STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on March 15, 2012

COMMISSIONERS PRESENT:

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

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

ORDER ESTABLISHING UTILITY FINANCIAL INCENTIVES

(Issued and Effective March 22, 2012)

BY THE COMMISSION:

INTRODUCTION

This order establishes a mechanism for awarding incentives to utilities administering efficiency programs under the Energy Efficiency Portfolio Standard (EEPS). The mechanism adopted here, applicable to years 2012 through 2015, is a revision of the mechanism that was applicable in 2009-2011. Formulaic incentives will be awarded on a positive basis only, and the total amount of potential incentive awards is smaller, on an annual basis, than the potential incentives under the previous mechanism. Utilities will be eligible for incentives not only for achievement of their own targets, but also for the achievement of statewide goals, including NYSERDA targets.

BACKGROUND

On August 22, 2008, the Commission adopted an incentive mechanism for utilities administering EEPS programs.[1] The application of the mechanism was

[1] Case 07-M-0548, Order Concerning Utility Financial Incentives, issued August 22, 2008 (2008 Incentives Order).

subsequently modified to account for circumstances affecting the roll-out and early performance of EEPS programs. On December 21, 2010, the Commission issued an order consolidating targets for the period ending December 31, 2011, and providing for a demonstration of mitigating circumstances, where targets are not achieved.[2]

On July 6, 2011, DPS Staff issued an Energy Efficiency Portfolio Standard Program Review White Paper (White Paper) addressing numerous issues related to the continuation of EEPS programs beyond December 31, 2011. The White Paper contained an extensive discussion of utility incentives, finding that incentives had succeeded in motivating utility management but also had contributed to counterproductive results. Staff recommended that incentives in the form then existing should be eliminated, and that a process should be put into place to consider instituting a revised mechanism.

In an order of October 25, 2011 (EEPS Reauthorization Order)[3] the Commission eliminated the efficiency incentive as of January 1, 2012. The order outlined a proposal for a revised mechanism, but did not adopt the mechanism, instead ordering the Secretary to issue the proposal for comment. The Commission stated that it intended to adopt an incentive mechanism similar to that which was outlined in its order, and that the incentives would be effective retroactively to January 1, 2012.

The Secretary issued a Notice Seeking Comment on November 17, 2011, including the Commission's proposed incentive mechanism and several additional questions.[4] Comments were received from nine parties on January 10, 2012, and replies were received from four parties on January 19, 2012.[5]

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2 Case 07-M-0548, Order Combining Incentive Targets, Clarifying Incentive Mechanism Details and Establishing Implementation Advisory Group, issued December 21, 2010.

3 Case 07-M-0548, Order Authorizing Efficiency Programs, Revising Incentive Mechanism, and Establishing a Surcharge Schedule, issued October 25, 2011.

4 A Notice of Proposed Rulemaking was published in the State Register November 23, 2011.

5 A summary of parties' comments is attached as Appendix 2.

THE INCENTIVE PROPOSAL

The proposal articulated in the EEPS Reauthorization Order was designed to maintain the positive benefits of incentives while reducing the complexity of implementation and potentially counterproductive effects. Total amounts at stake would be smaller. Formulaic negative incentives would be eliminated, although poorly performing utilities would still be vulnerable to adjustments in rate cases or other proceedings. Cooperation among utilities and NYSERDA would be encouraged by a two-step mechanism that would reward all utilities if statewide goals are met. Incentives would be calculated once for a four-year period, rather than annually.

The proposal, as issued by the Secretary, was as follows:

1) Total “incentive pools” of $36 million for electric and $14 million for gas will be established (based on estimates of a 5-basis-points on equity per year, 20-basis-points total, equivalent over the four-year incentive period).

2) Each incentive pool will be divided into two sums (Step One and Step Two). Step One will represent two-thirds of the total and Step Two will represent one-third.

3) The Step One and Step Two funds will be allocated among utility program administrators proportionally based on their percentage of total utility targets.

4) Step One: Each utility will have the opportunity to earn an incentive if it reaches 100% of its aggregate target, for years 2012-2015, by the end of 2015 (calculated on a commitment accrual basis). The amount it can earn would be its proportional share of Step One.

5) Step Two: All utilities will earn an incentive if the entire statewide jurisdictional goal (including NYSERDA’s share) is achieved by 2015. The amount for each utility would be its proportional share based on its share of the utilities’ aggregate targets. If the statewide goal is not reached, no utility receives an incentive from Step Two.

6) Determination of any incentive that a utility is qualified for under (4) or (5), and the mechanism for payment, will be made in 2016.

7) There will be no formulaic negative adjustments provided in the incentive mechanism. Each utility, however, may be subject to adjustments in rate cases, penalties, or other proceedings, in the event of poor performance that is not excused by mitigating factors.

DISCUSSION OF ISSUES

General

Parties' positions regarding the usefulness of incentives in general continue to be mixed. We have considered this question in past orders and have determined that properly structured incentives can result in a more effective energy efficiency program. Therefore, the issue of whether there should be an incentive mechanism will not be revisited here. The questions we consider in this order involve the best mechanism to put into place, given what we have learned from the prior three years' experience with utility-administered efficiency programs and incentives.

In the EEPS Reauthorization Order, we recognized that the EEPS program will be subject to a process of continuous improvement. The incentive framework we adopt here is designed to accommodate changes in the underlying program. We reserve the option, however, to reconsider the incentive mechanism, including the total amount of the incentive pool, in light of future changes to targets, budgets, and other elements of the EEPS program.

The Two-Tiered Approach

A majority of comments favor the use of two tiers to encourage cooperation among utilities and NYSERDA. Multiple Intervenors (MI) oppose, arguing that the two-tiered approach could produce a windfall for utilities whose own efforts would not otherwise warrant an incentive. MI proposes that only utilities meeting their own targets should be eligible for a Step Two award. Other comments argue that the Step Two pool should be larger, or smaller, or geared only to NYSERDA's meeting its own targets, or geared toward meeting targets specific to utility territories.

NRDC/Pace and Northeast Energy Efficiency Partnerships argue that Step Two should be smaller than one-third of the total, because the primary emphasis should be on utilities achieving their targets. NYSERDA argues that the Step Two incentive should be increased. One purpose of the Step Two incentive is to encourage cooperation toward the achievement of NYSERDA's targets. Increasing the Step Two portion, however, would reduce the incentive of individual utilities to perform in meeting their own targets. We are persuaded that a greater emphasis should be placed on giving individual utilities incentives to meet their targets; therefore we will revise the allocation so that 90% of the total is allocated to Step One and 10% is allocated to Step Two. We also find it reasonable that the Step Two goal for electricity should equal the jurisdictional goal, confirmed in the EEPS Reauthorization Order, of 11.2 million MWh.[6]

MI's concern, that the Step Two award might constitute a windfall for one or more utilities, is well taken. However, the Step Two award will maintain an incentive to perform even where a utility is failing to meet its own targets, because its efforts will help the statewide goal to be achieved. General eligibility for Step Two awards ensures that all utilities will have incentives not only to meet their own targets but also to cooperate with NYSERDA and other utilities toward meeting the statewide goal. We find the value of this continued incentive to be greater than the risk of an unwarranted award. Moreover, a utility whose efforts are manifestly inadequate is vulnerable to having its award reduced or eliminated in a rate proceeding. For those reasons, we will not impose the condition proposed by MI. Consumer Power Advocates propose that Step Two awards should be geared exclusively to NYSERDA meeting its targets. We decline to adopt this proposal, for similar reasons. An incentive to achieve the statewide goal assures that every MWh or Dth saved by a utility is significant, even if it will not achieve its own targets; moreover, cooperation among all utilities, beyond cooperation between utilities and NYSERDA, is promoted by using the statewide goal.

Positive-Only Incentives

The departure from symmetrical positive-negative adjustments is a substantial change from the prior mechanism. Pace/NRDC oppose this change, while the Joint Utilities support it.

The reasons supporting this change are discussed at length in the White Paper and the EEPS Reauthorization Order. The experience reported by Staff is that the threat of negative adjustments, while motivating utilities to perform, also affected program implementation in counterproductive ways. It created an adversarial approach

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[6] EEPS Reauthorization Order, pg. 7.

to setting targets and budgets, undue aversion to risk, and short-term allocation of resources that may not serve the long-term interests of a balanced program.[7] Moreover, the amount of Staff and utility time that has been needed to consider and account for mitigating circumstances has been a substantial drain on resources better spent administering programs. The revised mechanism will not fully resolve all of the difficulties identified by Staff, but it will establish a better balance to help maintain focus on the principal goal of meeting efficiency targets in a cost-effective way.

The absence of a formulaic negative adjustment does not remove all risk for utilities. As we noted in the EEPS Reauthorization Order, a utility that underperforms may be held to task in a rate proceeding or a penalty proceeding. MI argues that the process for carrying this out is not clear, and that rate cases should not be encumbered with this issue. We do not anticipate that utilities' performance on energy efficiency programs will be a frequent subject of rate cases, but that issue will be addressed when and if it arises. Nor is it necessary at this point to identify objective metrics for performing such an evaluation. Like all activities ordered by the Commission, utilities have an obligation to administer efficiency programs in a reasonable manner. If they fail to do so, such failures can be addressed in rate cases or on the Commission's own motion, as is the case for any other obligation of utilities.

Size of the Incentive Pool

The proposal was based on an estimate of 5 basis points per year across all utilities, which rounds to a total of $50 million over a four-year period. Of the $50 million, $36 million would be allocated to electric efficiency targets and $14 million to gas. In the 2008 Incentives Order, the total for electric incentives was converted to a fixed amount of $38.85 per megawatt-hour. That conversion will not be performed in this phase, because the total aggregate targets are likely to be revised during the next four years and the final figure per megawatt-hour will not be known until the completion of

7 The utilities, while supporting the change to positive-only incentives, do not agree with many of Staff's characterizations of the effect of the previous incentive mechanism.

the four-year period. Based on current target levels, however, the per-megawatt-hour incentive for combined Steps One and Two is estimated to be $16.78, and the per-Dth incentive for gas is estimated to be $2.25.

The Joint Utilities argue that these amounts represent a substantial reduction from past incentives and are insufficient to provide a meaningful incentive. MI replies that utilities are already required to implement efficiency programs and should require no incentive at all, and any claim that $50 million is inadequate should be rejected. NEEP comments that the reduced total is appropriate to reflect the reduced risk of negative adjustments, although the total could be increased from approximately 5% of program costs to a range of 8-10% of program costs.

There is no formula for calculating a precisely correct level of incentives. Our experience in the previous three years demonstrated that incentive levels were certainly high enough to capture the attention of utility management, and perhaps too high. Instituting a positive-only formula warrants a substantial reduction in the total positive incentive, because the absence of a formulaic negative adjustment reduces risk. If the potential to earn $50 million is insufficient to motivate utility performance, utilities will still be at risk for negative adjustments in rate cases or penalty actions. We find the proposed level of $50 million over four years to be reasonable and we will adopt it.

Because the distribution of utility targets is not exactly proportional to utility revenues, there is the potential for some utilities to earn substantially more than 5 basis points per year from this incentive mechanism. This is not in itself an undesirable result, so long as incentives remain tied to achievement of targets, and programs run by an individual utility will benefit ratepayers within that utility's service territory. However, given the absence of formulaic negative adjustments, there is a concern that one or more utilities may be eligible to earn incentives at a level beyond what is needed to encourage excellent performance, and disproportionate to risk. For that reason, we will adopt a cap on the total award for any individual utility of 60 basis points over the four year period. This represents three times the average number of basis points available per utility, which is a reasonable constraint that will maintain an incentive for excellent performance from any utility with a relatively high level of targets. At current target levels, this cap will have minimal impact. In the event that targets are substantially revised, however, this cap will serve to limit total incentives.[8]

Scalable Awards

The proposal would have awarded incentives on an all-or-nothing basis, in order to increase motivation to achieve 100% and to provide simplicity in administration. Comments were unanimous that incentives should be awarded on a scaled basis. Scaled awards ensure that each MWh or Dth saved will have an equal incremental impact on incentives (within the range of scalability), and that a utility will maintain strong efforts even when it does not appear that it will achieve 100%. Moreover, as the Joint Utilities observe, an all-or-nothing approach could have a detrimental impact on cooperation. A utility within range of reaching its 100% goal may be less likely to cooperate with NYSERDA and other program administrators to achieve statewide goals. NFG also observes that an all-or-nothing incentive, in tandem with flexibility to shift funds among programs, is more likely to result in portfolio imbalance.

We agree with the comments that awards should be scaled, as they have been during the past three years. The previous incentive mechanism began to award positive incentives at the 80% achievement level. Most comments indicated that 80% achievement is a reasonable level. We will adopt a scaled award mechanism that operates on a straight line beginning with zero awarded at 80% achievement and concluding with 100% awarded at 100% achievement. This will be applied to both the Step One and the Step Two awards.

Some comments argue that incentives should be awarded for achievements in excess of 100%. Given the limited amount of the total incentive pool, and the priority

[8] The operation of the cap will be a pro rata reduction in awards to the affected utility; the utility will still need to achieve 100% of its targets to receive 100% of its capped total award. Any reduction in incentive payments to a particular utility, resulting from this cap, will be a reduction in the total incentive pool rather than being redistributed throughout the pool.

that we place on achieving our goal, resources will be focused on achieving the 100% level.

Calculating on a Four-year Basis

The initial approach adopted in the 2008 Incentives Order was to calculate incentives annually, in order to keep utilities on pace toward meeting cumulative targets. That approach was revised to account for mitigating circumstances, with the result that incentives for the years 2009-2011 will be calculated on a cumulative basis.

The proposal for 2012-2015 would calculate incentive awards only once, based on aggregated achievements during those years. Efficiency achievements will fluctuate considerably from year to year, depending on implementation factors such as roll-outs, contracts, and outreach, and also economic factors affecting consumer behavior. Calculating once over a four-year period will minimize the impact of these fluctuations.

NFG proposes a modification of this approach, in which awards would be calculated annually, with the maximum cumulative award increasing each year, from 25% after 2012 to 100% after 2015. This method would provide timely awards to utilities while allowing them to make up for lagging performance in off years.

We will adopt a one-time award calculation following the conclusion of the four-year period, rather than the four-stepped annual award mechanism proposed by NFG. Although NFG's proposal has merit, on balance the benefits of a one-time calculation outweigh the benefits of NFG's proposal. For a variety of reasons, annual accounting of efficiency gains is difficult. Many programs are seasonal in nature. Accounting on an accrual/commitment basis requires true-ups, which would be more difficult to administer, for purposes of incentives, on an annual basis than on a four-year basis. This will be further complicated by the accounting for credits earned in on-bill financing programs, as discussed below. Finally, and by no means least in significance, the time needed by Staff and utilities to perform annual accounting and true-ups for incentives can be better spent in monitoring and administering programs.

The Step Two Goal for Gas Efficiency

There is no statewide goal for gas efficiency comparable to the 15-by-15 goal for electricity. The Notice requested comments on the appropriate goal for the Step Two gas awards. The Joint Utilities indicated that the aggregate of all administrators' gas targets would be the logical goal. NFG and NYSEG/RGE indicated that the gas targets may be unattainable as currently stated.

The process of revising targets will be ongoing, and the specific issues raised by NYSEG/RGE and others will be addressed in a different phase of this proceeding. Because awards will be scaled, beginning at 80% achievement, concerns about the attainability of targets, for incentive purposes, are reduced. We find that the aggregate of gas targets is an appropriate total goal for the Step Two statewide incentive award.

Participation of Gas Utilities

The previous incentive mechanism allowed gas utilities a one-time opportunity to opt out of the incentive program. Because the formulaic negative adjustment will be omitted from the mechanism we are adopting here, there would be little sense in offering utilities an opportunity to opt out. NFG seeks clarification, however, of whether a utility opting out of the program would be exempt from the potential for adjustments in rate cases or penalty proceedings. The efficiency targets assigned to utilities are not optional, and reasonable efforts to achieve the targets, especially where ratepayer funds are expended, are required of all utilities. Regardless of the availability of positive incentives, we would hold utilities accountable for unreasonably poor performance. For that reason, we will eliminate the opt-out provision and every utility with efficiency targets will be eligible for incentives.

On-Bill Financing

Section 66-m of the Public Service Law, enacted in 2011, relates to utilities' providing billing and collection services for on-bill financing programs run by NYSERDA. These programs would allow customers to finance the costs of some efficiency investments through their utility bills.[9] Subdivision (1)(e) of section 66-m provides, "The commission shall determine an appropriate percentage, up to fifteen percent, of the energy savings from qualified energy services … for purposes of meeting such corporation's targets …". This provision is designed to encourage utilities in providing this service to NYSERDA. The statute does not specifically address incentives, but it is reasonable to conclude the intent was for the percentage to apply to utilities' targets for incentive purposes, as opposed to overall programmatic achievement. Applying the percentage only for incentive purposes will avoid a double count in the calculation of the MWh and Dth achieved by the EEPS program.

Applying the percentage to utility targets presents complications in reporting. On-bill financing projects offered by NYSERDA may contain a mixture of utility rebates, NYSERDA EEPS-funded measures, NYSERDA non-EEPS-funded measures, and savings in non-EEPS fuels such as oil. For purposes of the credit to utility targets under Section 66-m, only the portion of savings attributable to NYSERDA EEPS-funded measures will be counted. To the extent an on-bill-financing project contains utility rebates, those savings will already be counted by the utility and no additional incentive is needed for the utility.

We find that 15% is a reasonable percentage, applicable only to the NYSERDA EEPS-funded components of a project, and applicable only to the utility-specific Step One awards. Utilities will already be invested in the success of NYSERDA for purposes of the Step Two award, and require no additional incentive. Moreover, because NYSERDA's savings are all counted toward the Step Two award, allowing utilities to count any percentage of those savings would constitute a double count.

The 15% of on-bill-financing savings counted toward the utilities' achievements for purposes of the Step One award must be reported separately and not

[9] On December 15, 2011 we adopted an order approving tariff amendments to implement this statute. Cases 11-E-0450, et al, Tariff Filings to Effectuate Amendments to the Public Service Law Concerning Green Jobs-Green New York On-Bill Recovery, Order Modifying and Authorizing On-Bill Recovery Tariffs (issued December 15, 2011).

counted toward the achievement of utilities' actual energy targets, so that our assessment of program achievements is not inflated and the NYISO will receive accurate figures. NYSERDA should continue to report all of the savings from its EEPS-funded measures as NYSERDA achievements.

Commitment/Accrual

NYSEG/RGE seek clarification of the use of commitment/accrual accounting toward incentives. We stated in the EEPS Reauthorization Order that savings toward target achievement would be reported on a commitment/accrual basis. Because incentives will be calculated only once, after the 2012-2015 period has concluded, the choice of accounting methods has less impact on incentives than it has for annual reports. For incentives, commitments obtained after January 1, 2012 and prior to December 31, 2015 will be counted.

Pre-collections

MI urges that funds for incentives should not be pre-collected from ratepayers in anticipation of awards made following 2015. We agree with this recommendation. The method of paying utilities will be determined at the time awards are determined.

New York City Demand Incentive

In the 2008 Incentives Order, we established a demand-based incentive, specific to New York City, in the amount of $100,000 per MW up to 50 MW. Con Edison states that this incentive should be continued, as it not only reduces usage and customer bills but allows the company to defer transmission and distribution expenditures. We agree with Con Edison, and the demand incentive will be continued on the terms that were established in the 2008 Incentives Order, to a maximum of 50 MW per year over the 2012-2015 period.

Evaluation of Results

NYSERDA suggests that the incentive should be based on fully evaluated results, and either the awards should be delayed until evaluated results are available, or they should be awarded subject to a true-up. Although it is important to have confidence in reported results, the approach suggested by NYSERDA would delay and complicate the incentive process without a commensurate benefit. Because incentives will be awarded for a four-year period, many results will have been fully evaluated. Also, as the methodology of estimating savings improves, the difference between reported results and evaluated results shrinks. For these reasons we will not delay the award of incentives any further than is needed beyond the end of 2015.

Additional Metrics

Pace/NRDC suggest that additional metrics are required, to avoid utilities concentrating their resources on certain programs to the detriment of portfolio balance and customer equity. In particular, Pace/NRDC suggest that a separate metric for performance in low-income programs is needed. At this time, we will not establish separate metrics, which would further complicate the process of calculating and awarding incentives. The bulk of low-income program funds are administered by NYSERDA, and utilities already receive credit for referring customers to NYSERDA.

Budget Restrictions

MI proposes that incentives should only by awarded if utilities achieve savings within approved budgets. The Joint Utilities note that budgets approved in the EEPS Reauthorization Order may be revised as targets are revised, and that budget flexibility has been provided for by the Commission. We establish budgets for programs, accompanied by rules for moderate flexibility in shifting funds among programs, designed to achieve a reasonable balance between strict program control and maximum flexibility. This approach is designed to achieve optimal efficiency savings, and utilities will be allowed to earn incentives based on aggregated portfolio performance.

Effective Date

As we stated in the EEPS Reauthorization Order, the new mechanism will apply to efficiency savings during the four calendar years 2012 through 2015. The effective date of the mechanism adopted here is January 1, 2012.

SEQRA Findings

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

The Commission orders:

1. For the four-year period 2012-2015, incentives for utility energy efficiency programs resulting from the Energy Efficiency Portfolio Standard shall be applied in the manner described in the body of this order and in Appendix 1 to this order. The affected utilities shall take cognizance of this requirement and prepare their program portfolio filings in a manner that reflects this order.

2. The utilities shall prepare their calculations of Step One incentive awards, covering the period 2012 through 2015, and may file them not later than April 1, 2016.

3. The Secretary is authorized to extend any deadline established in this order.

4. This proceeding is continued.

By the Commission,

Jaclyn A. Brilling
Digitally Signed by Secretary
New York Public Service Commission

(SIGNED) JACLYN A. BRILLING
Secretary

Utility Incentive Mechanism

1) Incentive pools will be $36 million for electric utilities and $14 million for gas utilities, totaled over the four-year incentive period.

2) Each incentive pool will be divided into two sums ("Step One" and "Step Two"). Step One will represent 90% of the total and Step Two will represent 10%.

3) The Step One and Step Two funds will be allocated among utility program administrators proportionally based on their percentage of total utility targets.

4) Each utility will be eligible to earn its proportional share of Step One. Step One awards will be based on achievement of a utility's aggregate target (for years 2012-2015) by the end of 2015. Awards will begin at zero for 80% achievement and will be graduated on a straight line basis to 100% awarded for achievement of 100% of the aggregate target. Achievement will be calculated on a commitment accrual basis.

5) Solely for purposes of calculating achievement of targets for earning a Step One award, a utility will be credited with 15% of the energy savings achieved through any NYSERDA-funded measure for which the utility performs on-bill financing services as described in Section 66-m of the Public Service Law.

6) Step Two awards will be calculated separately for electric and gas utilities, as follows: All utilities will earn an incentive if the entire statewide jurisdictional goal (including NYSERDA's portion) is achieved by 2015. The amount for which each utility is eligible will be based on its proportional share of the utilities' aggregate targets. Awards will be graduated from 80% to 100% achievement, as they will be for Step One. Awards will be granted either to all utilities or no utilities, depending on achievement of statewide goals.

7) The statewide goal for gas efficiency, for purposes of this incentive mechanism, will be the aggregate target of all program administrators including NYSERDA.

8) All gas utilities administering efficiency programs under EEPS will be eligible for incentives.

9) Determination of incentive awards and the mechanism for payment will be made in 2016. The award for any utility will be capped at sixty basis points over the four year period.

10) No formulaic negative adjustments are provided in the incentive mechanism. Each utility, however, may be subject to adjustments in rate cases or other proceedings, in the event of poor performance that is not excused by mitigating factors.

11) The demand reduction incentive applicable to New York City will be continued on the same terms as established in the 2008 Incentives Order, up to a total of 50MW per year for the four-year 2012-2015 period.

12) This incentive mechanism applies to utility achievements beginning January 1, 2012.

EEPS Incentives Summary of Comments

Initial Comments

Joint Utilities (Con Edison, Orange and Rockland, Central Hudson, and the National Grid companies)

The general approach of providing incentives is supported. Also supported is the general approach of a two-step incentive, which will encourage cooperation among program administrators. The size of potential incentives, however, is substantially reduced from the approximately 10 basis points available under the previous mechanism. Incentives under the previous mechanism equated to $38.85/MWh, while total incentives under the proposal would be $16.77/MWh, with only $11.18/MWh available under the Step One process which rewards utilities for individual effort. This reduction sends a signal that excellent performance is not valued, and it will not provide sufficient incentives to excel and to cooperate. Because of the small overall levels, dividing the total into two pools defeats the purpose of the Step Two process.

The incentives should be scalable. The Commission has already commented on the effectiveness of graduated incentives compared with an all-or-nothing approach. Moreover, incentives should not be capped at 100% achievement, because that fails to reward excellent performance. Incentives should be scaled beginning at 80% achievement and capped at 125% achievement.

A statewide Step Two goal for gas utilities should be established from the aggregate of targets.

Ancillary gas and electric savings should not be counted; there is no mechanism for doing this, and further analysis is needed.

Positive incentives should be made available to all gas utilities; utilities that opted out earlier should have a chance to opt in.

Utilities should receive the maximum permissible 15% credit for savings resulting from on-bill financing programs, with no corresponding increase in utilities' targets

A cap on individual utilities' incentives is not warranted. Targets will not be proportional to utility revenues, but that does not affect the importance of incentives.

National Fuel Gas

The Commission should provide more time for the review and revision of programs before instituting a new incentive mechanism. Budgets are established in a manner that almost ensures failure to achieve 100% of targeted savings; there is no margin for error built into the budget projections, so that achievement of 100% savings will require expenditure of 100% of budgets by December 31, 2015.

Financial incentives in general are not necessary to capture management's attention; standard prudency requirements are sufficient. The levels of incentives in the proposals will not be effective.

The two-tiered structure of the proposal is not unreasonable, but it would be improved if a specific NYSERDA goal were established for each utility territory.

The utility-specific awards should not be delayed until the end of 2015. A step-system would allow for awards up to 25% of the total in the first year, increasing by 25% each year, so that payments are not delayed while administrators can make up for shortfalls in earlier years. An all-or-nothing approach provides incentives for undue shifting of funds and uncooperative behavior.

Quantifying ancillary savings for incentive purposes would add unnecessary complication.

Utilities not currently participating in incentives should have the opportunity to opt in. The Commission needs to clarify, however, whether a utility not participating in positive incentives would have the same potential negative exposure as participating utilities.

NYSEG and RG&E

The Commission needs to clarify the total amount available for incentives, and whether it will remain fixed over the four-year period. The Commission also needs to clarify how incentives will be paid on a commitment/accrual basis.

Graduated incentives would be more effective than an all-or-nothing approach.

Targets and budgets need to be corrected, to make targets achievable.

Savings from on-bill financing need to be reported separately from actual jurisdictional savings, to avoid a double-count.

Con Edison (supplementing the comments of the Joint Utilities)

The megawatt incentive authorized in the 2008 Incentives Order should be renewed. Some EEPS programs reduce peak demand and permit Con Edison to defer capital expenditures in transmission and distribution infrastructure. The incentive level of $100,000 per megawatt should be maintained.

Natural Resource Defense Council and Pace Energy and Climate Center (NRDC/Pace)

Incentives for efficiency programs are very valuable and should be continued. Experience from the first three years of the program, including delays in program approvals, should be used as lessons for moving ahead.

Incentives should be focused on the performance of individual utilities. If a two-step process must be used, the total amount of the second step should be much smaller, in the range of 5-10% of the total rather than one-third.

Incentives should be scaled, beginning at 80% achievement, and achievement of greater than 100% of targets should be rewarded.

Formulaic negative adjustments should be included. A threat of penalties in other proceedings is ambiguous and insufficient.

In order to prevent incentives from skewing portfolio balance, metrics should be added for criteria other than meeting total targets. Low-income programs, for example, should have a separate metric.

NYSERDA

There continues to be no convincing evidence that incentives provide benefits. There is evidence in California showing a low correlation between incentives paid and energy savings realized. Adopting incentives early in 2012 is premature; targets and budgets should be modified first.

The two-step mechanism would be improved if half of the total were allocated to the second step. This would be more representative of the proportional distribution of targets between NYSERDA and utilities.

Incentives should only be awarded for evaluated results. This could be accomplished with a true-up mechanism.

Savings from on-bill financing should be credited consistent with the manner in which EmPower savings are credited, with 15% added to the utility's total for incentive purposes, but not subtracted from NYSERDA's achievement of actual savings.

Northeast Energy Efficiency Partnerships (NEEP)

Performance-based incentives should be continued. Removing the negative adjustment is effective, and warrants a reduction in total incentives to reflect the reduction of risk. Rather than 5% of total budgets, incentives should be somewhat higher, in the range of 8-10% of total budgets.

The two-step mechanism serves a valuable purpose, but may be coming at the expense of individual utility incentives, which are more important.

Incentives should be graduated beginning at 80% achievement.

Measurement and verification protocols should be clarified and improved prior to the award of incentives.

Multiple Intervenors

As developed more fully in comments submitted on the White Paper, utility shareholder incentives should be eliminated, and if they are not, they should include negative incentives. Assuming the Commission will proceed with incentives, then it should ensure that individual utility incentives are not awarded unless targets are met within established budgets. If budgets are increased, targets should receive corresponding increases, at least for incentive purposes.

In applying an incentive mechanism, the Commission should refrain from considering mitigating circumstances. There will always be mitigating factors, and the Commission's leniency in awarding incentives or refraining from negative adjustments is unfair to ratepayers.

The Step Two incentive has the potential to produce a windfall for utilities that have not performed well. Step Two awards should be contingent on a utility meeting its own targets.

The lack of formulaic negative incentives is not cured by statements that poor performance might be dealt with in rate cases or other proceedings. The criteria for such a consideration are vague; moreover, this approach has the potential to complicate rate proceedings.

Funds for incentive awards should not be collected in advance of any decision by the Commission to award incentives.

Consumer Power Advocates

Incentives that align the interests of NYSERDA and utilities should be adopted. Step Two, as proposed, would improperly allow incentive payments to some utilities for the accomplishments of other utilities. Instead, the Step Two award should be based entirely on the achievement of NYSERDA's targets.

Gas utilities should be required to participate, rather than being given an option. No utility should have the option to decline participating in a program that the Commission has found to be in the public interest.

Incentives for any utility should be capped at five basis points per year. There is no evidence that a higher incentive would be cost-effective.

Reply Comments

Joint Utilities

The upper limit for incentives should be higher than 100% achievement to provide an incentive for exceptional performance.

Budgets established in the EEPS Reauthorization Order should not be used to restrict incentive awards; these budgets will be modified, and flexibility is needed to respond to market conditions. Increases in budgets to make targets reasonably achievable need not be accompanied by increased targets.

The Commission should always retain the discretion to consider mitigating factors in awarding incentives.

It would defeat the purpose of the Step Two award if utilities had to achieve 100% of their own targets to be eligible.

A certain degree of competition among utilities and NYSEDA should be retained.

Incentive awards should not be subject to a true-up based on evaluation results. Estimation of savings is performed using the Technical Manuals, which will provide for consistency across all programs. In either event, estimation of savings is not an exact science.

Where a utility-administered program achieves savings using on-bill financing, the utility should be credited with all of the savings. Where a customer achieves savings from both NYSERDA and utility-administered programs, the utility should be credited with all of the savings from the utility program and 15% of the savings from the NYSERDA program.

Issues related to the EM&V protocols are outside the scope of the Notice and should not be addressed.

National Fuel

The Commission is capable of deciding when mitigating factors should be considered, and should retain the flexibility to do so.

The Step Two percentage should not be increased. Utilities have very little influence on NYSERDA's overall program design and implementation; utility incentives should be focused where utilities have the most ability to influence outcomes. It is already questionable whether the sums in the Step One incentives will provide extra motivation to utilities.

Multiple Intervenors

There is no basis to characterize $50 million as insufficient to provide an incentive, particularly where utilities are ordered to implement programs, and ratepayers are carrying 100% of the costs. The cost of EEPS is already exorbitant. Moreover, removing the threat of negative adjustments eliminates virtually all risk for utilities.

New York Energy Consumers Council, Inc.

A total of $50 million is the highest level at which incentives should be established. Incentives should not be available for achievements lower than 100%, because utilities should aim to exceed targets. Incentives graduated to achievements higher than 100% would be effective, as would off-setting negative adjustments.