

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on September 17, 2008

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
Maureen F. Harris
Robert E. Curry, Jr.

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 ADOPTING AN INTERIM ENERGY EFFICIENCY
PROGRAM AND MODIFYING THE JOINT PROPOSAL

(Issued and Effective September 18, 2008)

BY THE COMMISSION:

INTRODUCTION

On May 23, 2008, Niagara Mohawk Power Corporation
(doing business as National Grid and referred to in this order
as either Niagara Mohawk or the Company) filed tariff amendments
to increase its rates and charges for natural gas delivery
service by \$95.3 million. We suspended the rate filing and
began this proceeding to examine the Company's rate proposals.¹
A decision on the proper level of rates and charges will be
provided in mid-2009 after the presiding officer has conducted
hearings and the record is developed in this case. In order to
introduce several energy efficiency programs for the upcoming
heating season, we are addressing now a Joint Proposal recently
submitted by various parties to the rate proceeding.

¹ Case 08-G-0609, Order Suspending Major Rate Filing (issued
June 18, 2008).

Among its rate case proposals, Niagara Mohawk requested \$11.11 million for energy efficiency programs that would be implemented in mid-2009. However, to increase energy efficiency during the upcoming heating season, the parties met and discussed actions that can be implemented soon. The parties' discussions began on July 16 and were completed on August 1, 2008 when they filed a *Joint Proposal for Interim Energy Efficiency Programs*. The Joint Proposal is supported by Niagara Mohawk, Department of Public Service (DPS) Staff, Multiple Intervenors, the Small Customer Marketer Coalition and by nine clients of The E Cubed Company, LLC.² Each of these parties has submitted supporting statements.

Public notice of the Joint Proposal was provided on August 5, 2008. Comments concerning the proposal have been received from the New York State Energy Research and Development Authority (NYSERDA), the Oil Heat Institute of Eastern New York, Inc. and the Public Utility Law Project of New York, Inc. (PULP). Responsive comments were filed by Niagara Mohawk, DPS Staff, Multiple Intervenors, The E Cubed Company and PULP.

THE JOINT PROPOSAL

The Joint Proposal presents a \$5.053 million budget for an eight month, interim energy efficiency program.³ The program proposals are as follows:

² The E Cubed Company represents the following firms that support the Joint Proposal: ECR International, Inc.; Climate Energy, LLC; Joint Supporters; Comverge, Inc.; Energy Curtailment Specialists, Inc.; Integrated Energy Concepts Engineering, PC; National Association of Energy Services Companies; Energy Spectrum, Inc.; and Red Hook Green Power.

³ The interim program would run from October 1, 2008 to May 31, 2009. Energy efficiency program requirements are being considered in the Energy Efficiency Portfolio Standard proceeding, Case 07-M-0548.

Residential High-Efficiency Heating
and Water Heating Program - (\$987,000)

This program would provide incentives for residential customers to install high-efficiency, natural gas space heating and water heating equipment and controls. The incentives cover about 75% of the incremental cost of installing the facilities. The marketing efforts for this and other programs would include direct mailings, bill inserts, trade events and contractor-provided visits and education. The equipment and controls must be installed by qualified, licensed contractors and plumbers.

Enhanced Home Sealing
Incentives Program - (\$313,000)

The program would assist customers and contractors to implement insulation, air sealing, ventilation measures and related health and safety items. The target market for this program is the residential customer class members who heat with natural gas and who do not participate in NYSERDA's Home Performance with ENERGY STAR program. Niagara Mohawk will provide a 75% incentive, up to \$5,000, for the installation of these measures.

Residential ENERGY STAR Products - (\$79,000)

This program encourages customers to purchase ENERGY STAR products to decrease their use of natural gas. The outreach for the program includes cooperative promotions with such retailers as Lowe's, Home Depot and other regional hardware stores. A \$10 mail-in rebate will be provided for high-efficiency window replacements up to a \$500 maximum per customer account. A \$25 rebate would be provided for each of up to two ENERGY STAR programmable thermostats, not to exceed the price of the thermostats.

Residential Low-Income Program - (\$3,333,000)⁴

Customers who heat with natural gas and meet specified low-income eligibility criteria can receive up to 100%

⁴ Niagara Mohawk will enter into an agreement with NYSERDA to transfer to it the funds that NYSERDA will use to implement and administer the Residential Low-Income Program.

of the cost for attic and wall insulation, air sealing measures, space heating replacements and water heating system repairs and replacements. Low-cost financing would be available for the balance.

Residential Internet Audit Program
and E-Commerce Sales

This program would provide customers access to their energy usage information and encourage them to participate in energy efficiency programs. It offers a self-service audit tool that allows customers to survey their home energy usage and identify ways to improve energy efficiency. It also provides customers easy access to on-line suppliers of compact fluorescent lighting, weatherization materials and do-it-yourself products. Customers will receive an estimate of the cost savings available from implementing the energy efficiency measures.

Tune-Up Program - (\$80,000)

Niagara Mohawk would offer a \$50 incentive to customers to have their gas heating systems cleaned and tuned up by a certified technician or qualified contractor. The Company will collect and analyze the data obtained from this provisional program to determine its benefit/cost ratio and see if it should continue as a permanent program.

Commercial High-Efficiency Heating
and Water Heating - (\$260,000)

This program offers incentives to firm, commercial service customers who install high-efficiency heating equipment. The amount of the rebate offsets the cost difference between standard and high-efficiency equipment. Rebate amounts will vary by the size and type of equipment installed, up to \$15,000. The rebate for multiple units at a single site would be negotiated with the customer.

The \$5 million budget represents payments to third-party contractors, incentive payments to customers, and internal utility labor costs. Niagara Mohawk may recover up to the portion of the \$5 million budget representing internal labor costs that are in its incremental, internal operating costs if

it can adequately demonstrate such costs. The Company will also defer and recover the revenues it loses due to customers' implementing energy efficiency measures and reducing their use of natural gas.

A volumetric surcharge would be applied to customer bills to pay for the program costs. The surcharge would apply to residential customers in Service Classification No. 1 and to the small commercial and industrial customers in Service Classification Nos. 2 and 7.

Budget amounts for the programs may be transferred. Up to 20% of a program's budget may be switched to better accomplish the goal of achieving energy efficiency savings. If the parties do not dispute any such transfer proposal, it will go into effect at the conclusion of a 20-day notice and review period. Contested transfers and proposals involving more than 20% of a program budget will be reviewed and acted on by the Commission.

Niagara Mohawk will coordinate its energy efficiency programs with other program providers in the service area to avoid duplicate efforts and to enhance program efficiencies. The Company will keep separate from the energy efficiency program its efforts to promote oil-to-gas conversions. It will not use the interim energy efficiency program budget to encourage any such conversions.

Niagara Mohawk must report the ongoing results of the energy efficiency program every two months and it must provide a final report at the end of the interim program.

THE SUPPORTING STATEMENTS

Niagara Mohawk

Niagara Mohawk urges us to adopt the interim energy efficiency program on an expedited basis so it can begin in October 2008. The Company considers it important to provide

customers cost-effective, energy conservation measures in advance of this winter when gas commodity costs are expected to be high. It plans to provide energy efficiency measures to about 1,000 customers by the end of the heating season and to about 2,467 by May 2009. While providing the interim program, the Company will continue to develop more permanent programs that conform to the requirements of the Energy Efficiency Portfolio Standard case.

Addressing the Commission's stated criteria for settlements like this one,⁵ Niagara Mohawk observes that the seven interim programs were included in its May 2008 rate filing and they satisfy, with one exception, the Total Resource Cost

⁵ As stated in Case 90-M-0255, the Commission's substantive review of a proposed settlement considers: (1) the settlement's consistency with law and with the regulatory, economic, social, and environmental policies of the Commission and the State; (2) whether the result compares favorably with the likely result of full litigation and is within the range of reasonable outcomes; (3) whether the settlement strikes a fair balance among the interests of ratepayers and investors and the long-term soundness of the utility; (4) the existence of a rational basis for the decision; (5) the completeness of the record; and (6) whether the settlement is contested.

The first four of the foregoing factors are themselves elements of the public interest standard. The fifth and sixth, in contrast, simply guide the Commission in its assessment. It would give weight, for example, to the fact that a settlement has been agreed to by all parties, including normally adversarial ones, but the absence of objection would not relieve the Commission of its obligation to form an independent judgment that the settlement is in the public interest. Similarly, the less developed the record, the greater the burden on the settlement's proponents to show that the result compares favorably to the likely result of full litigation. Case 90-M-0255, Settlement Procedures and Guidelines, Opinion No. 92-2 (issued March 24, 1992) pp. 30-31.

Test.⁶ It notes that many of these programs are similar to the ones the Commission has authorized KeySpan Energy Delivery New York and KeySpan Energy Delivery Long Island to provide. It also states that the low-income program that NYSERDA will administer is in the public interest during this period of high natural gas commodity prices.

Niagara Mohawk considers it proper to use a bill surcharge to recover the costs of the interim energy efficiency programs from the residential and small commercial class customers who can use the programs.⁷ It states that the proposed treatment of the lost revenues is consistent with the approach approved for the KeySpan companies.

The Company believes that the Joint Proposal provides the best means for putting energy efficiency measures into place pending the further development of such programs in the rate case and the Energy Efficiency Portfolio Standard proceeding.

DPS Staff

DPS Staff supports the interim cost-effective energy efficiency programs and states that they are similar to the programs that Niagara Mohawk's affiliates provide in New England and downstate. Addressing the residential low-income program, Staff considers it desirable to perpetuate NYSERDA's current efforts to May 2009 when the next round of energy efficiency programs are expected to be ready.

⁶ The Tune-Up Program is a pilot being offered on an interim basis to evaluate its efficiency and determine whether it can satisfy the Total Resource Cost Test.

⁷ The \$5 million budget for the interim energy efficiency program will increase Niagara Mohawk's revenues by 0.59% and impact customers' bills accordingly. A typical residential heating customer using 1,052 therms will pay an additional \$6.85 per year. Energy savings will mitigate this impact for program participants.

DPS Staff states that the Joint Proposal provides a proper framework for Niagara Mohawk to implement gas energy efficiency programs in its service area. It believes there are sufficient safeguards and that the programs can operate well. Staff lists the following as some of the factors supporting the Joint Proposal:

- Prompt implementation of the Interim Energy Efficiency Programs will help customers offset the high heating costs expected this winter and improve energy efficiency.
- Continuing the NYSERDA Residential Low-Income Program will provide low-income ratepayers the opportunity to reduce their utility bills using efficiency measures.
- The Interim Energy Efficiency Program offers customers a variety of cost effective efficiency improvement measures.
- The Interim Energy Efficiency Program can help reduce consumption of natural gas and improve air quality.
- The Joint Proposal is consistent with efforts in the Energy Efficiency Portfolio Standard proceeding to promote cost effective, natural gas related, energy efficiency programs for this heating season.
- The cost of the Interim Energy Efficiency Program (\$5.053 million) produces minimal negative rate impacts for ratepayers. For the customers availing themselves of the energy efficiency measures, benefits would outweigh costs.
- The Joint Proposal presents agreement among normally adverse parties and provides reasonable results.

Multiple Intervenors⁸

Multiple Intervenors supports the Joint Proposal as a reasonable resolution of the energy efficiency program issues. It notes that the Joint Proposal has broad support and states that extensive discussions took place and compromises were made

⁸ Multiple Intervenors is an unincorporated association of 50 large industrial, commercial and institutional energy consumers with manufacturing and other facilities located throughout New York.

to arrive at its provisions. Multiple Intervenors believes we should not disturb the balance achieved and urges us to adopt the Joint Proposal without modification.

This party firmly believes that the costs for the program, and the lost revenues, should only be collected from the customer classes that participate in the energy efficiency programs. Without this requirement, Multiple Intervenors states that it would have likely opposed the Joint Proposal. It notes that large commercial and industrial customers are not eligible to participate in the interim programs and they do not receive any direct benefits. In these circumstances, Multiple Intervenors believes it is appropriate to assign cost recovery to the service classifications that benefit from the energy efficiency programs.

Small Customer Marketer Coalition

The Small Customer Marketer Coalition considers the Joint Proposal a reasonable settlement of the issues and a proper balance of competing interests. This party states that the interim program comports with the energy efficiency policies emerging in the Energy Efficiency Portfolio Standard proceeding. It also notes that the settlement was reached by disparate and normally adversarial parties with diverse interests.

The Small Customer Marketer Coalition supports the proposal because it will improve the use of natural gas, moderate the impact of rising commodity prices and help develop an energy efficiency infrastructure for the Commission's priority to encourage cost effective energy efficiency behavior by all consumers. Addressing the public interest standard, this party believes that ratepayers will benefit by choosing among energy efficiency programs that suit their economic means; that the environment and economic well being of the State will be enhanced; and, that the financial standing of the utility company will not be impaired.

The E Cubed Company, et al. (E Cubed)⁹

E Cubed, and the firms it represents, supports a greater amount of energy efficiency and more programs during the next eight months covered by the Joint Proposal. Nonetheless, they support the interim programs because they favor prompt action and they have put their concerns aside to promote the timely introduction of residential energy efficiency programs for the upcoming heating season.

They offer the following comments:

1. NYSERDA's and the utility companies' energy efficiency programs should be expanded and broadly defined to include energy efficiency, demand-side responses and distributed generation.
2. There is no need for a lengthy process or a long roll-out period for energy efficiency programs throughout the State. The programs should not be delayed.
3. In addition to the energy efficiency measures for residential customers, these parties support energy efficiency programs for commercial and industrial customers.
4. These parties support the use of energy efficiency rebates and incentives for heating system improvements that use integrated systems, such as the boiler components of micro-combined heat and power systems.
5. These parties support energy efficiency programs that provide fuel neutral reviews of customers' needs. Third parties, and gas marketers, are capable and interested in providing energy efficiency audits to customers.

⁹ E Cubed represents various firms that are participating in the Energy Efficiency Portfolio Standard proceeding (Case 07-M-0548). The firms are committed to advancing energy efficiency goals, the use of demand-side resources and the deployment of combined heat and power facilities. They sell energy-related products and have facilities in the service area. They serve the residential gas and electric efficiency markets, provide load controls, and offer high efficiency facilities.

COMMENTS

NYSERDA

By letter dated August 8, 2008, NYSERDA states that energy efficiency program participants should not be allowed to receive multiple incentives for the same energy efficiency measure. It suggests that we apply a prohibition on "double-dipping."

NYSERDA also believes that quality assurance protocols should apply to the Residential High Efficiency Heating and Water Heating Program and the Enhanced Home Sealing Incentives Program. At a minimum, it believes that on-site inspections should be performed on 10% of the installed products.

Next, NYSERDA observes that the description it was provided of the Residential High Efficiency Heating and Water Heating Program did not show the specific incentive amounts for different types of equipment. It notes that its opportunity to assess the incentives was thus limited.

NYSERDA considers the 75% incentive proposed for the Enhanced Home Sealing Incentives Program excessive. It believes that a 75% incentive should only be offered to low-income households and that a 50% incentive is sufficient for the general public. It proposes that the incentives for each participant be capped at \$3,000 to preserve ratepayer funds and to make the program available to more participants.

Further, NYSERDA does not believe that the cost recovery for the interim program should only apply to residential and small commercial class customers in Service Classification Nos. 1, 2 and 7. It notes that the Energy Efficiency Portfolio Standard proceeding is considering cost recovery issues that remain pending. NYSERDA is opposed to this issue being decided on a case-by-case basis.

NYSERDA believes that some Joint Proposal provisions should be clarified. With respect to the Residential Low-Income Program, it notes that the program is available to households with income in a stated range of the State or Area Median Income. It believes that a similar reference to the State or Area Median Income should have been included in the Joint Proposal.

NYSERDA also seeks clarification of the interim program budget. It notes that the \$5 million applies to the eight months from October 2008 to May 2009. Should the interim programs remain in operation after May 2009, NYSERDA believes they should continue to be supported on a month-to-month basis using a prorated budget.¹⁰

Finally, NYSERDA states that gas efficiency programs should be developed in the Energy Efficiency Portfolio Standard case to supersede the interim program as intended by the parties who entered into the Joint Proposal.

Oil Heat Institute

In its letter dated August 8, 2008, the Oil Heat Institute states its support for energy conservation and the efficient use of all forms of energy. It does not object to Niagara Mohawk's engaging in reasonable efforts to implement natural gas efficiency programs for its customers who have traditionally used natural gas. However, the Oil Heat Institute is opposed to the energy efficiency program funds being used to convert customers who use other fuels. If the funds were used to convert customers, the Oil Heat Institute states that such action would decrease the funds for existing gas customers and increase the demand for natural gas contrary to the conservation goals and objectives. For these reasons, the Oil Heat Institute

¹⁰ Using the Residential Low-Income Program as an example, NYSERDA observes that the \$3.3 million for the eight-month interim program is 8/12th of a \$5 million annual budget.

proposes that the energy efficiency program funds only be used to benefit existing utility company customers.

The Oil Heat Institute is aware that the Joint Proposal expressly states the \$5 million is not to be used to encourage conversions; however, it doubts that a complete separation can be maintained between Niagara Mohawk's marketing efforts and the energy efficiency program. According to the Institute, it seems impractical for Niagara Mohawk to refrain from promoting high efficiency equipment to potential conversion customers until after they commit themselves to making conversions.

PULP

PULP does not believe that the Joint Proposal is entirely consistent with the State's regulatory, economic, social and environmental policies. In its letter dated August 8, 2008, PULP urges us to increase the budget for the Residential Low-Income Program from \$3.3 million to \$5 million for the next eight months. It observes that large increases in home heating costs are expected this winter and it will be difficult for low-income customers to meet the higher expense. Rather than maintain the low-income energy efficiency program at its existing funding level, PULP supports an expansion to serve the growing needs of these customers.

Also to assist low-income customers, PULP proposes that the bill surcharge used to cover the costs of the Interim Energy Efficiency Program not be applied to them. If low-income customers are required to pay the surcharge, PULP states that

the value of their weatherization measures will be reduced and their bills will be higher.¹¹

DISCUSSION AND CONCLUSION

We find that the parties developed and submitted their Joint Proposal using proper means. They complied with the procedural requirements for settlements, and Niagara Mohawk provided notice of the impending negotiations on July 8, 2007.¹² The presiding officer reviewed the notice and determined that all persons who should have been notified of the negotiations were given a reasonable opportunity to participate in the process.¹³

We also find that the general public has been given a reasonable opportunity to consider the Joint Proposal and submit comments concerning it. Notice of the Joint Proposal was provided on August 5, 2008 and public comments were requested by August 26, 2008. The comments submitted by NYSERDA, PULP and the Oil Heat Institute have been considered and they are addressed below.

Beginning with the economic, social and environmental policies addressed by the Joint Proposal, we agree with the supporting parties that natural gas energy efficiency programs should be promptly pursued for implementation this winter. As work on suitable programs continues in the Energy Efficiency Portfolio Standard case, it makes good sense for us to move forward with the programs that are currently ready so as to obtain the energy efficiency they can provide.

¹¹ In support of its position, PULP notes that low-income customers in California pay a reduced Public Purpose Program Surcharge that exempts them from paying for the California Alternate Rates for Energy (CARE) Program that assists these customers.

¹² 16 NYCRR 3.9(a).

¹³ 16 NYCRR 3.9(a)(2).

The \$5 million budget proposed for the eight months from October 2008 to May 2009 appears to be a proper amount of funding. No party has suggested that we start with any lower amount. This sum allows the existing, low-income program to continue at its established level and it provides a reasonable sum, and modest budget, for other programs that are ready for implementation. Niagara Mohawk has presented the bill impacts that ratepayers will experience as a result of the interim energy efficiency program and we find that they are acceptable. We are aware that the parties have sought to mitigate this impact by presenting a volumetric surcharge that spreads this cost over a large base of usage. The \$5 million budget will be collected over a 12-month period which also helps to mitigate the bill impacts.

Three parties – NYSERDA, PULP and Multiple Intervenors – have raised concerns about the proposal to apply the bill surcharge to the residential and small commercial classes whose customers can use the interim energy efficiency programs. This issue is being considered in the Energy Efficiency Portfolio Standard case and a determination awaits there. Nonetheless, it is not possible to implement an interim energy efficiency program, like the one presented here, without also providing a means for the program costs to be recovered. Pending the results of the Energy Efficiency Portfolio Standard case, we will accept for Niagara Mohawk's interim energy efficiency program the volumetric surcharge proposed by the supporting parties.

PULP has proposed that low-income customers be exempt from paying the volumetric surcharge that other residential gas customers will pay. PULP also proposes that the budget for the Low-Income Program be increased from \$3.3 million to \$5 million for the next eight months. For the interim energy efficiency program for the 2008-09 heating season, we will not exclude any customers in the three service classes (S.C. Nos. 1, 2 and 7)

from paying the bill surcharge. In the same manner that we will consider in the EEPS case whether the surcharge should be expanded and applied to other service classes that may or may not obtain benefits from the broad application of energy efficiency measures throughout the service area, we will also consider in that proceeding whether any specific types of customers, due to their specific characteristics, should be exempt from having to pay for energy efficiency program costs.

In general, we believe it would be best if all energy efficiency program matters were considered and addressed more collectively and not in utility company rate proceedings. For this reason, we are removing consideration of Niagara Mohawk's \$11.11 million program proposal from this rate proceeding and we are placing it in its own proceeding for separate review and action. 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.

Turning to the interim energy efficiency measures presented here, NYSERDA correctly observes that customers should receive no more than one incentive for each efficiency measure they choose. It should not be possible for anyone to game the system or abuse the programs and receive unintended incentive payments the costs of which will be borne by others. Various parties have properly suggested that the program providers in the service area should meet and establish the means for precluding any "double dipping" from occurring. If the parties are unable to resolve this concern by the means at their disposal, they should report back to us on the nature of the problems they have encountered with their best suggestions for how any such potential abuse of the energy efficiency programs can be eliminated.

NYSERDA has also suggested that the energy efficiency measures provided by Niagara Mohawk be subject to on-site

inspections. The Company does not dispute NYSERDA's point and states that it is committed to inspecting at least 10% of the households where energy efficiency measures are installed. DPS Staff agrees that quality assurance must be included in the Company's program and inspection reports will be required. Contractors who fail to provide good products and services will either be trained to perform better or they will not be employed to do this work.

When it received the Joint Proposal, NYSERDA did not receive the list of incentives for each type of equipment included in the Residential High Efficiency Heating and Water Heating Program. This information was subsequently provided to NYSERDA and we find that this unintended oversight did not adversely affect the party's ability to provide useful comments for us to consider.

NYSERDA has also questioned whether it is necessary to offer a 75% incentive for the Enhanced Home Sealing Incentives Program. It suggests that a 50% incentive would serve just as well. For the interim program we are adopting for the 2008-09 heating season, we are not accepting the proposed Enhanced Home Sealing Incentives Program. We find that this program may not have an adequate benefit-to-cost ratio to support its adoption and implementation. On the basis of the information included in the rate filing, we have been advised that the benefit-to-cost ratio for this program may not materially exceed 1.0. If this is the case, and were the costs and benefits to vary from the current estimates, it is possible that the program would not be economic on an on-going basis.

Similarly, we are not adopting the Tune-Up Program that has been presented here because neither the Company nor any other party has provided for our consideration a reasonable assessment of the benefits and costs of this program. Absent

the information needed to fully evaluate the merits of this proposal, the program cannot go forward.

The comments submitted by the Oil Heat Institute suggest that the \$5 million budget and the funds collected from ratepayers are best used to provide energy efficiency measure to Niagara Mohawk's established customers and the traditional users of natural gas. The Institute is aware of the Company's promotional efforts that seek to attract new customers and to solicit business away from the providers of fuel oil. It believes that strict limits should be placed on the use of the interim energy efficiency program funds so they are only applied to the utility company's existing customers.

We find that the Joint Proposal draws an acceptable line between the energy efficiency program, supported with ratepayer funds, and the Company's new business promotion efforts. The funds will generally, and for the most part, apply to existing customers. However, we need not, as the Oil Heat Institute suggests, strictly require and limit the application of the ratepayer funds only to the existing customer body. To the extent that the energy efficiency program and the Company's new business efforts overlap, we are not affronted by any such instances where the final result benefits the public with an overall increase in energy efficiency and a reduction in any wasteful use of energy.

With the modifications we are making in this order, we find that the Joint Proposal meets the Commission's criteria for acceptable settlements. As modified, the Joint Proposal will promote the State's economic, social and environmental policies that favor the efficient use of natural resources and it is not contrary to any lawful standard. We view with favor the parties' efforts that advanced the consideration of interim energy efficiency measures to provide a greater opportunity to conserve energy in the 2008-09 heating season. The interim

programs will help to reduce energy consumption and help customers to avoid natural gas commodity costs and thereby control their natural gas usage bills.

We did, however, find that the Joint Proposal contains a significant omission in that it does not explicitly require the program initiatives to be subject to rigorous program evaluation. Such accountability is critical. A significant commitment to transparent, accurate, and timely evaluation is necessary to bring the gas programs in conformance with the policies established in the Energy Efficiency Portfolio Standard case. In that case, we took several important steps to enhance the rigor of evaluation of programs funded with System Benefits Charge funds, including increasing from two to five percent the portion of the program budgets dedicated to evaluation. Utility companies, NYSERDA, and independent program administrators will submit detailed plans for evaluating each program, including details addressing the scope and the method of measurement and verification activities.

The overall budget for the evaluation of the gas energy efficiency programs will also equal five percent of the program budgets.¹⁴ To guide the development of the evaluation plans, the Company will follow the evaluation guidelines released on August 7, 2008 as part of the EEPS case. These guidelines are an important step in providing not only the elements of an acceptable evaluation plan, but the standards to strengthen the accountability, accuracy and usefulness of the evaluation results.

Also, in our action here to adopt and implement five of the seven proposed programs, we note that it is premature for

¹⁴ We recognize that program-specific evaluation budgets may be higher or lower than five percent. However, the overall budget for evaluation will be set at five percent of program costs.

us to consider any specific performance incentives that would apply to the interim programs. This matter requires further consideration and development and it is not clear that the incentive measures that are ultimately adopted can be made to serve for the interim period addressed here.¹⁵

Further, with the information available in Niagara Mohawk's rate filing, we were able to develop an estimate of the amount of revenues that the Company may lose due to the implementation of the interim energy efficiency programs. We do not believe that the lost revenue on Company-administered programs should exceed \$25,000 for the eight-month period being addressed here. We will not allow the Company to recover any greater amount absent clear and convincing support for the amount it claims.

In conclusion, after removing from the proposed budget the two interim programs that are not ready for implementation and by providing a five percent allowance for program evaluations, we find that a proper amount to allow for the eight-month interim energy efficiency program is \$4.893 million. Niagara Mohawk is authorized to surcharge customers this amount in the manner specified in the Joint Proposal.

¹⁵ We also note that incentives can only be earned on Company-administered programs. See Case 07-M-0548, Energy Efficiency Portfolio Standard, Order Concerning Financial Incentives, p. 45, n. 19.

The Commission orders:

1. The terms and provisions of the August 1, 2008 *Joint Proposal for Interim Energy Efficiency Programs* are adopted as modified by this Order.

2. Niagara Mohawk Power Corporation shall provide a compliance filing documenting the costs and benefits of each approved program.

3. Niagara Mohawk Power Corporation shall submit an evaluation plan consistent with the evaluation guidelines adopted in Case 07-M-0458. The Company shall provide monthly "scorecard" reports to Department of Public Service Staff of its actual expenditures compared to a forecast of expected program enrollment, expended and committed funds, as approved or modified by the Commission. Niagara Mohawk shall advise DPS Staff at least 120 days in advance of any program that is expected to exceed its authorized budget level for commitments and the Company should provide recommendations for addressing the situation. The Company shall advise DPS Staff at least 90 days in advance of any planned changes to program provisions so that Staff may review the planned changes and provide feedback prior to implementation. Niagara Mohawk shall provide a monthly report to Staff of the low income referrals made to NYSERDA.

4. This proceeding is continued.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary