STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

REPLY COMMENTS OF THE NEW YORK STATE CONSUMER PROTECTION BOARD REGARDING THE REPORT OF WORKING GROUP V - NATURAL GAS EFFICIENCY GOALS

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INTRODUCTION

The Consumer Protection Board ("CPB") received and reviewed twelve (12) sets of initial comments filed on January 30, 2009, pursuant to guidelines established by the Administrative Law Judges ("ALJs").[1] Almost all of the parties generally support Model 2, which is the development of energy efficiency programs that are capable of comprehensively identifying and addressing a building's inefficient use of natural gas and electricity.[2] Building owners also prefer this approach. NYSERDA provides evidence that in a program it administers in New York City, 96% of the building owners using the program chose a "whole

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[1] Case 07-M-0548, supra, Ruling Establishing Comment Process and Schedule Concerning the Report of Working Group V (issued December 30, 2008) ("Ruling").

[2] While supporting Model 2, most of these parties prefer that the utilities rather than the New York State Energy Research and Development Authority ("NYSERDA") administer the building envelope component.

building" approach rather than pursuing individual gas measures.[3]

As suggested by many parties, however, considering gas energy efficiency programs and electric energy efficiency programs separately in this and other proceedings makes it difficult from a regulatory perspective, although not from a practical perspective, to authorize, design, and implement integrated gas/electric whole building programs. Out-of-the-box thinking is required on the part of the parties and the Public Service Commission ("PSC" or "Commission") to overcome these regulatory barriers so as to provide New Yorkers with state-of-the-art energy efficiency programs. The CPB discusses such an approach later in these comments.

Many of the commentators discussed, in addition to responding to the ALJs' questions, the rationale and program characteristics presented by the ALJs regarding Model 1 and Model 2. In these Reply Comments, the CPB explains developments in our thinking based on those discussions and why we agree, and disagree, with certain recommendations of the parties.

DISCUSSION

Rationale and Program Characteristics

Eligible Gas Appliances:

The CPB agrees with the Department of Public Service Staff ("DPS Staff") that the definition of the term "gas appliance" should be broadened beyond the ALJs' space heating equipment and tankless and instantaneous water

[3] NYSERDA Initial Comments ("IC"), at 5.

heating equipment to include "any high efficiency equipment including cooking and industrial process equipment that produces cost effective savings."[4] We also agree with the suggestions of various utilities. National Fuel Gas Distribution Corporation ("NFG") explains that high efficiency water tanks should be eligible for rebates because this equipment is more affordable than tankless and instantaneous water heaters, and thereby, would allow more New Yorkers to achieve energy efficiency gains.[5] Consolidated Edison of New York, Inc. ("Con Ed") and Orange and Rockland Utilities, Inc. ("O&R") state that high efficiency tank systems and gas storage water heaters should similarly be eligible for rebates.[6]

The National Grid Companies agree; they suggest also including indirect water heaters attached to natural gas ENERGY STAR forced hot water boilers, which they have found to be cost-effective in New York and New England.[7] Such expansion acknowledges the significant benefits of energy efficiency measures in commercial applications and is consistent with the CPB's preference for the whole building approach. In addition, we echo the comment of the National Grid Companies (at 8) that it is important for New York to participate in the national campaign to transform the market to ENERGY STAR water heaters. Excluding highly efficient storage water equipment from eligibility to

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[4] DPS Staff IC, at 4.

[5] NFG IC, at 7.

[6] Con Edison/O&R IC, at 14.

[7] National Grid Companies IC, at 7-8.

receive rebates would impede the effort to maximize cost-effective savings.

Incentives:

Multiple Intervenors ("MI") points out an inconsistency concerning utility performance incentives between the Model 1 and Model 2 "Total Budget, Benefit and Cost Assumptions" sections of the Ruling.[8] The ALJs propose that Model 2 include a building envelope component that would be administered not by the utilities but by NYSERDA. Under either model, the utilities would administer the appliance rebate programs. Accordingly, it does not make sense to distinguish between the models in terms of utility performance incentives.

Regarding the appropriateness of utility performance incentives, NFG (at 12) opposes them whereas all other utility commentators support their use. The CPB does not oppose utility performance incentives so long as the cost of the incentives is included as a cost element in the Total Resource Cost ("TRC") analysis, and the resulting TRC number is equal to or higher than the TRC number resulting from an analysis with NYSERDA as the program administrator.

Expanded TRC:

Several commentators indicated support for efficiency programs that may disproportionately benefit low-income customers, such as weatherization programs, despite having low benefit/cost ratios. The CPB agrees with Con Ed/O&R (at 14), DPS Staff (at 4) and others that, as discussed in our Initial Comments (at 5-7), efficiency programs targeting

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[8] MI IC, at 11.

low-income customers should be funded because of significant societal benefits that are often not captured in the typical TRC analysis. NFG (at 11) explains that the TRC test "is the accepted minimum standard, and it suffers from the deficiencies that naturally flow from the use of only one evaluation test." It states that it has added two measures to the standard TRC analysis in evaluating its existing energy efficiency program. These are: (1) a TRC Western New York test, which adds net benefits accruing to NFG's service territory; and, (2) a societal test that includes the environmental benefits associated with CO_2 reductions. The CPB supports this approach.

Rebates:

Two aspects of the utility appliance rebate program are controversial as presented in the initial comments of some parties. The New York Oil Heat Council, Inc. ("NYOHC") and the Oil Heat Institute of Long Island, Inc. ("OHILI") disagree with the ALJs' Item 9 of the "Common Assumptions of Model Designs" on page 3 of the Ruling, which states that as a general rule, customers converting from oil to gas appliances would be eligible for rebates. These parties prefer that this issue be considered collaboratively in "appropriate work groups" and individual utility cases.[9]

The CPB appreciates the concern of these parties that their members remain financially viable businesses. We also understand that in the give and take of settlement negotiations in a rate case, parties may agree that conversion customers would not be eligible for rebates. It is the CPB's opinion that, on balance, it would be poor

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[9] NYOHC/OHILI IC, at 2.

public policy not to encourage New Yorkers to use a cleaner heating fuel as efficiently as possible. Global climate change is too significant an issue to be subject to the vagaries of negotiations in a rate case.

Con Ed/O&R (at 14) agree with the ALJs (at 8-9) that rebate levels should be differentiated so that low-income customers are able to participate. Other parties disagree, including the Grid Companies (at 8) and NFG (at 10), asserting that it would be difficult for contractors to determine who would qualify as a low-income customer. This point may have some merit but the CPB observes that for many years New York utilities have been administering low-income programs in which contractors participate, and determining eligibility appears not to be a barrier. NFG (id.), for instance, suggests using HEAP eligibility as the low-income criteria.

The National Grid Companies, however, raise a different objection. They state that rather than offering higher rebates to low-income customers, the more effective approach, based on their experience in New York and New England, is to refer these customers to delivery organizations like NYSERDA or the Association for Energy Affordability, which offer a comprehensive range of services. The CPB believes this is a valid argument but seeks more information before recommending this approach.

Surcharge For Interruptible Customers:

The CPB agrees with MI (at 13) that it would be inefficient and non-productive to impose a surcharge on interruptible customers whenever gas is priced below oil "so that imposition of the surcharge will not create an incentive to switch to oil."[10] The resulting lack of predictability would impose a barrier to efficient business planning.

Responses To Questions

Questions 2, 4 and 9:

Comparing the respective results and bill impacts of the models presented in the Working Group V Report as supplemented by this ruling, what level of funding is appropriate?

Does the funding of building envelope programs create significant customer cost inequities, in terms of the allocation of costs and benefits across different fuels and across regulated and unregulated industries?

What are the relative benefits of integrated gas/electric efficiency program delivery versus gas and electric programs delivered separately? How can integrated programs be accomplished in territories not served by combination companies?

The CPB (at 5) advocated a funding level of $160 million to support a suite of statewide gas efficiency programs. After reviewing the initial comments of the parties, the CPB modifies its position slightly regarding funding levels as explained below. Interrelated to this modification is a proposed solution to the issue raised in the ALJs' Question 4 regarding the potential for inequities in terms of cost and allocation across fuel types or between regulated and non-regulated entities.

The National Grid Companies (at 19) assert that "significant customer inequities" would be created by the utilization of a building envelope approach. They, along with DPS Staff (at 6), argue that gas and electric customers will be required to pay two (2) System Benefit Charge ("SBC") surcharges, one on their gas bill and

[10] Ruling, at 6.

another on their electric bill, but only get the same benefit as an oil, propane or wood heating, or an electric-only customer who pays only into the electric SBC fund.

The CPB agrees with this premise and modifies its original position in support of a $160 million funding level for a statewide gas efficiency program. To avoid the inequity dilemma, we strongly support the recommendation of the National Grid Companies (id.) that an appropriate portion of those funds be dedicated directly to an enhanced electric SBC funding for purposes of developing and conducting the building envelope programs. The remaining portion of the increased funding would be used to fund the appliance replacement component of Model 2. With this approach, the CPB's previously-stated goal of providing gas services for gas surcharge customers only would be preserved and the efficiencies realized by the electric SBC whole building approach would remain.

DPS Staff seems to take a dim view of taking action now to increase electric SBC funding. It states (at 6-7) that, although it recognizes the existence of the inequity problem:

> At this time, it is not practical to discuss changes to the current SBC and how its costs are allocated among energy customers. That exercise would drain already scarce resources, which are badly needed to focus on utility administered energy efficiency programs.

The CPB disagrees that the time and resources spent now to gain the proper perspective on the allocation issue would be wasted. The hard work involves designing the programs so that gas and electric whole building measures are provided effectively either by NYSERDA or the utilities or in combination. In contrast, it need not be difficult to increase the electric SBC, in the case of NYSERDA, or assign the monies to a dedicated utility account, as appropriate, by the portion of the gas SBC that would have been allocated to building envelope endeavors. Such a change can be accomplished within the timeframe established by the public notice requirements of the State Administrative Procedures Act (SAPA).

Question 3:
What are the relative merits of an appliance-only model compared with a model that includes whole-customer and building envelope programs?

From the CPB's perspective, the "whole building" approach of the ALJs' Model 2 consists of two components. The first component includes an assessment of both the equipment in a building (for example, furnace, air conditioners) as well as factors affecting the thermal envelope (for example, insulation, windows). The second component approach includes rebates for higher than standard-efficiency equipment and weatherization programs.

The comments of DPS Staff and Con Edison/O&R are confusing from this perspective. DPS Staff (at 3) states that it prefers some combination of Model 1 (appliance rebates) and Model 2 (appliance rebates and building envelope). The program elements it recommends, however, suggests support for the Model 2 approach only. Con Edison/O&R (at 4) similarly indicate support for "elements of both models and recommend a hybrid approach that takes into consideration elements of Model One and Model Two." The companies go on to state (id.):

> The Companies propose that utilities would administer the *gas appliance rebate measures*

> included in the hybrid, but also provide certain *building envelope measures*. NYSERDA should continue to administer any *whole building, performance-based programs*. These two options provide customers a choice between appliance-based measures or a performance-based whole building program.[11]

Development of a common vocabulary, in CPB's opinion, would aid the discussion, and, hopefully, eliminate confusion.

NYSEG/RG&E assert that the only approach is to utilize Model 1, because it and not Model 2 can be operational by the target date of November 1, 2009. The CPB shares the concern about the long timeframes this proceeding has experienced but disagrees with the assertion. NYSERDA is already administering relevant programs supported by the electric SBC. This can continue, with the increased funding as discussed above, while the utilities (potentially) develop their equivalent programs. During this same time, the utilities can also design and, upon Commission approval, implement the appliance rebate aspects of Model 2.

<u>Question 7</u>:
Should an exclusion of large customers distinguish between high-load factor industrial customers and lower-load factor commercial heating customers?

The CPB (at 9) took the position that an exclusion of large customers should distinguish between high-load factor industrial customers and lower-load factor commercial heating customers. Lower-load factor, non-interruptible commercial heating customers, the CPB stated, should be given priority for inclusion in any gas efficiency program because their inclusion would allow for the greatest reduction to peak load periods. We further argued that

[11] Emphasis added.

allowing large high-load factor customers to participate in efficiency programs may have an adverse affect on year-round gas balancing issues. We suggested (id., at 10) that "the inclusion of high-load customers should be done on a case-by-case basis to avoid any potential adverse consequences."

In reviewing the initial comments of Con Edison/O&R (at 7), we were alerted to the fact that Con Edison's large customer category (i.e., those customers using over 12,000 Dths annually) comprises nearly 12,000 firm customer accounts. These include residential low-income housing buildings. The companies point out that one of the largest individual gas customers is the New York Housing Authority, which serves many low-income residents who would be effectively shut out from gas efficiency programs if all large customers were excluded. This example supports the premise that the CPB established in its initial comments, namely, that large customers' inclusion in the program should be evaluated on a case-by-case basis.

Question 8:

Working Group V identified as a starting point for program development the diversity of the natural gas market in different regions in New York State, including geographical and customer mix differences. How, if at all, should this diversity be reflected in the development of a statewide gas efficiency program?

The ALJs (at 5) appear to be recommending uniformity regarding rebate levels. Con Edison/O&R (at 14), NFG (at 8), the National Grid Companies (at 9), NYSEG/RG&E (at 10-13), and Central Hudson Gas & Electric Corporation ("Central Hudson") (at 4) oppose the imposition of uniform rebate levels. These parties explain that the cost of a specific piece of equipment and installation may be higher downstate than upstate, with prices in the Mid-Hudson Region falling somewhere between. In addition, market conditions vary in different regions of New York. Standardization, it is argued, would also impede a program administrator's ability to respond quickly to changed circumstances.

The CPB agrees that because prices for the same equipment, as well as for installation of the equipment, may differ across regions, the amount of the rebates should not be the same, at least initially. It should go without saying, however, that the level of rebates would not be determined unilaterally by individual utilities, but, rather, such determination would be part of a collaborative process leading to a Commission decision.

CONCLUSION

For the reasons explained herein, the Commission should direct expeditious implementation of natural gas energy efficiency programs that integrate whole building, electric and gas, approaches in the manner discussed in the CPB's initial comments and in these reply comments.

Respectfully submitted,

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