STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on February 26, 2015

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Gregg C. Sayre

COMMISSIONER EXCUSED:

Diane X. Burman

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

CASE 08-E-1014 – Petition of Niagara Mohawk Power Corporation d/b/a National Grid for Approval of an Energy Efficiency Portfolio Standard (EEPS) "Fast Track" Utility-Administered Electric Energy Efficiency Program.

CASE 08-G-1015 – Petition of Niagara Mohawk Power Corporation d/b/a National Grid, for Approval of an Energy Efficiency Portfolio Standard (EEPS) "Fast Track" Utility-Administered Gas Energy Efficiency Program.

CASE 06-G-1185 – Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York for Gas Service.

CASE 06-G-1186 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of the KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island for Gas Service.

CASE 08-G-0609 – Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Niagara Mohawk Power Corporation for Gas Service.

ORDER RESOLVING GAS AND ELECTRIC ENERGY EFFICIENCY MATTERS

(Issued and Effective March 4, 2015)

BY THE COMMISSION:

INTRODUCTION AND GENERAL DISCUSSION

By this order, the Commission resolves a number of outstanding energy efficiency budget and program issues arising out of the implementation of certain energy efficiency programs by Niagara Mohawk Power Corporation d/b/a National Grid (Niagara Mohawk), The Brooklyn Union Gas Company d/b/a/ National Grid NY (formerly d/b/a KeySpan Energy Delivery New York)(KEDNY), and KeySpan Gas East Corporation d/b/a National Grid (formerly d/b/a KeySpan Energy Delivery Long Island)(KEDLI). The affected programs include (1) the Niagara Mohawk “Fast Track” Electric Heating, Ventilation, and Air Conditioning (HVAC) Program; (2) the Niagara Mohawk “Fast Track” Gas HVAC Program; (3) the KEDNY/KEDLI Gas Low Income Programs; and (4) the Niagara Mohawk Interim Gas Programs.

It should be noted that among the matters resolved by the Commission in this order, there are three instances in which the Commission is authorizing Niagara Mohawk to recover costs that constitute over-expenditure by Niagara Mohawk above the level of costs previously budgeted by the Commission. The Commission is allowing such recovery for good cause shown and because such over-expenditure provided additional benefits for ratepayers in the form of incremental achieved energy-efficiency savings and the ability of more customers to participate in popular energy efficiency programs. The incremental savings are quantified below in the body of this order as part of the discussion of individual programs. In the broader context of the overall original Energy Efficiency Portfolio Standard (EEPS) and Interim Programs budgets, the overspending constitutes only 0.81% of overall electric and gas energy efficiency expenditures (0.32% electric/2.00% gas). In the first two instances, unspent funds already collected from ratepayers are available for the cost recovery without additional collections. In the third instance, Niagara Mohawk will be granted a deferral, with the method of recovery to be determined in the Company's next filed rate case where it may be possible to consider offsetting the recovery with credits owed by Niagara Mohawk to ratepayers.

Although the over-expenditure is small in the broader context, the Commission does not take these matters lightly. When the Commission issues an order establishing a maximum budget for a program, the utility or other entity responsible for administering that program needs to respect that Commission order. Commission orders should not be lightly regarded, and any entity that believes it can unjustly overspend and expect later Commission approval is grossly mistaken. These recoveries are only being authorized after an extensive audit process and a very lengthy review of every aspect of the petitions. In fact, as discussed below in the body of this order, the audit process resulted in a significant $3.7 million reduction in Niagara Mohawk's cost recovery request, which equates to approximately 46% of the over-expenditure to be allowed. In addition, many steps have been taken since these original EEPS programs were approved that have imposed tighter record-keeping and reporting requirements such that any future overspending will become apparent quicker and with less justification for such practices by utilities or other entities administering programs.

Regarding the Niagara Mohawk "Fast Track" Electric HVAC Program, in this order the Commission approves in part and denies in part the petition filed by Niagara Mohawk requesting reconsideration of a January 20, 2010 order in Cases 08-E-1014 and 07-M-0548 that terminated the Company's "Fast Track" electric HVAC program and ordered reduced collections for 2010 and 2011 to reflect the termination of the program. The Commission denies the request for reconsideration of the directive to reduce collections for 2010 and 2011, but authorizes Niagara Mohawk to recover the actual program expenditures incurred in its terminated program from available unspent EEPS funds authorized for EEPS programs implemented during the time period 2009 – 2011 (EEPS1). The Commission also denies Niagara Mohawk's request to calculate its earned shareholder incentive for the terminated program based on cumulative achieved savings through 2010 applied against a cumulative program target through 2011.

Regarding the Niagara Mohawk "Fast Track" Gas HVAC Program, in this order the Commission approves Niagara Mohawk's petition dated April 5, 2010, as modified herein, to recover incremental costs of its "Fast Track" HVAC program. The Commission authorizes Niagara Mohawk to recover a portion of these costs from available unspent incremental funding authorized in a June 24, 2010 order[1] and the remainder from available unspent EEPS funds authorized for its other EEPS gas programs implemented during the time period 2009 – 2011 (EEPS1).

Regarding the KEDNY/KEDLI Gas Low Income Programs, in this order the Commission grants a requested waiver from the service classification restriction under their respective Interim Low Income Energy Efficiency Programs and authorizes the Companies to retain SBC funds already collected, for the expenditures incurred in serving large multifamily service classes under the Low Income Programs. However, the Commission denies the request to recover additional revenues to account for those lost in serving the large multifamily service classes as the lost revenues have already been included in the Companies'

[1] Case 07-M-0548 et al., Energy Efficiency Portfolio Standard (EEPS), Order Approving Three New Energy Efficiency Portfolio Standard (EEPS) Programs and Enhancing Funding and Making Other Modifications for Other EEPS Programs (issued June 24, 2010) (the June 2010 order).

calculation of their SBC surcharges. KEDNY/KEDLI are authorized to retain the lost revenues on an ongoing basis.

Regarding the Niagara Mohawk Interim Gas Programs, in this order, the Commission approves in part and modifies in part the petition filed by Niagara Mohawk to recover incremental costs of its interim gas energy efficiency programs through a revised System Benefit Charge (SBC) on customer bills. The Commission authorizes Niagara Mohawk to recover the incremental expenditures, but denies the request to recover these expenditures through a revised SBC, and instead, authorizes the Company to defer these expenditures for future recovery from ratepayers.

BACKGROUND

On August 22, 2008, Niagara Mohawk submitted a proposal for a “Fast Track” utility administered residential electric HVAC program in response to a June 23, 2008 Commission order inviting such proposals from the six large investor-owned electric utilities.[2] The proposal contained budget amounts and savings projections that were well below those listed in the June 23, 2008 order. In a January 16, 2009 order, the Commission authorized Niagara Mohawk to proceed with its program with an overall budget of $2,113,650 ($576,450 for 2009 and $768,600 for each of 2010 and 2011), and a cumulative savings target of 542 MWh (148 for 2009, and 197 for each of 2010 and 2011) for the period 2009 – 2011.[3] Due to concerns regarding the

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

[3] Case 08-E-1003 et al., Electric “Fast Track” Energy Efficiency Programs, Order Approving “Fast Track´ Utility-Administered Electric Energy Efficiency Programs with Modifications (issued January 16, 2009).

low energy savings projections, the Commission directed the Company to file a new residential HVAC program proposal by April 1, 2009 for potential Commission approval for calendar years 2010 and 2011.

In April 2009, Niagara Mohawk submitted a proposal revising its program for 2010 and 2011 to include elements of the "Cool Smart" program offered by National Grid's New England affiliates. The revised proposal contained a total budget of $812,778 and projected savings of 394 MWh for 2010 and 2011. The revised 2010 – 2011 budget was $724,422 less than that authorized in the January 16, 2009 order for the same time period while the savings projections remained the same.

In a January 20, 2010 order, the Commission rejected Niagara Mohawk's proposal for 2010 and 2011. The Commission directed the Company to discontinue its existing residential electric HVAC program by March 31, 2010 and reduce its EEPS electric surcharge by $576,450 for 2010 and by $768,600 for 2011, effectively reducing the overall budget and savings targets of the program to $768,600 and 197 MWh, to reflect the cancellation of the program.[4]

On August 22, 2008, Niagara Mohawk submitted a proposal for a "Fast Track" utility administered residential gas HVAC program in response to a June 23, 2008 Commission order directing such proposals from gas utilities serving more than 14,000 customers.[5] In an April 9, 2009 order, the Commission

[4] Case 08-E-1014 –Niagara Mohawk Power Corporation - "Fast Track" Utility-Administered Electric Energy Efficiency Program, Order Rejecting Niagara Mohawk Power Corporation's Proposed Residential High Efficiency Central Air Conditioning Program for 2010 and 2011 (issued January 20, 2010).

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

approved the program with an overall 2009 – 2011 budget of $2,098,358 and savings target of 75,793 dekatherms (Dth).[6] The program was designed to promote the installation of efficient, cost-effective gas furnaces, boilers, and other equipment at the time of replacement, primarily by providing rebates for the purchase and installation of approved equipment, and began on June 1, 2009.

Due to the overwhelming success of the Program, Niagara Mohawk filed a petition on April 5, 2010 to request recovery of expenditures that exceeded the originally approved budget and to inform the Commission that the Program would be suspended.

On July 18, 2007 the Commission adopted the terms and conditions of a Joint Proposal (JP1)[7] that set forth a framework under which KEDNY and KEDLI would implement gas energy efficiency programs on an interim basis (Interim Programs), commencing August 1, 2007. The July Order authorized KEDNY and KEDLI to spend up to $10 and $5 million, respectively, and to defer these amounts and associated lost delivery service revenues for future recovery from ratepayers. Subsequently, in a December 21, 2007 order,[8] the Commission modified the authorized spending for the Interim Programs to $20 million and $10 million annually for KEDNY and KEDLI, respectively. The authorized amounts were to be expended on 15 programs, most of

[6] Case 08-G-1004 et al., Orange and Rockland Utilities, Inc. - Gas “Fast Track” Program, Order Approving “Fast Track” Utility-Administered Gas Energy Efficiency Programs with Modifications (issued April 9, 2009).

[7] Cases 06-G-1185 and 06-G-1186, supra, Order Authorizing Interim Gas Energy Efficiency Programs and Related Deferrals (issued July 18, 2007) (July Order).

[8] Cases 06-G-1185 and 06-G-1186, supra, Order Adopting Gas Rate Plans for KeySpan Energy Delivery New York and KeySpan Energy Delivery Long Island (issued December 21, 2007).

which had been effectively implemented in the then-KeySpan Corporation's New England jurisdictions. For each program, JP1 specified the service classes eligible to be served.[9] Large multifamily service classes were not listed as eligible for participation in the Low Income Programs, but were included as eligible service classes to be served by the Multifamily Programs.

On September 18, 2008, the Commission adopted, with modification, the terms and conditions of a Joint Proposal (JP)[10] that set forth a framework under which Niagara Mohawk would implement five gas energy efficiency programs on an interim basis (Interim Programs), for an eight-month period commencing October 1, 2008, as work in the Energy Efficiency Portfolio Standard (EEPS) case proceeded. Three of the five programs, the Residential High Efficiency Heating, Water Heating and Controls Program, the Residential ENERGY STAR Products Program and the Commercial Heating and Water Heating Program, were to be administered by the Company. The two remaining programs, the EmPower New York Program and the Assisted Home Performance with ENERGY STAR Program were to be administered by the New York State Energy Research and Development Authority (NYSERDA).

The September Order authorized spending of up to $4.9 million to implement these five programs for the period October 1, 2008 through May 31, 2009 and recovery of this amount

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[9] According to JP1, eligibility for the Low Income Program was limited to customers in service classifications serving one- or two-family dwellings, and buildings including no more than five (KEDNY) or four (KEDLI) dwelling units. Customers with larger multifamily buildings are served in a separate service classification.

[10] Case 08-G-0609, Niagara Mohawk Power Corporation - Gas Rates, Order Adopting an Interim Energy Efficiency Program and Modifying the Joint Proposal (issued September 18, 2008) (September 2008 Order).

through the SBC on customer bills. The September Order also authorized the Interim Programs to continue on a month-to-month basis until more permanent programs were established in the Commission's EEPS proceeding. Neither the September 2008 Order, nor any subsequent Order, specified incremental funding for the continuation of any of the Interim Programs beyond the eight-month period ending May 31, 2009.

NOTICE OF PROPOSED RULEMAKING

A Notice of Proposed Rulemaking concerning the Niagara Mohawk "Fast Track" Electric HVAC Program petition under consideration here was published in the State Register on March 17, 2010 (SAPA08-E-1014SP3). The minimum time period for the receipt of public comments pursuant to the State Administrative Procedure Act (SAPA) regarding that notice expired on May 3, 2010. One comment was received. The comment is summarized and addressed below.

A Notice of Proposed Rulemaking concerning the Niagara Mohawk "Fast Track" Gas HVAC Program petition under consideration here was published in the State Register on April 20, 2011 (SAPA07-M-0548SP36). The minimum time period for the receipt of public comments regarding that notice expired on June 4, 2011. No comments were received.

Notice of Proposed Rulemaking concerning the KEDNY/KEDLI Gas Low Income Programs petition under consideration here was published in the State Register on August 4, 2010 (SAPA Nos.: 06-G-1185SP12 and 06-G-1186SP9). The minimum time period for the receipt of public comments regarding those notices expired on September 20, 2010. No comments were received.

A Notice of Proposed Rulemaking concerning the Niagara Mohawk Interim Gas Programs petition under consideration here was published in the State Register on July 29, 2009 (SAPA No.:

08-G-0609SP3). The minimum time period for the receipt of public comments regarding that notice expired on September 14, 2009. No comments were received.

NIAGARA MOHAWK "FAST TRACK" ELECTRIC HVAC PROGRAM

By petition filed on February 19, 2010, Niagara Mohawk requests that the Commission reconsider portions of its January 20, 2010 order. Specifically, Niagara Mohawk requests reconsideration of the Commission's directive to reduce the Company's EEPS electric surcharge by $576,450 in 2010 and by $768,600 in 2011. Niagara Mohawk requests that the Commission instead authorize the recovery of $3,348,383 from customers for costs incurred for the terminated program ($2,094,841 in actual costs through January 2010 and $1,253,543 in forecasted costs to terminate the program) and allow the Company to calculate any earned shareholder incentive for the terminated program based on the cumulative savings achieved in calendar years 2009 and 2010 applied against the originally approved cumulative program target through 2011.

In its petition, Niagara Mohawk states that it began its "Fast Track" electric HVAC program, implemented as the High Efficiency Central Air Conditioning (CAC) Program, on March 17, 2009. Niagara Mohawk claims that it based its initial participation projections for the program on the experiences of National Grid affiliates implementing similar electric energy efficiency programs in New England, where customer participation had not been overwhelming. In contrast, Niagara Mohawk maintains that participation in the CAC program in upstate New York ramped up significantly in July 2009, only a few months into program implementation, with high participation levels that continued through the remainder of 2009. Niagara Mohawk states that it became aware only a few months after the program start that the high level of customer participation was likely to result in accelerated expenditure of future program dollars, and that if the high level of demand continued, the potential existed for a need for incremental funding to avoid early termination of the program. Niagara Mohawk notes, however, that in its February 13, 2009 order in Case 07-M-0548, the Commission had ruled that for efficiency programs initiated in calendar year 2009, shareholder incentive determinations for 2009 and 2010 would be based on an accounting of measures installed or performed cumulatively in years 2009 and 2010 applied against a cumulative program target through 2010. Niagara Mohawk states that at the time it became aware of the potential need for incremental funding, it had not yet exceeded the combined 2009 and 2010 approved spending. Niagara Mohawk further states that it was awaiting a Commission determination on its April 2009 proposal, and therefore deemed it premature to seek Commission guidance on the higher-than-expected customer participation in the CAC program.

Niagara Mohawk states in its petition that the response to the program was so overwhelming that by the end of January 2010, the program had incurred expenditures of $2,094,840 to achieve 979 MWhs in energy savings, surpassing the Commission’s established saving targets and approaching the Commission’s approved cumulative program costs for the overall program years of 2009 – 2011. Niagara Mohawk notes that the majority of program costs were associated with customer rebates, while marketing, planning, and administrative costs were kept to a minimum. Niagara Mohawk also states that the program served 2,656 participants through January 2010, as compared to the 2009 – 2011 projection of 1,995 participants.

Niagara Mohawk contends that customer response to its CAC program demonstrated how valuable the program was to upstate

New York customers interested in improving the efficiency of residential HVAC appliances and the overall comfort of their homes. Niagara Mohawk adds that this success came despite the fact that it did not undertake a marketing campaign for the program, and claims that program success was due to contractor education of customers, as well as the Commission authorized $200 BPI Contractor incentive, which further encouraged the Company’s network of contractors to transform the market and increase sales of high-efficiency HVAC equipment. Niagara Mohawk adds that its contractors stated that the CAC program, together with the Company’s gas HVAC program, allowed them the opportunity to sell whole systems to customers. In addition, Niagara Mohawk attributes some of the CAC program’s success to the fact that it was the first energy efficiency program it had offered to its customers in the western New York area of the Company’s service territory, where it provided electric service only.

In its February 19, 2010 petition, Niagara Mohawk requested that it be allowed to recover $3,348,383 through its EEPS electric surcharge, the total costs it expected to incur for the CAC program to be terminated on March 31, 2010, including $2,094,841 in actual expenditures through January 2010 and $1,253,543 in forecasted expenditures to wind down the program. The Company requested recovery of these costs through its EEPS electric surcharge, with the resultant collections being net of those authorized for the CAC program in the January 2010 order. In its amended petition filed July 8, 2011, the Company revised its original request for recovery from $3,348,383 to $2,257,279 to reflect the replacement of forecasted expenditures to terminate the program with actual results.

Summary of Comments

On March 22, 2010, Multiple Intervenors (MI) filed comments in response to Niagara Mohawk's Petition for Reconsideration, urging the Commission to affirm its directive to National Grid to reduce its 2010 and 2011 EEPS collections to reflect termination of the CAC program and limit the Company's recovery of CAC program costs to the 2009 budget level. MI strongly supports the Commission's rejection of programs that are not demonstrably cost-effective and in particular supports the decision to terminate Niagara Mohawk's CAC program. MI notes that in its reconsideration petition, Niagara Mohawk makes no claim that the CAC program is cost-effective, but instead concentrates on the achievements of the program and defends it by arguing that it was more popular than anticipated. MI claims that Niagara Mohawk had multiple opportunities to revise the program into a cost-effective one, and failed to do so each time. MI contends that Niagara Mohawk was on notice and aware that the program could be cancelled before the end of 2011, as the Commission granted only provisional approval of the program and directed the Company to file a revised program, and thus the Company "assumed the risk that it would not recover excess expenditures when it chose to exceed the approved 2009 budget without prior Commission approval."[11]

Discussion

Niagara Mohawk's request to recover actual incurred expenditures in its CAC program is reasonable. The Commission rejects MI's argument that Niagara Mohawk was on notice that the program may not be authorized to continue beyond 2009. Despite concerns with Niagara Mohawk's August 22, 2008 proposed "Fast Track" budget and energy savings (i.e., the budget and savings

[11] Case 08-E-1014, supra, Comments of Multiple Intervenors at 9 (filed March 22, 2010).

were far below what was originally anticipated in the June 2008 EEPS order), the CAC was authorized with annual budgets and savings targets through 2011 in the January 16, 2009 order approving “Fast Track” electric programs. In contrast, in that same order the Commission approved the “Fast Track” electric HVAC program proposed by Orange & Rockland Utilities for 2009 only, with no budget for 2010 or 2011, due to a concern regarding the cost-effectiveness of the program. In both instances the companies were required to file revised program plans by April 1, 2009. Niagara Mohawk complied with the requirement to file a revised program by April 1, 2009 for possible implementation during program years 2010 and 2011 and continued to implement the program, as originally approved.

Although it was expected that program administrators would work within their annual budgets and modulate program delivery to do so, exceeding annual budgets, and overall budgets, particularly during the first years of program implementation, was not unprecedented. For example, due to the overwhelming popularity of the “Fast Track” gas residential HVAC programs, six program administrators either exceeded or nearly exceeded their overall 2009 – 2011 budgets in just over one year of program implementation. In response, the Commission authorized incremental funding for those programs in a June 24, 2010 order.[12] Subsequent to these early EEPS experiences, significant changes were made to ensure Niagara Mohawk and the other program administrators gathered information regarding market demand via a rebate reservation system and to also provide needed flexibility to respond to market information by

[12] 07-M-0548 et al., Energy Efficiency Portfolio Standard (EEPS), Order Approving Three New Energy Efficiency Portfolio Standard (EEPS) Programs and Enhancing Funding and Making Other Modifications for Other EEPS Programs (issued June 24, 2010).

allowing them to revise rebate levels and to transfer funds between and among programs. Importantly, Niagara Mohawk's expenditures supported the overall objectives of the EEPS program and successfully provided energy efficiency services to customers.[13]

Niagara Mohawk's request to recover its actual incurred program costs for its CAC program will therefore be approved. Working with Niagara Mohawk, Staff has determined that the final incurred program expenditures are $2,276,838.[14] Although Niagara Mohawk requested recovery from customers through its EEPS surcharge, sufficient unspent funds exist in the Company's EEPS1 electric portfolio to cover these expenditures, and no further collections from customers are necessary. The Commission therefore denies the Niagara Mohawk's request for reconsideration of the directive in the January 20, 2010 order to reduce its collections by $576,450 in 2010 and by $786,660 in 2011. As Niagara Mohawk collected $730,171 from customers through its EEPS electric surcharge for program implementation prior to its termination, we authorize Niagara Mohawk to recover $1,546,668, the difference between actual program expenditures and collections for this program, from unspent EEPS1 electric portfolio funds.

Although the Commission approves here the recovery of program expenditures that exceed the budget set in the January 20, 2010 order, The Commission will not allow Niagara

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[13] With the expenditures above those originally authorized, the Company achieved an additional 1148 MWh in energy savings, at a cost per MWh approximately 64% less than the cost per MWh originally authorized.

[14] A distinction is made here between program funding and funding authorized for Evaluation, Measurement and Verification (EM&V) activities associated with the Program, which is authorized and tracked separately.

Mohawk to earn a shareholder incentive on savings achieved with those expenditures, as the Company should not be rewarded for failing to appropriately manage its program. The Commission will therefore not approve Niagara Mohawk's request to calculate its earned shareholder incentive for the terminated program based on the cumulative savings achieved in calendar years 2009 and 2010 applied against the originally approved cumulative program target through 2011. The January 20, 2010 order effectively reduced the CAC program's overall budget and savings targets to $768,600 ($730,171 net of EM&V) and 197 MWh, respectively, and any EEPS1 shareholder incentive for the CAC program shall be calculated based on those targets.

For the reasons discussed above, the Commission denies Niagara Mohawk's request for reconsideration of a January 20, 2010 order directing it to reduce collections for the CAC program in 2010 and 2011, denies its request to calculate any earned shareholder incentive for the CAC program based on the cumulative savings achieved in calendar years 2009 and 2010 applied against the originally approved cumulative program target through 2011, and approves, with modification, its request to recover actual expenditures in the CAC program.

NIAGARA MOHAWK "FAST TRACK" GAS HVAC PROGRAM

Niagara Mohawk's April 5, 2010 petition provides notice that the Program would be suspended, effective April 6, 2010, and requests recovery of expenditures in excess of its approved 2009 - 2011 program budget. The approximately $3 million in requested expenditures were comprised of $2,018,858 in actual expenditures through February 2010 and $1,070,149 in forecasted expenditures, for the months of March through December 2010, associated with winding down the program.

In its petition, Niagara Mohawk states that it began its “Fast Track” gas HVAC program, implemented as the Residential Heating, Water Heating, and Controls Program (the Program) on June 1, 2009. Niagara Mohawk states that although it did not undertake a marketing campaign for the Program, customer response was enormous. When participation levels through November 2009 became available in mid-December, it became clear that the cumulative 2009 – 2011 budget would be exhausted by the end of the first quarter of 2010. Niagara Mohawk notes that the Commission issued a proposed rulemaking on February 10, 2010 announcing that it was considering the provision of additional funding for certain EEPS gas energy efficiency programs. But once Niagara Mohawk realized a decision on this proposed rulemaking would likely not occur until May 2010, it made the determination to suspend the Program and to only accept new customer applications through April 5, 2010. In its petition, Niagara Mohawk states that if the Commission deems it appropriate to allocate additional funding, above and beyond what is requested in its petition, it would be agreeable to resuming the Program. Niagara Mohawk estimates that incremental funding of approximately $8 million would be required to resume the Program on July 1, 2010 and continue it through the end of 2011, assuming participation levels will not substantially diminish from that experienced to date. National Grid adds that, to the extent it is allowed to modify rebate amounts and make other proposed changes to the Program that would mitigate costs without discouraging participation, the estimate of $8 million may be somewhat overstated.

Discussion

For the reasons discussed below, the request of Niagara Mohawk to recover program expenditures in excess of those originally authorized in its EEPS1 gas HVAC program is approved.

In response to the overwhelming success of not only Niagara Mohawk's Program, but the residential gas HVAC programs administered by other utilities, in the June 2010 order additional funding was authorized for those programs administered by Niagara Mohawk, New York State Electric & Gas Corporation, Rochester Gas and Electric Corporation, Central Hudson Gas and Electric Corporation, and Orange & Rockland Utilities, Inc. to ensure their continuation through 2011. In that order, approximately $5 million in incremental program funding[15] was authorized for Niagara Mohawk to resume its Program. With that funding, Niagara Mohawk was expected to achieve incremental savings of 272,476 Dth. The Commission did not allow Niagara Mohawk, or any utility, to apply the additional funding to previous budget overruns without its approval. In addition, to enable more effective program administration, the Commission also required utilities to institute rebate reservation processes and reduced rebate levels associated with the incremental funding.

Niagara Mohawk reopened its Program in October 2010, and in compliance with the June 2010 order instituted a rebate reservation system and offered reduced rebates. Through December 2011, the Company expended $3,433,453 of the incremental program funds to achieve 222,310 Dth in savings. It is important to note that Niagara Mohawk's performance for the period October 2010 through 2011 demonstrated improved oversight

[15] A distinction is made here between program funding and funding authorized for Evaluation, Measurement and Verification (EM&V) activities associated with the Program, which is authorized and tracked separately, and for which the Company did not exceed its authorized budget.

and proper program modulation so as not to exceed the incremental budget approved in that order.

As was the case for other program administrators running like programs, participation levels far exceeding what was initially anticipated were a factor in Niagara Mohawk exceeding its originally authorized program budget for its residential gas HVAC program. Subsequent to these early EEPS experiences, significant changes were made to ensure Niagara Mohawk and the other program administrators gathered information regarding market demand via a rebate reservation system and to also provide needed flexibility to respond to market information by allowing them to revise rebate levels and to transfer funds between and among programs. Importantly, Niagara Mohawk's expenditures supported the overall objectives of the EEPS program and successfully provided energy efficiency services to customers.[16] In a March 20, 2012 order, the Commission authorized NYSEG/RG&E to recover expenditures in its residential gas HVAC programs in excess of those originally authorized, and we will do the same here.[17]

Working with Niagara Mohawk, Staff has determined that the program expenditures exceeding those originally authorized in the Company's Program are $3,145,857.[18] As previously noted,

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[16] With the expenditures above those originally authorized, the Company achieved an additional 155,197 Dth in energy savings, at a cost per Dth approximately 23% below the cost per Dth originally authorized.

[17] Case 07-M-0548 et al., supra, Order Approving Application of Additional Gas Residential HVAC Program Funding to Previous Budget Overages (issued March 20, 2012).

[18] A distinction is made here between program funding and funding authorized for Evaluation, Measurement and Verification (EM&V) activities associated with the Program, which is authorized and tracked separately. $3,145,857 represents 17% of the Company's total authorized budget for its EEPS1 gas portfolio.

the Company expended $3,433,453 of the $5,016,497 in incremental program funding through 2011, leaving $1,583,044 in unexpended incremental program funds. Niagara Mohawk is authorized to apply this amount to the previous program overspending. In addition, Staff has determined that sufficient unspent program funds exist in Niagara Mohawk's EEPS1 gas portfolio to cover the remaining program over-expenditures and thus no further collections from customers are necessary. Niagara Mohawk is therefore authorized to recover $1,562,813 ($3,145,857 - $1,583,044), the remaining program costs, from unspent EEPS1 gas portfolio funds.

For the reasons discussed above, the Commission approves the petition of Niagara Mohawk, as modified herein, to recover its expenditures in excess of those originally approved in its residential gas HVAC program.

KEDNY/KEDLI GAS LOW INCOME PROGRAMS

By petition filed on June 22, 2010, KEDNY/KEDLI seek a waiver of the restriction of the Low Income Programs to only certain specified small home and multifamily service classes under the Low Income Programs. KEDNY/KEDLI specifically request authorization to retain approximately $11.43 million[19] in direct program costs incurred in serving large multifamily service classes under the Low Income Programs through December 2009. KEDNY/KEDLI have already collected these monies from customers through the SBC. In addition, KEDNY/KEDLI request recovery of the "lost revenue" associated with serving these customers under the Low Income Programs in the amounts of $377,804 and $212,556 for KEDNY and KEDLI, respectively.

[19] Of the $11.43 million, KEDNY spent $7.35 million, and KEDLI spent $4.08 million.

KEDNY/KEDLI state that the omission of the large multifamily service classes from those eligible to be served under the Low Income Programs was unintentional and inconsistent with the intent of JP1. According to KEDNY/KEDLI, that intent was to adapt the Interim Programs to the characteristics of the KEDNY and KEDLI service territories, which include many larger multifamily dwellings that house a significant number of low income households. The petitioners believe that the general intent of JP1 was to offer the Low Income Programs to income-eligible households residing in large multifamily dwellings, and the omission of those service classes was an oversight.

KEDNY/KEDLI state that they entered into an agreement with the Association for Energy Affordability, Inc. (AEA) whereby AEA provided administrative support and installation services for the Companies' Low Income Programs. KEDNY/KEDLI affirm that, through AEA, they were openly targeting weatherization-eligible[20] large multifamily housing under the Low Income Programs since the programs' inception. KEDNY/KEDLI contend that the Low Income Programs were designed and implemented to complement the New York State Weatherization Assistance Program and to reach that segment of the population that had not already received energy efficiency services through state agencies. Working with AEA, state KEDNY/KEDLI, they appropriately coordinated with the state agencies in a manner consistent with JP1. According to KEDNY/KEDLI, their failure to comply with the literal text of JP1 was inadvertent and

[20] Per the New York State Division of Housing and Community Renewal, the administrator of the Department of Energy Weatherization Assistance Program for New York, New York State weatherization guidelines require that more than 50% of the households in those small home or multifamily buildings served have an annual household income that is at or below 60% of the New York State Median Income.

regrettable, but motivated by a need to deliver the benefits of the Low Income Programs to the largest segment of low income households in their respective service territories. Across both service territories, KEDNY/KEDLI state that 87% of the total expenditures in the Low Income Programs funded energy efficiency measures in large multifamily buildings, resulting in 199,352 Dth in energy savings. These measures benefited 3,574 and 2,324 families in the KEDNY and KEDLI service territories, respectively.

While KEDNY/KEDLI maintain that serving large multifamily low income customers under the Low Income Programs was the most appropriate use of the program funds, they acknowledge that JP1 did not include such service classes as eligible to receive the benefits of these programs. KEDNY/KEDLI claim, however, that to exclude the large multifamily buildings in New York City and Long Island from the provision of services under the Low Income Programs would not have been in the best interest of their customers, and would have been inconsistent with past practice in programs with similar target participants. In support of this claim, KEDNY/KEDLI point to the eligibility requirements of the New York State Weatherization Assistance Program, and sound public policy.

KEDNY/KEDLI state that they ceased delivery of the Low Income programs at the end of 2009. At that time, the Commission approved funding to achieve similar goals through the EmPower NY (Gas) Program to be administered by the New York State Energy Research and Development Authority (NYSERDA) on a statewide basis. KEDNY/KEDLI note that the low income customers served under the NYSERDA program includes the large multifamily segment.

Discussion

The KEDNY/KEDLI request for waiver of the service classification restriction under the Low Income Programs is reasonable and is approved. The Low Income Programs at issue here expired prior to KEDNY/KEDLI's filing of their petition, thus the import of the waiver is the disposition of monies related to the Companies' execution of the Low Income Programs. KEDNY/KEDLI are authorized to retain SBC funds previously collected, for expenditures of $7,348,374 and $4,082,406 for KEDNY and KEDLI, respectively, incurred to serve the large multifamily service classes in the Low Income Programs. This authorization requires no new collections from customers.

As explained by KEDNY/KEDLI, the omission of the large multifamily service classes from those eligible for the Low Income Programs would have undermined the ability to successfully reach the intended beneficiaries of those programs. JP1 explains that the Interim Programs, including the Low Income Programs were to be adaptations of programs that have been implemented in KeySpan Corporation's New England service territories. Both JP1 and the July Order emphasize the need to customize these programs to maximize benefits in the KEDNY/KEDLI service territories. The July Order specifically notes the prominence of large multifamily buildings, particularly in KEDNY's service territory.[21] Thus, in order to meet the purpose of the Low Income Programs, it was logical for KEDNY/KEDLI to include larger multifamily buildings. Further, none of the signatories to JP1, or any other party, has objected to the request, which they could have done by filing comments in response to the SAPA notices.

[21] July Order, p. 9. Also, according to the US Census Bureau, 85.7% of the housing units in Kings County (Brooklyn) are in multi-unit structures, this compares to 50.5% statewide. See, http://quickfacts.census.gov/qfd/states/36/36047.html (figures are for the years 2008-2012)(accessed on November 10, 2014).

With regard to the KEDNY/KEDLI request to recover the lost revenue associated with serving large multifamily building customers under the Low Income Programs, a review of the Companies' SBC surcharge filings shows that the Companies have previously included the requested lost revenues in their SBC surcharges and, therefore, no additional recovery is necessary. However, KEDNY/KEDLI are authorized to retain the lost revenues included in and collected through their SBC surcharges, on an ongoing basis until the Companies' rates are reset. The July Order explicitly allowed KEDNY/KEDLI to recover lost revenues.[22] Serving large multifamily buildings under the Low Income Programs was logical, in order to fulfill the goals of those programs in the Companies' service territories. Therefore, it is appropriate that KEDNY/KEDLI continue to recover the lost revenues associated with serving those customers.

NIAGARA MOHAWK INTERIM GAS PROGRAMS

On June 9, 2009, Niagara Mohawk filed a petition (the June 2009 petition) seeking incremental funding to continue the Interim Programs. Specifically, Niagara Mohawk requested recovery of an additional $2.52 million in estimated program expenses that it would incur to run the five programs through May 31, 2009, as well as authorization to spend up to an additional $5.2 million in forecasted expenditures to continue four of the programs through October 31, 2009.[23] Niagara Mohawk also requested authorization to recover these incremental costs through a revised SBC.

[22] July Order, pp. 9-10.

[23] As a permanent Residential High-Efficiency Heating, Water Heating and Controls Program was to commence on June 1, 2009 per the Commission's April 9, 2009 order in the EEPS Proceeding, the interim gas energy efficiency program of the same name was no longer needed after May 31, 2009.

In its June 2009 petition, Niagara Mohawk stated that incremental funding was necessary because the demand for the Interim Programs was far greater than expected, and in particular, the response to rebates for high efficiency gas heating and water heating equipment was overwhelming. In addition, Niagara Mohawk stated that the majority of the program costs were associated with customer rebates, while planning and administrative costs were kept to a minimum.

On August 10, 2011, Niagara Mohawk amended its original request by replacing the forecasted expenditures of its June 2009 petition with the actual incurred expenditures for continuing the Interim Programs (the August 2011 amendment). In the August 2011 amendment, Niagara Mohawk stated that its June 2009 petition significantly underestimated the costs incurred in closing the interim Residential High-Efficiency Heating, Water Heating and Controls program, due mostly to the number of applicants in the queue awaiting rebates at the time the program was replaced by the more permanent program. Additionally, Niagara Mohawk states that it continued to offer the Residential ENERY STAR Products Program and the Commercial High-Efficiency Heating, Water Heating and Controls Program through March 2010 and April 2010, respectively, as more permanent EEPS programs were not yet authorized to replace the remaining Interim Programs. Niagara Mohawk claims that the September 2008 Order anticipated that the Interim Programs would continue on a month-to-month basis until such time as more permanent programs were acted on by the Commission which resulted in additional expenditures above those forecasted in the June 2009 petition.[24]

[24] The Company's assertion is based on page 16 of our September 2008 Order wherein we stated that, "The interim program may continue on a month-to-month basis until such time as the Niagara Mohawk $11.11 million program proposal is fully considered and we have acted on it." (noting that the

Niagara Mohawk also states in its August 2011 amendment that there were no incremental costs incurred for the two interim low income programs implemented by NYSERDA. The net result of Niagara Mohawk's August 2011 amendment was that the requested actual incurred incremental costs of the Interim Programs totaled approximately $7.3 million, approximately $400,000 less than that requested in its initial June 2009 petition.

Thereafter, on December 29, 2014, Niagara Mohawk filed a second amendment to its June 2009 petition (the December 2014 amendment), reducing its request for recovery of incremental costs to implement the Interim Programs to approximately $3.6 million, a reduction of approximately $3.7 million, basing its further reduction on clarifications it received from Department of Public Service Staff regarding certain items included in its incremental expenditures.

Discussion

For the reasons discussed below, the request of Niagara Mohawk to recover incremental expenditures in excess of those originally authorized in its Interim Programs, as included in the December 2014 amendment, is approved. In considering Niagara Mohawk's request, the Department's Office of Accounting, Audits and Finance undertook an audit to verify the Company's actual costs. The audit included reviewing invoices and other supporting documentation to verify the reported actual costs, as well as additional discussions with Niagara Mohawk to clarify matters surrounding the energy efficiency programs, their cost, and the allocation of such.

Company's rate case proposal for an $11.11 million gas energy efficiency program would best be decided in a generic proceeding such as the EEPS case, rather than in a specific rate case).

Staff's audit has determined that Niagara Mohawk's December 2014 amended request, reducing the amount for which it seeks recovery from $7,334,894 to $3,634,894, is reasonable, and that sufficient supporting documentation exists for the amount requested. The costs incurred helped to accelerate Niagara Mohawk implementation of gas energy efficiency programs, furthered our energy efficiency policies, and provided benefits to the system and to its customers.[25]

Through Niagara Mohawk's initial and amended petitions, Niagara Mohawk was and is seeking recovery of the incremental costs incurred to implement the Interim Programs through a revised SBC. As Niagara Mohawk has already incurred the costs for which it seeks reimbursement, and due to time that has lapsed since it initially filed its incremental funding request, the Commission is exercising its discretion to modify Niagara Mohawk's request and treat such request as a deferral petition.

The Commission generally considers any such deferral request under the following three criteria to determine if deferral treatment may be allowed:

i. the expense must be incremental to the amount allowed in rates;

ii. the incremental amount must be material and extraordinary in nature; and,

iii. earnings must be below the authorized rate of return on common equity (ROE).

The Commission first approved the Niagara Mohawk's Interim Programs in Niagara Mohawk's gas rate proceeding in Case

[25] With the $3,634,894 in expenditures authorized here, the Company achieved an additional 195,195 Dth in energy savings, at a cost per Dth approximately 82% lower than the cost per Dth originally authorized.

08-G-0609, through the adoption of a Joint Proposal specific to the interim gas energy efficiency issues, and on a separate track from that of the other general rate case issues. To cover the projected costs to implement the Interim Programs for an eight-month period, an SBC surcharge was designed to collect the approved and projected costs of $4.893 million over a twelve-month period and was included on customer bills from October 1, 2008 through September 30, 2009, at which time the SBC surcharge for these programs was terminated. No subsequent funding mechanism was established. Accordingly, Niagara Mohawk has demonstrated that the actual costs incurred, for which it now seeks recovery, were incremental to what had been established in rates.

The second prong of the deferral test is the requirement that the incremental amount for which recovery is requested be material to the company’s earnings and extraordinary in nature. The Commission's general policy for establishing materiality is that an item (net of related income taxes) must exceed 5% of the company’s net income available for common shareholders prior to the extraordinary event. As shown below, the incremental amount of $3.635 million requested and incurred by Niagara Mohawk for the interim gas energy efficiency program costs meets the Commission’s 5% materiality standard when compared to the net income available for common shareholders for the annualized twelve month period ended May 31, 2009.[26]

[26] The earnings for the annualized twelve month period ended May 31, 2009 were reported in the Company’s gas regulatory earnings report filed August 28, 2009.

Niagara Mohawk Power Corporation
Materiality Analysis of Incremental
Interim Gas Energy Efficiency Program Expense

Incremental Interim Gas Energy Efficiency Program Expense (Gross)	$ 3,634,894
State Income Taxes	(258,078)
Federal Income Taxes	(1,181,886)
Net of Tax Amount	$ 2,194,930
Net Income Available for Common Shareholders	$ 42,533,000
Net Impact as a % of Net Income Available for Common Shareholders	5.16%

Whether a cost is considered "extraordinary" is defined in the Uniform Systems of Accounts (USOA) for Class A Electric and Gas Companies to include:

> Those items related to the effects of events and transactions which have occurred during the current period and which are of unusual nature and infrequent occurrence shall be considered extraordinary items. Accordingly, they will be events and transactions of significant effect which are abnormal and significantly different from the ordinary and typical activities of the company, and which would not reasonably be expected to recur in the foreseeable future.

Based on the information presented in Niagara Mohawk's initial and amended petitions, the Commission agrees with Niagara Mohawk that the incremental Interim Program costs incurred were extraordinary in nature. The customer response to the Interim Programs, not unlike the customer response to the initial EEPS programs, was overwhelming and unanticipated, as were the related costs to implement the programs and to transition from the interim to the more permanent programs established in our EEPS Proceeding.

The last prong that must be met for deferred accounting treatment is the requirement that the utility not be over-earning. Niagara Mohawk's regulatory earnings report for the annualized twelve month period ending May 31, 2009 included an ROE analysis and a computation showing it had actually earned a 3.93% ROE for the period. Niagara Mohawk's allowed ROE for the same period was 10.0%.[27] As evidenced by the very low ROE, the Company has met this prong of the test.

Accordingly, the Commission will approve Niagara Mohawk's December 2014 amendment and grant the Company a deferral in the amount of $3,634,894, with the method of recovery determined in the Company's next filed rate case. The authorization here for incremental funding above that originally approved is in recognition of the unanticipated customer response to the Interim Programs, as well as the need for Niagara Mohawk to extend the programs beyond the eight-month period for which funding was originally authorized, while permanent programs were established in the EEPS Proceeding. It is the Commission's expectation, however, that going forward Niagara Mohawk will implement the necessary safeguards to ensure it operates within the authorized budgets for its energy

[27] For the annualized twelve-month period ending May 31, 2009, Niagara Mohawk was operating under the terms of the settlement agreement approved by the Commission in Case 99-G-0336, Niagara Mohawk Power Corporation - Gas Rates, Opinion 00-9 (issued July 27, 2000). This case was amended further in Case 01-M-0075, Niagara Mohawk Holdings, Inc., et al. - Merger and Stock Acquisition, Opinion and Order Authorizing Merger and Adopting Rate Plan, Opinion No. 01-6 (issued December 3, 2001).

efficiency programs, as well as its general operations and other regulatory initiatives.

For the reasons discussed above, the Commission approves the December 2014 amended petition of Niagara Mohawk, as further modified herein, to recover $3,634,894 in incremental expenditures in its Interim Programs from ratepayers. The Commission denies Niagara Mohawk’s request to recover these expenditures through a revised SBC, and instead authorize the Company to defer this amount for future recovery from ratepayers.

The Commission orders:

1. The request of Niagara Mohawk Power Corporation d/b/a National Grid (Niagara Mohawk) for reconsideration of a January 20, 2010 order to reduce its Energy Efficiency Portfolio Standard (EEPS) electric surcharge by $576,450 in 2010 and by $768,600 in 2011 to reflect the termination of its High Efficiency Central Air Conditioning (CAC) Program is denied.

2. The request of Niagara Mohawk for authorization to calculate any earned shareholder incentive for the CAC program based on the cumulative savings achieved in calendar years 2009 and 2010 applied against the originally approved cumulative program target through 2011 is denied.

3. Niagara Mohawk is authorized to recover $1,546,668 in overspending in its terminated CAC from unspent EEPS funds authorized for its other EEPS electric programs implemented during the time period 2009 – 2011 (EEPS1).

4. The request of Niagara Mohawk for recovery of overspending in its Residential Heating, Water Heating, and Controls Program (HVAC program) is approved.

5. Niagara Mohawk is authorized to apply incremental funding approved in the June 24, 2010 order in the amount of

$1,583,044 to previous overspending in its HVAC program, as described in this order.

6. Niagara Mohawk is authorized to recover $1,562,813 in previous overspending in its HVAC program from unspent EEPS funds authorized for its other EEPS gas programs implemented during the time period 2009 – 2011 (EEPS1).

7. The request of Brooklyn Union Gas Company d/b/a National Grid NY (KEDNY) and KeySpan Gas East Corporation d/b/a National Grid (KEDLI) for a waiver of the restrictions to serve only certain specified small home and multifamily service classes under the Low Income Programs approved in the July 18, 2007 Order Authorizing Interim Gas Energy Efficiency Programs and Related Deferrals is granted.

8. KEDNY is authorized to retain $7,348,374 in expenditures incurred to serve large multifamily service classes in its Interim Low Income Program, previously collected from customers.

9. KEDLI is authorized to retain $4,082,406 in expenditures incurred to serve large multifamily service classes in its Low Income Program, previously collected from customers.

10. KEDNY is authorized to retain the lost revenues associated with serving the large multifamily service classes in the Low Income Programs on an ongoing basis until rates are reset.

11. KEDLI is authorized to retain the lost revenues associated with serving the large multifamily service classes in the Low Income Programs, on an ongoing basis until rates are reset.

12. The request of Niagara Mohawk for recovery of $3,634,894 in incremental expenditures in its interim gas energy efficiency programs is approved.

13. The request of Niagara Mohawk to recover $3,634,894 in incremental expenditures through a revised System Benefit Charge (SBC) is denied.

14. Niagara Mohawk is authorized to defer $3,634,894 in incremental expenditures for future recovery from ratepayers.

15. These proceedings are continued.

By the Commission,

(SIGNED) KATHLEEN H. BURGESS
Secretary