STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on February 13, 2013

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
Maureen F. Harris
James L. Larocca
Gregg C. Sayre

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

CASE 09-G-0363 – Petitions for Approval of Energy Efficiency Portfolio Standard (EEPS) Gas Energy Programs.

ORDER ADDRESSING BLOCK BIDDING AND OTHER UTILITY ENERGY EFFICIENCY PORTFOLIO STANDARD PROPOSALS

(Issued and Effective February 19, 2013)

BY THE COMMISSION:

INTRODUCTION

In this order, the Commission approves proposals by Niagara Mohawk Power Corporation d/b/a National Grid (Niagara Mohawk) and New York State Electric and Gas Corporation (NYSEG) and Rochester Gas and Electric Corporation (RG&E) to consolidate their respective commercial and industrial (C&I) EEPS programs and grants Consolidated Edison of New York, Inc.'s (Con Edison) request to exclude block bidding for its EEPS programs.[1] Also in this order, the Commission denies proposals by Niagara Mohawk

[1] Case 07-M-0548, Energy Efficiency Portfolio Standard (EEPS), Con Edison Requests Leave to Withdraw Block Bidding Proposal, dated September 19, 2012.

and Orange and Rockland Utilities, Inc.'s (O&R) for block bidding components, as well as Niagara Mohawk's request for additional funding for its mid-size commercial customers and O&R's proposal for a new C&I gas rebate program.

BACKGROUND

On June 23, 2008, the Commission created the EEPS program for New York State to develop and encourage cost-effective energy efficiency programs.[2] The Commission directed the New York State Energy Research and Development Authority (NYSERDA) and the six large investor-owned electric utilities to submit electric energy efficiency program proposals. In 2009 and 2010, the Commission approved a number of energy efficiency programs for the utilities' commercial and industrial customers.[3]

On October 25, 2011, among other actions, the Commission reauthorized most of the previously approved EEPS programs.[4] In that order, the Commission directed program administrators to submit any program modifications that would result in substantial impacts on targets and budgets by

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

[3] Case 07-M-0548, et al., Order Approving Certain Commercial and Industrial; Residential; and Low-Income Residential Customer Energy Efficiency Programs with Modifications (issued January 4, 2010); Case 07-M-0548, et al., supra, Order Approving Certain Commercial and Industrial Customer Energy Efficiency Programs With Modifications and Addressing Independent Program Administrator Filings (issued November 13, 2009); Case 07-M-0548, et al., supra, Order Approving Certain Commercial and Industrial Customer Energy Efficiency Programs with Modifications (issued October 23, 2009); Case 07-M-0548, et al., supra, Order Approving Certain Large Industrial Customer Energy Efficiency Programs with Modifications and Rejecting Others (issued August 24, 2009).

[4] Case 07-M-0548, et al., supra, Order Authorizing Efficiency Programs, Revising Incentive Mechanism, and Establishing a Surcharge Schedule (issued October 25, 2011).

March 31, 2012. The Commission also directed each electric utility not offering a block bidding program to submit either a proposal for such a program including a recommended source of funding, or an explanation as to why such an approach would not be effective for their customers.[5]

Various petitions were filed in response. Niagara Mohawk filed a proposal on January 27, 2012 to incorporate a block bidding program into its C&I programs. On April 2, 2012, Niagara Mohawk filed a petition proposing substantial modifications to its Small Business Services program (SBDI) and its Mid-Size and Large C&I programs.[6] Con Edison/O&R jointly submitted a proposal on January 27, 2012, requesting that the Commission approve conceptual block bidding programs and provide the companies 90-days to file fully developed proposals that incorporate block bidding into their existing prescriptive and custom rebate C&I programs. On September 19, 2012, Con Edison submitted a request to withdraw its block bidding proposal.[7] On April 2, 2012, O&R petitioned for approval of a new C&I gas energy efficiency program and on March 30, 2012, NYSEG/RGE petitioned to merge each utility’s multiple electric and gas C&I programs into one electric C&I and one gas C&I program for each utility.

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[5] The Commission further stated that utilities may recommend supplanting the targets and budgets of existing programs, or may recommend alternative funding sources.

[6] On May 9, 2012 Niagara Mohawk filed an erratum to its April filing to correct a number of minor rounding errors in certain dollar amounts and to properly title certain tables. The filing did not change Niagara Mohawk’s proposals or the arguments supporting them.

[7] O&R continues to seek Commission approval of its block bidding proposal.

SUMMARY OF FILINGS

Niagara Mohawk's Filings

In its January 27, 2012 filing, Niagara Mohawk proposes to offer block bidding to all its C&I electric customers that have loads greater than 100 kW and contribute to the System Benefit Charge (SBC). Niagara Mohawk claims that incorporating block bidding into its existing program offerings would allow customers to aggregate projects and the resulting energy savings, and that this approach would provide additional options for commercial customers to participate in EEPS programs. Niagara Mohawk is not requesting a change in funding or savings targets in order to facilitate block bidding, but states it may request additional funding in the future.

On April 2, 2012, Niagara Mohawk filed a petition that, among other things,[8] seeks to increase funding to its electric Mid-Sized C&I program. Niagara Mohawk is seeking an increase in funding of $4,900,180 annually for 2012-2015 with no related change in its savings target. The revised total annual budget would be $21,564,865. Currently, Niagara Mohawk's customer incentive payments represent 35%-40% of total project costs. Niagara Mohawk would use the requested budget increase to raise customer incentives to 50% of project costs. The petition identified several factors that discourage customer participation by increasing payback periods and lowering internal rates of return, including increased material and transportation costs related to higher petroleum prices, lower customer electric bills, and customer interest in more expensive LED lighting measures.

Niagara Mohawk's April 2, 2012 petition also restates the company's earlier request to combine its Mid-Sized and Large

[8] We will address issues related to in Niagara Mohawk's Small Business Direct Install program in the future.

electric programs[9] into a single program, the Energy Initiative – Commercial and Industrial Electric Program. Niagara Mohawk states that combining the programs will increase the flexibility and effectiveness of the EEPS programs. Niagara Mohawk notes that its natural gas C&I programs are already consolidated and it believes that combining its electric C&I programs would minimize customer confusion.

Con Edison/O&R Joint Filing – Block Bidding

In their January 27, 2011 filing, Con Edison/O&R state that they continue to have serious reservations about the Commission mandating specific program designs and do not believe that general block bidding programs represent the best use of their customers' dollars. Despite their reservations, the companies developed conceptual block bidding programs which they state are carefully designed to reflect their different service territories and to target specific market segments while not displacing existing successful EEPS programs.

On September 19, 2012, Con Edison requested to withdraw its portion of the joint Con Edison/O&R block bidding proposal. Con Edison claims that it seeks to avoid harming its existing C&I programs which are on track to achieve their established energy savings targets. Con Edison reiterates its concern that a block bidding program in its service territory would interfere with existing programs, create confusion in the C&I marketplace, and otherwise cannibalize existing programs.

O&R continues to seek approval of its block bidding proposal. The utility asserts that delivering block bidding as part of a combined C&I portfolio will allow the company to target and leverage existing resources and infrastructure

[9] Niagara Mohawk's gas C&I programs are already consolidated.

without the need for separate funding. O&R proposes to offer a block bidding option through energy services companies (ESCOs). The company believes that this approach will enhance its existing C&I portfolio by creating the opportunity to strategically target market segments and technologies with significant unrealized potential.

O&R – New Gas Program

On April 2, 2012, O&R filed a petition to, among other things, add a new C&I Existing Buildings Gas Rebate Program.[10] O&R proposes to serve 1,262 gas commercial and industrial customers through 2015. O&R states that it modeled the C&I Existing Buildings Gas Rebate Program after its successful electric C&I Existing Buildings Program.

NYSEG/RGE’s Filing

Currently, NYSEG and RG&E each administer three C&I electric programs (i.e., Non-residential Commercial and Industrial Prescriptive Electric Rebate, Non-residential Commercial and Industrial Custom Electric Rebate, and Block Bidding) and two C&I gas programs (i.e., Non-residential Commercial and Industrial Prescriptive Gas Rebate, Non-residential Commercial and Industrial Custom Gas Rebate). In the March 30, 2012 petition, each company proposes, among other things, to combine its three individual electric programs into one C&I electric program per service territory and its two

[10] We will address additional issues related to O&R’s Small Business Direct Install program in the future.

individual gas programs into one C&I gas program per service territory.[11]

All five of the existing C&I programs within each company's customer service territory serve the same non-residential customers. The companies have found that customers choose among the various programs depending on their needs, their access to technical resources, and their economic situation. The unpredictability of customer response to the programs has resulted in multiple fund transfers between programs.[12] The companies state that the transfer of funds between programs is administratively burdensome for the companies and for Staff, and can result in delays for payment of customer incentives and/or customers not completing energy efficiency projects because the funds are not immediately available. In addition, the companies report that operating these programs separately results in duplicative administrative requirements and associated increased costs.

NYSEG/RG&E believes that the proposed merging of the C&I programs will continue to allow customers to select the energy efficiency service option that best meets their needs while reducing administrative burden and cost with no decrease in accountability. The companies will continue to offer all current program measures, will continue to separately track each measure and project, and do not propose any additional modifications to eligibility or program operation at this time. The companies propose establishing budgets and energy savings targets for the new merged C&I electric program and the new merged C&I gas program by combining the budgets and savings

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[11] We will address additional requests raised in NYSEG/RG&E's March 30, 202 petition in the future.

[12] During the 2011-2012 time period, the Companies requested and were granted four separate fund transfers.

targets of the merged programs.[13] NYSEG/RG&E state that they plan to utilize any administrative cost savings that may be realized to increase the amount of incentives available to customers and to offset any cost increases incurred through calendar year 2015.

NOTICE OF PROPOSED RULEMAKING

A Notice of Proposed Rulemaking concerning the block bidding proposals was published in the State Register on February 22, 2012 [SAPA 07-M-0548SP48]. The minimum time period for the receipt of comments pursuant the State Administrative Procedure Act (SAPA) regarding this notice expired on April 7, 2012. Notices of Proposed Rulemaking concerning requests for modifications and additions to existing EEPS programs were published in the State Register on May 9, 2012 [SAPA 07-M-0548SP59] and [SAPA 07-M-0548SP65]. The minimum time period for the receipt of comments regarding these notices expired on June 23, 2012.

SUMMARY OF COMMENTS

Two sets of comments were received regarding block bidding programs in general: one from New York State Energy Research and Development Authority (NYSERDA), received April 9, 2012, and one from NYSEG/RG&E, received April 24, 2012. NYSERDA is concerned that the block bidding programs as currently proposed by the utilities will compete with existing C&I programs, cause unnecessary confusion for customers and market partners, and will lead to higher overall costs for ratepayers. NYSERDA asserts that the ratepayer cost per unit of energy saved

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[13] The annual energy savings targets for the merged RG&E C&I electric program reflects target changes from the February 17, 2012 Order and two inter-program fund transfers.

through block bidding programs should be capped at or lower than the lowest-cost C&I program and that block bidding solicitations should be focused on specific market segments or measure types to avoid market overlap, confusion and interference with existing EEPS programs. NYSERDA also submitted a June 25, 2012 comment package on NYSEG/RG&E's proposed modifications but NYSERDA's comments pertained to the Multifamily Gas Rebate Program and did not address the merger of the C&I programs.

NYSEG/RG&E also submitted comments, asserting: (i) it is unnecessary for block bidding programs to provide customer incentives at a lower ratepayer cost than existing EEPS programs; (ii) avoidance of overlapping EEPS programs has not, thus far, been a Commission endorsed EEPS program design principle; and (iii) overlapping programs do not automatically escalate EEPS costs. NYSEG/RG&E explain that a block bidding program by design encourages third party aggregators to competitively bid MWh savings at current market prices regardless of other program incentives. NYSEG/RG&E state that they have not experienced a cost escalation due to the concurrent operation of their block bidding and rebate programs. NYSEG/RG&E recommends that the Commission reject NYSERDA's suggestions regarding avoidance of program overlap and capping the $/MWh cost of block bidding programs.

Multiple Intervenors (MI) submitted comments on June 25, 2012 regarding various petitions seeking EEPS program modifications for 2012-2015. MI objects to program modifications that would increase program costs and/or decrease program benefits significantly. MI only supports program modifications that would not violate the total resource cost (TRC) test. Lastly, MI urges the Commission to return excess SBC and EEPS collections to customers.

DISCUSSION

Block Bidding Proposals

Despite our interest regarding block bidding programs in general, we decline to approve any block bidding proposals at this time. Upon consideration of the actual program proposals, as well as the comments submitted, we conclude that the potential benefits of additional block bidding programs are outweighed by the potential for overlapping programs and the resulting confusion, duplication and waste associated with such overlap. We share the concerns of Con Edison and NYSERDA that block bidding programs have the potential to negatively impact existing EEPS programs. Further, neither Con Edison/O&R’s, nor Niagara Mohawk’s proposal provide sufficient specificity to ensure that potential issues involved with block bidding can be appropriately addressed through program design. Similarly, we grant Con Edison’s request to forego block bidding in its service territory.

Our rejection of the block bidding proposals is less a rejection of the concept of block bidding and more a recognition that adding new programs, particularly ones that have the potential to compete or otherwise interfere with existing programs, is likely to increase confusion and administrative burden at a time when we are still determining the best mix of programs, program administration and oversight. Therefore, although we reject the new block bidding proposals, we will not stop or otherwise alter NYSEG/RG&E’s block bidding programs. According to NYSEG/RG&E the programs are operating successfully and we see no reason to disrupt this success.

Program Consolidation Proposals

The comments we have received in this proceeding, as well as feedback from the program administrators and other sources, have us concerned that the multitude of different programs, especially those that target similar types of customers, has created unnecessary confusion and administrative burden. Therefore, we will authorize Niagara Mohawk and NYSEG/RG&E to consolidate their C&I programs as requested. We agree that consolidating the programs will likely minimize customer confusion and provide operational flexibility. We direct the administrators to make reasonable efforts to ensure that all sizes of C&I customer have reasonable access to the programs and that a limited number of large projects do not regularly consume all program dollars at the exclusion of all others. The changes made here should improve the operation of the program and therefore, do not raise cost-effectiveness issues discussed in MI's comments.

Additional Funding and New Program Proposals

We deny Niagara Mohawk's request for additional funding for its C&I program. Although Niagara Mohawk expresses concern that a number of factors may negatively impact program savings, its petition does not provide sufficient evidence to quantify the effect or, in some cases, to demonstrate convincingly that such factors will have any significant impact. Moreover, the consolidation of the programs will provide flexibility for achieving savings from the company's C&I sector. At the very least, it is premature to forecast the need for additional funding until the impacts of these program changes are understood. Moreover, we cannot support an increase in total portfolio spending, without commensurate gains in energy savings.

Similarly, we reject O&R's proposal for a new gas C&I efficiency program. O&R states that the program will operate in conjunction with its existing electric C&I program and existing

NYSERDA C&I programs, but does not distinguish the program from NYSERDA's already operating Existing Facilities gas program. The petition does recognize the potential for overlap and duplication of effort. We agree with this observation and do not believe O&R's petition details sufficient safeguards to ensure that the concern is addressed. Because this proposal does not provide clear benefits and may cause unnecessary confusion and duplication, we will not authorize it.[14]

SEQRA FINDINGS

Pursuant to our responsibilities under the State Environmental Quality Review Act (SEQRA), in conjunction with this order, we find that the authorizations approved here are within the overall action previously examined by us in Case 07-M-0548 and will not result in any different environmental impact than that previously examined. In addition, the SEQRA findings of the June 23, 2008 order in Case 07-M-0548 are incorporated herein by reference and we certify that: (1) the requirements of SEQRA, as implemented by 6 NYCRR part 617, have been met; and (2) consistent with social, economic, and other essential considerations from among the reasonable alternatives available, the action being undertaken is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable.

CONCLUSION

As discussed above, we deny the utility program administrators' requests for additional EEPS programs and/or

[14] It should be noted that O&R did not propose a gas C&I program when we first requested such proposals in 2009. See Case 07-M-0548, Energy Efficiency Portfolio Standard (EEPS), Order Establishing Targets and Standards for Natural Gas Efficiency Programs (issued May 19, 2009).

funding. We grant Con Edison's request to exclude block bidding from its EEPS C&I programs. We also grant Niagara Mohawk's and NYSEG/RG&E's requests to consolidate their respective C&I programs in the manner explained above.

The Commission orders:

1. Niagara Mohawk Power Corporation d/b/a National Grid (Niagara Mohawk) is authorized to merge its existing Energy Initiative - Large Industrial Electric program and its Energy Initiative - Mid Sized Electric program, into a single Energy Efficiency Portfolio Standard (EEPS), Energy Initiative – Commercial & Industrial Electric program. The annual budget and savings targets for the combined Energy Initiative – Commercial & Industrial Electric program shall be equal to the sum of the 2012-2015 annual budgets and targets for the two programs from which it was formed, as shown in the attached Appendix. Within 30 days of the issuance of this order, Niagara Mohawk shall submit to the Secretary a revised Commercial and Industrial Energy Efficiency Implementation Plan reflecting the merging of the two programs.

2. New York State Electric and Gas Corporation's (NYSEG) and Rochester Gas and Electric Corporation's (RG&E) are authorized to merge their existing: (i) Non-residential Commercial and Industrial Prescriptive Gas Rebate Program and Non-residential Commercial and Industrial Custom Gas Rebate Program into a single C&I gas program in each utilities' service territory and (ii) their Non-residential Commercial and Industrial Prescriptive Electric Rebate, Non-residential Commercial and Industrial Custom Electric Rebate, and Block Bidding into a single C&I electric program in each utilities' service territory. The annual budget and savings targets for the combined programs shall be equal to the sum of the 2012-2015

annual budgets and targets for the programs from which it was formed, as shown in the attached Appendix. Within 30 days of the issuance of this order, NYSEG and RG&E shall submit to the Secretary a revised Commercial and Industrial Energy Efficiency Implementation Plan reflecting the merging of the programs.

3. Niagara Mohawk's request to increase funding for its Energy Initiative - Mid-Sized Electric program is denied.

4. Niagara Mohawk's and Orange and Rockland Utilities, Inc. (O&R) O&R's block bidding proposals are denied.

5. O&R's proposal for a new Commercial and Industrial Existing Buildings Gas Rebate Program is denied.

6. Con Edison is authorized to exclude block bidding from its Commercial and Industrial EEPS programs.

7. The Secretary may extend the deadlines set forth in this order.

8. These proceedings are continued.

By the Commission,

(SIGNED) JEFFREY C. COHEN
Acting Secretary

Approved Program Costs and Savings Targets

Niagara Mohawk	**2012**	**2013**	**2014**	**2015**	**Total 2012-2015**	**% of Budget**
Energy Initiative Energy Initiative - Commercial & Industrial Electric Program						
Savings (MWh)	118,671	118,671	118,671	118,671	474,684	
Program & Admin. Costs	$22,080,847	$22,080,847	$22,080,847	$22,080,847	$88,323,388	95%
Evaluation/M&V Costs	$1,162,149	$1,162,149	$1,162,149	$1,162,149	$4,648,596	5%
Total	$23,242,996	$23,242,996	$23,242,996	$23,242,996	$92,971,984	

NYSEG	**2012**	**2013**	**2014**	**2015**	**Total 2012-2015**	**% of Budget**
Commercial & Industrial Electric						
Savings (MWh)	15,998	15,998	15,998	15,998	63,992	
Program & Admin. Costs	$5,939,570	$5,939,570	$5,939,570	$5,939,570	$23,758,280	95%
Evaluation/M&V Costs	$312,607	$312,607	$312,607	$312,607	$1,250,428	5%
Total	$6,252,177	$6,252,177	$6,252,177	$6,252,177	$25,008,708	
Commercial & Industrial Gas						
Savings (Dekatherms)	13,576	13,576	13,576	13,576	54,304	
Program & Admin. Costs	$591,445	$591,445	$591,445	$591,445	$2,365,780	95%
Evaluation/M&V Costs	$31,128	$31,128	$31,128	$31,128	$12,512	5%
Total	$622,573	$622,573	$622,573	$622,573	$2,490,292	

RG&E	2012	2013	2014	2015	Total 2012-2015	% of Budget
Commercial & Industrial Electric						
Savings (MWh)	11,849	11,849	11,849	11,849	47,396	
Program & Admin. Costs	$4,294,273	$4,294,273	$4,294,273	$4,294,273	$17,177,092	95%
Evaluation/M&V Costs	$226,014	$226,014	$226,014	$226,014	$904,056	5%
Total	$4,520,287	$4,520,287	$4,520,287	$4,520,287	$18,081,148	
Commercial & Industrial Gas						
Savings (Dekatherms)	13,621	13,621	13,621	13,621	54,484	
Program & Admin. Costs	$588,112	$588,112	$588,112	$588,112	$2,352,448	95%
Evaluation/M&V Costs	$30,952	$30,952	$30,952	$30,952	$123,808	5%
Total	$619,064	$619,064	$619,064	$619,064	$2,476,256	