

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on May 19, 2011

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
Robert E. Curry, Jr.
James L. Larocca

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

CASE 08-E-1129 - Petition of New York State Electric & Gas
Corporation for Approval of an Energy Efficiency
Portfolio Standard (EEPS) Utility-Administered
Electric Energy Efficiency Program.

CASE 08-E-1130 - Petition of Rochester Gas and Electric
Corporation for Approval of an Energy Efficiency
Portfolio Standard (EEPS) Utility-Administered
Gas Energy Efficiency Program.

ORDER APPROVING PETITION TO ELIMINATE 100KW DEMAND THRESHOLD for
COMMERCIAL AND INDUSTRIAL EEPS PROGRAMS

(Issued and Effective May 24, 2011)

BY THE COMMISSION:

INTRODUCTION

In this order, the Commission approves New York State
Electric & Gas Corporation and Rochester Gas and Electric
Corporation's (NYSEG/RGE) petition dated November 3, 2010 seeking
authorization to eliminate the 100kW demand threshold for
customer eligibility for the companies' Non-Residential
Commercial and Industrial Custom Rebate programs (Custom C&I
programs) that are currently operated by the utilities.
According to NYSEG/RGE, eliminating the 100kW threshold will

allow smaller customers to participate, providing greater overall opportunity for program participation. We also authorize other electric utilities that operate EEPS programs for commercial and industrial customers with a 100kW customer eligibility threshold the option to eliminate the threshold.

BACKGROUND

On June 23, 2008, the Commission created an Energy Efficiency Portfolio Standard (EEPS) for New York State to develop and encourage cost-effective energy efficiency programs.¹ The Commission invited 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. To provide for an orderly review of the proposals, they were considered and approved in phases, by customer market sector. Within the commercial and industrial customer market segment, the Commission approved a Small Business Direct Installation (SBDI) program for each of the electric utilities. The utility SBDI programs are targeted to customers with average demand up to 100kW. The Commission also approved other electric EEPS programs for commercial and industrial customers, including some programs with an eligibility threshold requiring customers to have average demand of 100kW or greater.

In a June 24, 2010 EEPS order, the Commission stated that the programs it approved for the various customer market sectors reflect a balance between each customer segment's allocated program cost responsibility and the funding of EEPS

¹ Case 07-M-0548, Energy Efficiency Portfolio Standard (EEPS), Order Establishing Energy Efficiency Portfolio Standard and Approving Programs (issued June 23, 2008).

programs for which the segment is eligible.² The Commission directed the utilities and NYSEERDA to take steps to ensure that only the intended customers participate in each approved program.

Currently, NYSEG/RGE have several electric efficiency EEPS programs that address the commercial and industrial customer sector in their service territories. Both utilities offer the same set of programs in their respective territories. The SBDI programs for customers with electric demand less than or equal to 100kW provide lighting upgrades only. The Custom C&I programs and the Block Bidding programs address commercial and industrial customers with electric demand greater or equal to 100kW, and the Non-residential Commercial and Industrial Prescriptive Rebate programs (Prescriptive C&I programs) are available to commercial and industrial customers regardless of demand levels.

NYSEG/RGE's PETITION

NYSEG/RGE state that their Custom C&I programs, which were launched on July 1, 2010, encourage commercial and industrial customers to identify and implement energy efficiency improvements that include a variety of measures not available in their Prescriptive C&I programs. The Custom C&I programs include upgrades and efficiency improvements to refrigeration, energy management systems, energy recovery systems, various industrial processes, day-lighting systems, and other measures. The custom measures require site-specific engineering and must meet the required TRC test screening and cost-effective analysis.

NYSEG/RGE believe that the 100kW demand threshold required by the Commission for the Custom C&I programs impedes participation and will result in lost energy saving opportunities

² Case 07-M-0548 et al., supra, Order Approving Three New Energy Efficiency Portfolio Standard (EEPS) Programs and Enhancing Funding and Making Other Modifications for Other EEPS Programs (Issued and Effective June 24, 2010), p. 31.

for customers below the demand threshold. According to NYSEG/RGE, from October 1, 2010, nine of sixteen submitted Custom Rebate program applications have been rejected because the customers did not meet the 100kW demand threshold. Agricultural customers and customers with commercial refrigeration equipment are of particular concern to NYSEG/RGE because many do not currently qualify for the Custom Rebate programs, and neither the SBDI programs nor the Prescriptive Rebate programs provide energy efficiency measures that meet these customers' needs. NYSEG/RGE conclude that removing the 100kW demand threshold for Custom Rebate programs will remove a significant barrier to EEPS program participation and provide more customers the opportunity to decrease their electricity usage due to efficiency improvements.

NOTICE OF PROPOSED RULEMAKING

A Notice of Proposed Rulemaking concerning the NYSEG/RGE petition for authorization to eliminate the 100kW demand threshold in their Custom Rebate program was published in the State Register on December 8, 2010 (SAPA 07-M-0548SP28). The minimum time period for the receipt of public comments pursuant to the State Administrative Procedure Act (SAPA) regarding that notice expired on January 24, 2011.

SUMMARY OF COMMENTS

On December 9, 2010 The New York State Department of Agriculture and Markets (Ag & Markets) submitted comments supporting NYSEG/RGE's petition. On January 21, 2011, Multiple Intervenors (MI) submitted comments opposing the elimination of the 100kW demand threshold.

Ag & Markets states that a significant portion of agricultural rate payers are currently ineligible to participate in the Custom Rebate program due to the current demand threshold. According to Ag & Markets, eliminating the 100kW demand threshold

will increase the likelihood that small and medium sized farming operations will increase the energy efficiency of their operations through participation in EEPS.

MI is concerned that eliminating the 100kW demand threshold would dissipate commercial and industrial program funds among small commercial and industrial customers without reducing the costs paid by large commercial and industrial customers. Furthermore, MI is concerned that a decision to grant the petition could establish an undesirable precedent where, through program design modifications, EEPS-related expenses are incurred to benefit customers of various types and sizes in a manner that is highly inconsistent with how EEPS-related surcharges are recovered.

DISCUSSION

NYSEG/RGE's argument that eliminating the 100 kW customer threshold for its Custom Rebate program is likely to increase EEPS participation among small business customers is compelling. In addition, Department of Public Service Staff (Staff) has conducted its review of other utility EEPS program operations and found that the utility SBDI programs statewide, which primarily promote lighting improvements, are not currently providing many opportunities for other types of cost-effective energy efficiency improvements in the small commercial and industrial sector. Approved programs for larger commercial and industrial customers of some other utilities also have a customer eligibility threshold of 100kW, including Orange & Rockland Utilities Inc.'s (O&R) Commercial Existing Buildings program, Central Hudson Gas and Electric Corporation's (Central Hudson) Mid-Size Commercial Business program, and Niagara Mohawk Power Corporation's (Niagara Mohawk) Energy Initiative Mid-size

Commercial and Industrial program.³ Niagara Mohawk has reported to Staff that customers with demand below 100kW cannot receive needed measures through its SBDI program, including compressed air, variable speed drives, energy management systems and custom projects. Niagara Mohawk also reported to Staff that some smaller commercial and industrial customers would prefer to use their own vendor due to longstanding relationships, and not be required to work with an unfamiliar SBDI program contractor. Such customers are likely to benefit from participation in Niagara Mohawk's Energy Initiative Mid-size Commercial and Industrial program. We suspect similar situations with the other EEPS programs with 100kW eligibility thresholds.

In order to achieve our EEPS energy savings goals it is vital that we eliminate barriers that unnecessarily limit customer participation in EEPS programs. We previously directed the utilities to ensure that only the customers for whom the EEPS programs were intended be allowed to participate in the programs. The purpose, in view of the EEPS funding collected from each customer sector, was to ensure that program funds intended for a particular customer sector are available to serve the intended customers. However, it has become clear that allowing wider participation in commercial and industrial programs will not deprive larger customers of an opportunity to participate. Indeed, NYSEG/RGE report that, through February 2011, they have spent only 8% (NYSEG) and 5% (RGE) of the approved Custom Rebate program budgets through 2011. Similarly, Niagara Mohawk has spent 15% of its mid-size commercial and industrial program budget, O&R has spent 4% of its Commercial Existing Buildings

³ Consolidated Edison Company of New York, Inc. commercial and industrial customers are currently eligible for the Con Edison C&I Equipment Rebate and C&I Custom Efficiency programs without demand level restrictions.

program budget, and Central Hudson has spent 32% of its Mid-Size Commercial Business program.

We approve NYSEG/RGE's request to eliminate the 100 kW demand threshold for customer participation in their Custom Rebate programs. In addition, we allow Niagara Mohawk, O&R and Central Hudson the option to revise their commercial and industrial customer EEPS programs to eliminate the 100 kW participation thresholds where applicable. NYSEG/RGE and any other utility that intends to exercise the option to make this change should file the necessary revisions to their program implementation plans including the effective date of the customer eligibility change.

SEQRA FINDINGS

Pursuant to our responsibilities under the State Environmental Quality Review Act (SEQRA), in conjunction with this order we find that programs modified 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

For the reasons discussed above, the Commission approves the petition from NYSEG/RGE to eliminate the Non-residential Commercial and Industrial Custom Rebate program 100kW demand threshold.

The Commission orders:

1. New York State Electric & Gas and Rochester Gas and Electric (NYSEG and RGE) are authorized to modify the Non-residential Commercial and Industrial Custom Rebate programs in the manner described in the body of this order. The program modification may be applied immediately.

2. NYSEG and RGE shall file revisions to their program implementation plans to describe the revised customer eligibility requirements no later than the date on which the revisions will take effect.

3. Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc. and Central Hudson Gas and Electric Corporation may modify EEPS program customer eligibility requirements as described in this order. Utilities that exercise this option shall file appropriate revisions to program implementation plans no later than the date on which the revisions will take effect.

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

5. These proceedings are continued.

By the Commission,

JACLYN A. BRILLING
Secretary