptions regarding utility participation are reasonable and should be satisfied.
6. The requests for assumptions regarding the "efficiency gap" are not reasonable; the NYSERDA filing does not purport to address the questions contained in this request.

NYSERDA should satisfy these requests within ten days of the date of this Ruling. If NYSERDA is unable to comply with that schedule, NYSERDA should notify Central Hudson, and the two parties should attempt to arrange a workable timetable.

IV. SCHEDULE

As explained above, the following schedule will facilitate the most expeditious presentation to the Commission of a full record for decision on issues of overall EEPS program design as well as on the expansion of existing programs:

January 25, 2008	Parties comment on NRDC/Pace Consensus Proposal
February 11, 2008	Judges' Straw Proposal issued
February 22, 2008	Parties identify issues for discussion at Technical Conference
March 5, 2008	(Continuing day-to-day as necessary) Technical Conference on (1) Rate and bill impacts, and (2) Target, Baseline, and Benchmark data
March 26, 2008	Parties file Initial Briefs on all issues
April 9, 2008	Parties file Reply Briefs

(SIGNED)

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(SIGNED)

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