STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

INITIAL BRIEF OF THE NATIONAL ASSOCIATION OF ENERGY SERVICE COMPANIES

INTRODUCTION

The National Association of Energy Service Companies (NAESCO) submits these comments in response to the "RULING ON STAFF MOTION FOR RECONSIDERATION AND REVISING SCHEDULE," issued on March 20, 2008 by Administrative Law Judges Eleanor Stein and Rudy Stegemoeller.

NAESCO's current membership of about 75 organizations includes firms involved in the design, manufacture, financing and installation of energy efficiency and renewable energy equipment and the provision of energy efficiency and renewable energy services in the private and public sectors. NAESCO members deliver about $4 billion of energy efficiency and renewable energy projects each year – about equal to all of the energy efficiency projects delivered by all US utilities combined, according to a recent report by the Lawrence Berkeley National Laboratory. NAESCO numbers among its members some of the most prominent companies in the world in the HVAC and energy control equipment business, including Honeywell, Johnson Controls, Siemens, Trane and TAC/Tour Andover. Our members also include many of the nation's largest utilities: Pacific Gas & Electric, Southern California Edison, New York Power Authority, and TU Electric & Gas. In addition, ESCO members include affiliates of several utilities that have a strong presence in the New York market including ConEdison Solutions, Pepco Energy Services, Constellation, PP&L and Direct Energy. Prominent national and regional independent members include Custom Energy, DMJM Harris, NORESCO, Onsite Energy, EnergySolve Companies, Ameresco, UCONS, Chevron Energy Solutions, Synergy Companies, Wendel Energy Services, WESCO and Energy Systems

Group. NAESCO member companies have delivered energy efficiency projects to New York institutional, government, industrial, commercial and residential customers for over twenty years and have delivered demand response, retail commodity energy supply including green power products, and renewables since the transition in the New York market to retail competition in the late 1990s.

NAESCO currently serves on the New York System Benefits Charge Advisory Group, multiple Program Advisory Groups for the California utility energy efficiency programs, the Energy Efficiency Task Force of the Western Governors Alliance, and the Leadership Group of the National Action Plan for Energy Efficiency. NAESCO participated in Working Groups I and II in the EPS proceeding and authored a section of the Working Group I report delivered on December 14, 2007.

SUMMARY OF COMMENTS

NAESCO's comments are summarized as follows:

1) NAESCO urges that the Staff Fast Track suite of programs filed on March 25 be adopted on as expedited a schedule as feasible. NAESCO believes that the prompt adoption of these programs will make a significant contribution to the achievement of the "15 by 15" target and need not compromise the ability of parties other than NYSERDA to develop and implement new programs.

2) NAESCO urges that the Commission authorize the utilities that are interested in administering energy efficiency programs to immediately begin the preparation of detailed program plans that the Commission can consider for funding. These programs should presented in a format that facilitates their comparison to the current NYSERDA Energy $mart programs.

3) NAESCO believes that each proposed program administrator should propose energy savings targets and the costs or budget it thinks will be required to achieve these targets. The Commission should then fund programs that it accepts for

implementation on an incremental basis, as programs achieve milestones or interim targets.

4) NAESCO defers to other parties with more expertise the question of whether the estimated bill impacts for proposed programs are accurate.

DISCUSSION

NAESCO's detailed comments are as follows:

1) NAESCO urges that the Staff Fast Track suite of programs filed on March 25 be adopted on as expedited a schedule as feasible. NAESCO believes that the prompt adoption of these programs will make a significant contribution to the achievement of the "15 by 15" target and need not compromise the ability of parties other than NYSERDA to develop and implement new programs.

The Staff Fast Track proposals, which are similar to the NYSERDA Fast Track proposals, are premised on the fact that several existing NYSERDA programs, such as the Enhanced Commercial Industrial Performance Program (ECIPP) are under-funded, and that their production can be substantially expanded by simply adding funding. In the case of ECIPP, Staff recommends approximately quadrupling the program from the existing SBC III funding level. No significant overhaul of the program administration or changes in incentives is required, other than a reasonable cost adder of 20% for projects in New York City.

During the course of this proceeding, NAESCO has not seen comments from any party that the proposed expansion of ECIPP will not produce the results that Staff and NYSERDA project, or that the work of expanding the program will be more complex than Staff and NYSERDA have envisioned. Rather, objections to the immediate implementation of the Fast Track programs seems to be coming from utilities and other parties such as New York City that apparently see the Fast Track programs as a threat to preclude their longer-term program administration proposals and program plans.

NAESCO does not see this threat as sufficient to defer the implementation of the Fast Track programs. In endorsing these programs, NAESCO is not making any presumptions about long-term program administration, and urges other parties not to make any presumptions, because, as we discuss below, most of the utilities have yet to develop detailed proposals and submit them for consideration in this proceeding. It would be unfair to make any decisions about long-term program administration until we see the utilities' proposals.

But NAESCO believes that the development, approval and implementation of new utility programs will take at least two years to get to the level of production that Staff and NYSERDA have proposed for the Fast Track programs. The timing of the programs is therefore sequential, not competitive, as the authorization and funding for the Fast Track programs will be ending at about the time that the new utility programs are nearing full implementation.

Therefore, in the absence of compelling counter-arguments, NAESCO urges the Commission to authorize the proposed Fast Track programs as expeditiously as possible.

2) NAESCO urges that the Commission authorize the utilities that are interested in administering energy efficiency programs to immediately begin the preparation of detailed program plans that the Commission can consider for funding. These programs should presented in a format that facilitates their comparison to the current NYSERDA Energy $mart programs.

NAESCO believes that the achievement of the "15 by 15" target will require the best efforts of all parties, including NYSERDA, the utilities, NYPA, DASNY, New York City and other local governments, and the energy services industry. During the entire course of this proceeding, utilities and other parties have repeated their interest in program administration, and have assiduously defended their "turf" against any perceived encroachments that might limit their ability to propose program administrative models and program portfolios. Yet, with the exception of NYSERDA, NYPA and Central Hudson, the interested parties have yet to propose administrative models that include compensation plans and program portfolios.

National Grid has offered information about some of the programs it operates in New England and the cost of these programs, and ConEd has perhaps put forward a surrogate for its EPS plan in the form of DSM program proposals in its rate case (07-E-0523).

And in the case of Central Hudson, there appears to be no defined process in place to evaluate the proposal and to compare it to existing NYSERDA programs, if such a comparison is appropriate. The responses of the Administrative Law Judges to Central Hudson's repeated petitions that its proposals be timely considered indicate to NAESCO that the ALJs may be waiting for a critical mass of utility proposals to emerge before they direct the proceeding to consider any proposals.

NAESCO therefore respectfully suggests that the next step is for the interested parties to put forward specific proposals. We understand that these parties may be waiting for definitive guidance from the Commission about the parameters of such plans, or some advance assurance that the Commission will authorize their administration of large-scale, multi-year programs. But we think that the interested parties should recognize the possibility that neither the guidance nor the assurance may be forthcoming. Rather, the Commission may be waiting to react to specific proposals from the interested parties. In the absence of such proposals, the proceeding will make little headway.

If the utilities feel that they need specific authorization from the Commission to develop detailed plans, or if the utilities feel a need to be assured that they can recover their reasonable costs for preparing detailed plans, then they should petition the Commission, and NAESCO urges the Commission to immediately provide the requested authorization and assurance of cost recovery.

NAESCO suggests that the proposals put forward by the utilities should contain the same level of detail as the current NYSERDA SBC III Energy $mart program plans, in terms of program narratives and detailed budgets. The proposals should also contain proposed compensation plans, including program cost recovery and shareholder incentives. NAESCO believes this level of detail will be required by the Commission to assess the benefit/cost ratio of the proposals and compare them to the existing NYSERDA programs, which we assume will be the benchmark. NAESCO also urges the interested parties to explain how they will expand the reach of energy efficiency programs beyond the reach of the current NYSERDA programs. We think this information is necessary as the Commission tries to come to grips with why it should approve new programs that may be (in NAESCO's opinion) more expensive that the current NYSERDA programs.

3) NAESCO believes that each proposed program administrator should propose energy savings targets and the costs or budget it thinks will be required to achieve these targets. The Commission should then fund programs that it accepts for implementation on an incremental basis, as programs achieve milestones or interim targets.

NAESCO does not support the idea that program administrators should be allocated a specific energy savings target at the outset of a planning process or allocated a specific amount of funding at the time that programs are initially authorized. Rather, we think that the parties that are interested in proposing program administration should initially propose their own energy savings targets and budgets, because it is very important for the program proposers to have full ownership of their proposals, and not be saddled at the outset with a savings target and budget imposed on them. NAESCO expects that these initial proposals will be compared to the NYSERDA program benchmarks, and refined during a Collaborative process as well as the judicatory process specified by the Commission. NAESCO also expects that one or more of the proposals may ultimately prove to be unacceptable to the Commission, either because the proposed savings targets are too low, or the proposed budgets too high, or both.

NAESCO understands that this approach is different from that used in other states, in which the regulators mandate a savings target and/or budget, and order the utilities to file compliance plans. The different approach that NAESCO suggests is based on the fact that New York is in the unique position of having a default program administrator in place, NYSERDA, that NAESCO believes, based on its experience across the country, is perhaps the best program administrator in the country. We think that it will be beneficial to New York if the utilities are able to design and field cost-effective new programs that complement the NYSERDA programs and expand the reach of energy efficiency. But there is no need, given the capabilities of NYSERDA, to compel the utilities, under threat of regulatory sanction, to run programs they don't believe in, or to try to make budgets they think are unrealistic come true.

If and when the Commission authorizes new programs by non-NYSERDA administrators, NAESCO urges the Commission to authorize funding for these new programs on an incremental basis. We suggest that the Commission initially authorize both an energy savings target and a multi-year target budget. The actual funding, however, would be released to administrators as they meet program development and implementation milestones, much as ConEd currently releases funding for the NYSERDA System-Wide program in the ConEd service territory. In NAESCO's experience, it is not wise to allocate full funding to new programs up front, because it is very difficult for the Commission to reclaim funding allocations if the programs do not perform as anticipated. And the reality is that if the utilities and other new program administrators are stretching the markets, as they should with new program designs, some of their programs will fail, while others will succeed beyond expectations.

It is particularly difficult for the Commission to reclaim funding allocations from a program administrator that is, or that involves, a local government entity, such as New York City administrative structure that was previously submitted in this proceeding as the "Consensus Proposal." NAESCO's experience with a similar program structure in California is that the Commission there was unable to timely reclaim funding allocations from under-performing third-party-administered programs in the 2004-05 program cycle, because that reclamation was too difficult politically. Following this painful experience, the California Commission gave up its program administration responsibilities to the utilities, and the utilities have in turn adopted an incremental funding approach for third-party-administered programs that has been successful. Underperforming programs lose their funding, while overperforming programs have access to increased funding, over and above their initial target budgets, so long as they continue to perform.

4) NAESCO defers to other parties with more expertise the question of whether the estimated bill impacts for proposed programs are accurate.

NAESCO has no particular expertise in the type of rate analysis that is the subject of this question. We will therefore leave the question to other parties who do have the requisite expertise.

CONCLUSION

NAESCO appreciates the opportunity to offer these comments in response to the "RULING ON STAFF MOTION FOR RECONSIDERATION AND REVISING SCHEDULE," issued on March 20, 2008 by Administrative Law Judges Eleanor Stein and Rudy Stegemoeller. NAESCO urges the Commission to adopt its recommendations:

1) NAESCO urges that the Staff Fast Track suite of programs filed on March 25 be adopted on as expedited a schedule as feasible. NAESCO believes that the prompt adoption of these programs will make a significant contribution to the achievement of the "15 by 15" target and need not compromise the ability of parties other than NYSERDA to develop and implement new programs.

2) NAESCO urges that the Commission authorize the utilities that are interested in administering energy efficiency programs to immediately begin the preparation of detailed program plans that the Commission can consider for funding. These programs should presented in a format that facilitates their comparison to the current NYSERDA Energy $mart programs.

3) NAESCO believes that each proposed program administrator should propose energy savings targets and the costs or budget it thinks will be required to achieve these targets. The Commission should then fund programs that it accepts for implementation on an incremental basis, as programs achieve milestones or interim targets.

We look forward to continuing to work with the ALJs and the other parties in the Collaborative proceeding to develop the best possible lineup of program administrators and the optimal portfolio of programs to achieve New York's "15 by 15" targets.

Respectfully submitted by,

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