

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 STAFF MOTION FOR RECONSIDERATION
AND REVISING SCHEDULE

(Issued March 20, 2008)

ELEANOR STEIN and RUDY STEGEMOELLER, Administrative Law Judges:

INTRODUCTION

On January 24, 2008, after consideration of parties' filings and the record to date, we came to the conclusion that the record in this proceeding did not support recommendations to the Commission to order the State's investor-owned utilities to so increase their proportionate contributions to the System Benefits Fund as to provide for Fast Track energy efficiency measures, absent the context of an overall plan for the creation of an Energy Efficiency Portfolio Standard and, in particular, resolution of the issue of utility participation.¹ In our February 11, 2008 Straw Proposal we suggest an EEPS design that roughly divides the responsibility to fill the remaining gap between planned programs and the 15 x 15 goal, and the additional funding necessary to do so, evenly between NYSERDA and utilities, with ample opportunity to participate for third party energy efficiency providers. In the accompanying Technical Appendix, we estimate the funding necessary to attain the energy efficiency goal, while also recognizing that continuous evaluation and assessment, as well as flexibility, are critical.

The procedure we adopted in the January 24, 2008 Ruling was to release a Straw Proposal, with Technical Appendix, suggesting a synthesis of Department of Public Service Staff (Staff) recommendations, parties' contributions, and the final reports of the four Working Groups, with a schedule for a Technical Conference and briefs. The

¹ Case 07-M-0548, Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio Standard, Ruling on the Status of the Record (issued January 24, 2008) (January 24, 2008 Ruling).

Straw Proposal was issued on February 11, 2008, soliciting parties' questions.² Our schedule provided for an on-the-record technical conference to examine the factual predicate for the Straw Proposal, which was based upon NYSERDA and Staff estimates accompanying their proposals.

Following submission of numerous clarification questions by parties, the on-the-record Technical Conference was held on March 5, 2008. In addition to clarification of the method and content of the Technical Appendix, the Technical Conference included presentations by Assembly Member Hon. Andrew Hevesi; proponents of the New York City Partnership proposal; and Staff.

We had established a procedure to follow the Technical Conference with two rounds of briefs that would not only address the record developed at the Technical Conference itself, but also issues addressed by the Working Groups, and any other information parties wished to provide in responding to the Straw Proposal and other counterproposals developed by the parties. Our intent was to prepare an analysis of all these materials for Commission consideration. As customary, we did not indicate whether that analysis would be issued as a Recommended Decision (RD) for briefing or would be provided directly to the Commission, as that determination is made by the Commission Secretary.³

In setting this schedule, we expressed the view that the schedule would enable Commission consideration of a broader range of issues that would set a context for the programs included in the Fast Track proposals. Although a few months' delay might

² Ruling Presenting Straw Proposal (issued February 11, 2008), replaced by Corrected Ruling Presenting Straw Proposal (issued February 13, 2008) (Straw Proposal).

³ Commission Rule 4.9(a), (b), 6 NYCRR 4.9(a), (b).

result, we expressed our view that the benefits of that context outweighed the cost of that delay.⁴

On February 20, 2008, Staff filed a Motion for Expedited Action on its Request for Reconsideration of the Schedule and to Bifurcate the Proceeding into Two Phases (Staff Reconsideration Motion). Ten responses to the Staff Reconsideration Motion were received.⁵ This ruling grants in part and denies in part the Staff Reconsideration Motion, as discussed below.

THE STAFF MOTION AND PARTIES' RESPONSES

The Staff Reconsideration Motion

Staff requested reconsideration of the process and schedule adopted in the January 24, 2008 Ruling, citing essentially two concerns. The first was that the postponement of Commission adoption of bridging or Fast Track programs was delaying implementation designed to assist in reaching the ultimate energy reduction targets. The second was that the process established did not afford sufficient opportunity for the parties and the Working Groups to continue to address major program design issues, or to develop alternatives to the Straw Proposal.

⁴ We noted as well that that the Commission could not take action in this proceeding, even on a limited basis, prior to its approval of a Final Generic Environmental Impact Statement (FGEIS), currently on the Commission public calendar for its March 19, 2008 session.

⁵ Comments were received from: Central Hudson Gas and Electric Co. (Central Hudson); Community Environmental Center; Conservation Services Group Association for Energy Affordability (CSG/AEA); Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities (Con Edison and Orange and Rockland); E-Cubed Co. (Joint Supporters); Multiple Intervenors (MI); Natural Resources Defense Council/Pace Energy Project (NRDC/Pace); Nucor Steel Auburn (Nucor); New York City Economic Development Corp. (NYC); and New York State Division of Housing and Community Renewal (DHCR).

The pertinent⁶ relief requested is that we (1) allow Staff to submit any additional information we consider necessary regarding its December 3, 2007 interim Fast Track proposal as so supplemented; (2) afford parties ten days to make final comments on Staff's December 3, 2007 Fast Track proposal; and (3) restart the collaborative process to consider all aspects of the long-term comprehensive EEPS Program in the context of the Straw Proposal; and (4) allow for the development of other proposals with meaningful opportunity for comment from all parties, with sufficient discovery opportunities. Staff requested we establish a schedule that would allow consideration of the fast track programs at the Commission's April 2008 session.⁷ As to remaining, longer-term policy issues, Staff stated its belief that, to develop a complete and defensible record, the schedule should accommodate more extensive discussion of alternatives to the Straw Proposal and the issuance of an RD on design issues, with briefing on exceptions.⁸

The Parties' Responses

Most parties share Staff's urgency to begin implementation of new energy efficiency programs as soon as possible; however, parties' views as to the best method to accomplish this goal vary widely.

1. The Revised Staff Fast Track Proposal

As to Staff's Fast Track proposals, utility parties are generally contra, seeking a larger and earlier role for their programs. Con Edison and Orange and Rockland oppose the Reconsideration Motion and request that the proceeding continue on the schedule established in the January 24, 2008 ruling, anticipating that the Staff

⁶ Staff also requested that parties be given three days to respond to its Reconsideration Motion and that we issue this ruling five days thereafter; these requests were mooted by our Ruling Establishing Reply Date for Staff Motion, issued February 22, 2008, allowing parties time to respond and the issuance of this ruling on the substance of the motion.

⁷ Staff Reconsideration Motion, p. 2.

⁸ Staff Reconsideration Motion, p. 4.

proposal generally relegates utility resource programs “to the sideline for the foreseeable future,” inconsistent with achieving the 15 x 15 goal.⁹ These parties, with reservations, prefer the Straw Proposal approach on the ground that it “affords utilities a meaningful role from the outset, rather than at some future date, as contemplated by the Staff Fast Track Proposal.”

Central Hudson supports a fast track, but only if it includes programs administered by utilities; in its view Staff’s Fast Track approach has kept utility-led programs from being implemented by jump starting NYSERDA programs to the exclusion of others. Central Hudson supports a Fast Track only if it includes “a full range of utility-led energy efficiency programs.” Central Hudson argues for immediate filing and adoption of utility energy efficiency programs, and urges expedited resolution of all issues by the Commission.

Some parties fear haste. While supporting Staff’s Reconsideration Motion on other issues, Multiple Intervenors (MI) opposes what it views as an overly expedited Fast Track process. Although MI supports restoring the bifurcated schedule of this proceeding and resuming the collaborative process, it does not support immediate implementation of a Fast Track, supporting instead “the establishment of deliberate and fair dispute resolution processes governing Fast Track issues and longer-term policy issues.” Nucor submits that Staff’s Fast Track proposal should be reconsidered and commented on by parties, followed by issuance of a Recommended Decision as to Fast Track issues only.

New York City Economic Development Corporation (NYC) endorses a Fast Track approach in which certain NYSERDA programs would be adopted early; but only if utilities were then given 60 days following a Commission order augmenting existing NYSERDA programs, to develop their own plans for interim energy efficiency and demand reduction programs.

⁹ Con Edison and Orange and Rockland Response, p. 1. These parties also challenge the Staff proposal as untimely. However, Commission Rules of Procedure provide no deadline for filing a motion for reconsideration of a Ruling and no prejudice to parties is demonstrated.

NRDC/Pace support immediate implementation of additional funding for interim energy efficiency programs. These parties caution, however, that the adoption of Fast Track programs by both NYSERDA and utilities, should not “be used as justification to prolong or delay the development and implementation of more comprehensive energy efficiency programs.” In contrast, the Community Environmental Center, a not-for-profit direct provider of energy efficiency measures for New York City buildings, warns of the need for comprehensive planning, citing past experience with ill-conceived utility-run programs.

Parties also differ as to which programs should receive funding on an expedited basis. For example, Conservation Services Group/Association for Energy Affordability (CSG/AEA) agree with Staff’s December 3, 2007 Fast Track proposal, but urge funding for NYSERDA’s Home Performance with Energy Star program in addition to the programs proposed by Staff. These parties would limit the Fast Track to existing programs and caution against rapid initiation of potentially overlapping programs. Joint Supporters urge inclusion of load reduction and demand response measures in the Fast Track, asserting that the valuable contributions of load reduction are being subordinated to energy efficiency measures. The Division of Housing and Community Renewal (DHCR) supports revival of the Fast Track approach including additional funding for its weatherization program.

2. The Staff Proposal to Reopen the Collaborative Process

Staff requests we restart the collaborative process under our direction to consider all aspects of the long-term comprehensive EEPS Program in the context of the Straw Proposal. Staff anticipates this process resulting in approved efficiency programs near the beginning of 2010.

MI supports a reopening of the collaborative process followed by a litigation schedule resulting in Commission action in 2009. Nucor supports the re-establishment of a bifurcated approach to the EEPS, suggesting that the Commission consider a Fast Track after a Recommended Decision and exceptions.

DHCR and CSG/AEA support the resumption of collaboration, estimating that new programs could begin implementation in 2009.

Other parties assent to further collaboration on a limited basis only. NYC opposes resuming the collaborative process, proposing instead that utilities be given 60 days to file energy efficiency plans. NRDC/Pace oppose any further collaboration that would extend beyond 30 days. Central Hudson urges immediate decisions from the Commission, arguing that “a month of experience would be worth a year of hearings.” Con Edison and Orange and Rockland state that a governance structure must be established soon so that all program administrators can begin developing and administering programs.

3. The Staff Proposal to Submit Additional Information

Staff’s Reconsideration Motion requests an opportunity to submit any additional information we consider necessary regarding its December 3, 2007 interim Fast Track proposal and that parties be afforded ten days to make final comments on Staff’s December 3, 2007 Fast Track proposal. Following the Technical Conference, on March 13, 2008, Staff orally requested permission to file an update and clarifications to its proposal for a suite of programs, and related issues. Staff seeks an early recommendation to the Commission. Staff represents that this updated proposal has been discussed with NYSERDA and will respond to parties’ questions concerning the Staff presentation that were proffered at the March 5, 2008 Technical Conference.

DISCUSSION

The comments of the parties reveal a wide range of positions on fundamental issues, including the pace of the decision-making process and the role of utility programs. We support Staff’s goal of authorizing early adoption of bridging programs and are prepared to put these before the Commission upon receipt of Staff’s final proposals for these programs, and parties’ comments. We remind parties that earlier rulings restricted such bridging programs to already existing, proven cost-effective energy efficiency programs that were oversubscribed, or for which there were waiting lists, that were capable of scaling up once additional funding was made available. If proposals stray from those parameters, proponents should explain why they are nonetheless appropriate for expedited consideration.

In order to move this process forward expeditiously, we intend to put before the Commission not only the authorization of bridge or Fast Track programs, but some specific policy issues as well. We continue to believe that authorization of a suite of primarily NYSERDA-administered Fast Track programs is best delivered while viewing the size of the Fast Track commitment relative to the overall cost of the energy efficiency program: that is, the current working estimates of the costs and benefits of attaining a 15% reduction of projected 2015 energy usage. That working estimate will be based upon the Technical Appendix estimates of overall program costs, as corrected based upon parties' questions and the Technical Conference record, and parties should comment on that estimate in their comments to be filed in April. Not only will prompt Commission action adopting a budget for the program place the bridging programs in perspective, it will allow utilities to increase SBC collection from customers immediately, so as to mitigate bill impact compression later in the program, and it will signal to market participants the Commission's commitment to a substantial long-term investment in energy efficiency. The issuance of the Straw Proposal, the record of the Technical Conference, and the parties' briefs pursuant to this Ruling expand the record of this proceeding sufficiently to support these Commission actions.

The Technical Appendix estimates are premised upon original NYSERDA submissions, Staff adjustments to and reframing of those estimates, and additional correction and review. The estimates are neutral as to what entity administers energy efficiency programs or other program design issues. They are also subject to ongoing program evaluation and modification which may require revision. They are not a blueprint for program design.

We also intend to recommend a policy determination by the Commission regarding utility participation in the broader EEPS initiative. Parties should comment on the Straw Proposal recommendations concerning target and funding allocations between NYSERDA and utilities, with the understanding that the Straw Proposal of an even division of energy efficiency targets, with concomitant funding, is also not reflective of program design but an estimate of targets for the purpose of ensuring utility accountability. Parties have argued convincingly for the critical importance of an

ongoing evaluation process, and flexibility to adjust Program Administrators' targets to reflect best opportunities to realize energy efficiency gains.

In view of Staff's Reconsideration Motion and the parties' responses, as well as the questions submitted by parties prior to the March 5, 2008 Technical Conference, we recognize the valid interest of many parties in a more extensive process prior to a Commission order deciding the full range of issues contemplated in the Straw Proposal. Many – but not all – parties support the reopening of the Working Group process; however, parties have widely differing views as to what that means, and on what timetable.

The Working Groups clarified and developed many issues on fundamental policy. However, several discreet issues will benefit from additional collaboration. As to issues identified in this Ruling, guidance from the Commission will make that process more productive. Further collaboration is necessary but we intend to focus it on (1) certain targeted policy issues; and (2) implementation. The issues flagged by the Working Groups for further consideration; the suggestions included among parties' questions concerning the Straw Proposal and Technical Appendix; proposals for the Technical Conference Agenda; and the list proposed by Staff at the Technical Conference provide a useful census of issues for collaboration. With the assistance of parties, we will establish a process and schedule shortly to address the major remaining issues.

CONCLUSION

Our prior procedural rulings were intended to expedite Commission consideration of overall program design policy. At this juncture, we agree this can be done in concert with approval of bridging programs. We urge parties to work with the schedule established here, which we believe addresses their principal concerns, so that we can all turn together to addressing the pressing substantive matters before us.

Staff's Reconsideration Motion is granted in part and denied in part. Insofar as Staff requests we allow it to submit additional information, the motion is granted. Staff should file and serve its updates by March 25, 2008. With its clarifications, Staff should include updated cost and benefit information for its proposed

suite of programs, and information as to the proposed duration of those programs. The cost, benefit, MWh reduction, and bill impact information should be presented in a format that is readily comparable to the data presented in the Straw Proposal Technical Appendix. If Staff recommends the adoption of new programs, including those administered by utilities, it should also recommend a schedule for stakeholder consultation, for utility filing of proposed programs, and for approval by the Commission. If Staff recommends early Commission approval of the use of SBC funds to augment the Division of Housing and Community Renewal programs, it should include its responses to the legal and policy issues raised in this proceeding concerning such use of SBC funds. Among other things, these include the identification or creation of a mechanism to implement its proposal, and to ensure that SBC funds can be channeled exclusively for energy efficiency programs as part of the EEPS.

Insofar as Staff urges us to (1) recommend to the Commission adoption of certain Fast Track or bridging programs at the earliest opportunity; and (2) afford parties time to add any further comments on these programs, the Reconsideration Motion is granted, with the following modification:

As discussed above, any recommendation of a Fast Track proposal will be made in the context of a determination regarding utility participation and with an estimate of overall program cost relative to the size of Fast Track commitments. Parties are encouraged to address the following issues:

(1) the updated Staff Fast Track suite of programs to be filed March 25, 2008, as well as the Staff presentation at the March 5, 2008 Technical Conference, the NYSERDA Fast Track proposal, and any other Fast Track proposals that have previously been submitted;

(2) the policy rationale for authorizing utility administration of energy efficiency programs in the broader context of the EEPS proceeding, including the reasons identified in the February 11, 2008 Straw Proposal: “Utilities can bring access to end-use customers, especially mass market customers, an ability to leverage outside funding through on-bill financing, and the potential to integrate energy efficiency with overall

energy resource planning”¹⁰ Parties may also brief the advisability of the Commission establishing periodic energy efficiency targets for each utility;

(3) whether the program cost and bill impact figures presented in the Technical Appendix to the Straw Proposal represent a reasonable estimate of the overall cost of those elements of the 15 x 15 initiative to be achieved through utility ratepayer-funded programs and on-bill financing; and

(4) the advisability of allocating in advance energy efficiency targets and funding among NYSERDA and each utility, as per the Straw Proposal.

All parties will have until April 8, 2008 to brief the four issues identified above. All parties may file replies by April 16, 2008.

We stress that this round of proposals and briefs only applies to the four issues proposed above for early Commission action. Following these proposals and briefing, and additional targeted collaborative efforts, parties will have further opportunities to brief the remaining policy issues necessary for overall design of an Energy Efficiency Portfolio Standard.

Insofar as Staff requests the restart of the collaborative process, the Reconsideration Motion is granted in part and denied in part. To the extent the Staff Reconsideration Motion seeks to put back into a full collaborative process “all aspects of the long-term comprehensive EEPS Program,” it is denied. A collaborative process on all issues, occupying an additional year or longer, would unnecessarily delay the adoption by the Commission of fundamental policy determinations, as well as the increase in SBC collection by utilities that must begin in order to moderate the long term bill increases associated with meeting the 15 x 15 goal.

Staff’s Reconsideration Motion as to the collaborative process is granted to the extent that a new round of targeted collaborative efforts is indicated and will be scheduled shortly.

Finally, as to the Staff request to allow for further discovery, the development by parties of other proposals for EEPS design, and an opportunity to

¹⁰ Straw Proposal, p. 2.

comment on those other proposals, we rule as follows: (1) parties are free to continue discovery throughout the course of this proceeding, as is the normal practice; (2) a revised Working Group schedule for additional collaboration, and briefing, will be issued shortly to allow parties sufficient time to propose other EEPS design models and to comment upon each others' models. To date in this proceeding, the following models in addition to the Straw Proposal have been put forward: Staff, NYSERDA, New York City Partnership, Central Hudson, and the EEPS structure models described in detail in the Working Group I Report. Parties will be welcome to suggest substitution of other program design choices, consistent with any Commission action on the recommendations herein.

The Revised Schedule

The current briefing schedule is amended and the tolling is discontinued. A separate schedule will be issued shortly for targeted collaboration on specific issues, as suggested by parties, along with a process and briefing schedule for the remainder of issues not included among the four identified above.

This Ruling establishes the following proposal and briefing round concerning issues for immediate Commission consideration:

March 25, 2008	Staff files supplemental information, as described above.
April 8, 2008	Initial Briefs on the four questions identified above, including new bridging program proposals.
April 16, 2008	Reply Briefs

(SIGNED)

ELEANOR STEIN

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