

State of New York Public Service Commission
Case 07-M-0548 - Proceeding on Motion of the Commission Regarding an Energy
Efficiency Portfolio Standard
(EEPS)

Initial Briefs on Behalf of Dutchess County New York In Reference to:

Ruling On Staff Motion For Reconsideration and Revising Schedule

(Issued March 20, 2008)

Eleanor Stein and Rudy Stegemoeller, Administrative Law Judges:

Introduction

What follows are reply briefs in the above referenced proceeding in compliance with the March 20, 2008 ruling by Administrative Law Judges Eleanor Stein and Rudy Stegemoeller. In the ruling the Administrative Law Judges asked active parties to the proceeding to comment upon four questions. The questions raised deal with: (1) a Department of Public Service Staff filing of March 25, 2008 regarding Fast Track efficiency proposals; (2) including jurisdictional utilities in the roll out of efficiency proposals; (3) whether costs and funding presented in the Administrative Law Judge's Straw Proposal of January 24, 2008 were supportable; and (4) advanced funding of NYSERDA and utility programs stipulated in the Straw Proposal. Throughout the reply briefs here in the only documents referenced will be those of March 20 from the Administrative Law Judges or from DPS Staff received or attached to the March 25 filing.

The County of Dutchess is a growing region in the State of New York with a substantial proportion of utility energy service coming from Central Hudson Gas and Electric. As an active party in the proceeding the County is interested in protecting County tax payers, reducing energy costs, promoting overall energy efficiency, protecting the environment and open space, participating in local County efficiency program development, and creating economic development opportunities.

Executive Summary

Section I: Reviewed in this section is the concept of a fast track in relation to the long term objectives of the energy efficiency proceeding. The term fast track is distracting and misleading. The proposal by the Administrative Law Judges and Staff to recast the starting programs as bridging programs is to the point and is supported by the County.

Section II: Staff's characterizations of State utility capabilities are questioned. The County believes that State utilities are capable and competent organizations and should be considered on an equal footing with NYSERDA for EEPS program development and funding.

Section III: In this section a proposal is made for reducing 2008/2009 Fast Track program funding requirements by \$341 million while retaining 91% of the 2015 program benefits. Projecting the impact of the proposal on Dutchess County residents and businesses, Fast Track program costs in 2008 are reduced from \$2,240,000 to \$520,000 and in 2009 from \$4,720,000 to \$1,000,000. The proposed reduction also has a significant positive impact on Central Hudson's non residential delivery rates dropping the forecasted Fast Track increases from 4% in 2008 to .98%; and in 2009 from 7.9% to 1.7%.

Section IV: In this section the County suggests providing more direction in the proceeding, focusing the regulatory role of Staff, and limiting the proliferation of committees, task forces and meetings.

Section V: This final section deals with the County's concern of centralized program development predominately residing in Albany or New York City. The County is intent on participation in the local deliberations that create energy savings and that are rolled out to accommodate County residents.

As part of the continuing development of the proceeding a closer look at the foundations of the 15x15 goal should be investigated in light of a change in administration and the economic conditions in which the State finds itself.

Section Headings

- I. Fast Track Programs versus Quality and Deliberation
- II. Utility Delivery of Energy Efficiency Programs
- III. Application of the Pareto Principal to Fast Track Program Funding
- IV. Focusing of the Proceeding
- V. County Involvement in Program Development

I. Fast Track Programs versus Quality and Deliberation.

The term Fast Track has been used throughout this proceeding. The term in part refers to award winning and successful NYSERDA programs, some of which are over subscribed. These programs in the opinion of a number of active parties, may be expanded upon to produce energy savings quickly.

NYSERDA programs were not developed in a hurry and NYSERDA is noted for the quality and deliberation it places in the programs it creates and administers. The Fast Track includes programs that are hybrids of NYSERDA programs with lower TRC benefit to cost ratios which should not be placed on an expedited path for funding. Specifically both the gas and electric low income programs proposed in Staff's Fast Track of March 25 need more work. Staff needs to better identify the coordination that must take place between NYSERDA and the Division of Housing and Community Renewal (DHCR) and how best to avoid redundant work product by overlapping contractors serving both programs. Although not immediately transparent as to content, the cost per house hold served in the DHCR Weatherization Assistance Program (WAP) of \$4583 versus the cost of the current NYSERDA EmPower New York program of \$1571 needs to be reconciled prior to authorizing the collection of funds. In regard to the

low income weatherization programs proposed, the transfer of jurisdictional rate payer funds to avoid capture by the New York State Division of Budget is an area that needs thorough review prior to relying on the Memorandum of a DHCR attorney. Assuming that what is proposed in the Memorandum dated March 19, 2007 from the DHCR to the DPS is a proper way to administer funding, the record of the EEPS proceeding is of sufficient detail to indicate that the proceeding is attempting to bypass the New York State Division of Budget which in itself poses longer term consequences that go well beyond funding this single low income program.

The very collaborative process that was used to develop the record in this proceeding obviates the term Fast Track. A long list of other PSC proceedings that require detailed attention and which cannot be relegated to a secondary position based upon fast track terminology, supports changing the Fast Track title. The term Fast Track should be replaced with Bridging Programs.

Dutchess County reiterates previous comments made that the EEPS proceeding should be conducted with all due deliberation. As such the County questions the statement made by the Administrative Law Judges on p.8 of the March 20 Ruling in which they state:

In order to move this process forward expeditiously, we intend to put before the Commission not only the authorization for bridge or Fast Track programs, but some specific policy issues as well.

This position taken by the ALJ's is justified by another statement which occurs subsequently on the same page:

Not only will prompt Commission action adopting a budget for the program place the bridging programs in perspective, it will allow utilities to increase SBC collection from customers immediately, so as to mitigate bill impact compression later in the program, and will signal to market participants the Commission's commitment to substantial long-term investment in energy efficiency. The issuance of the Straw Proposal, the record of the Technical Conference, and the parties' briefs pursuant to this Ruling expand the record of this proceeding sufficiently to support these Commission actions.

The County does not believe the record is complete to the point of supporting preemptive SBC funding actions of the magnitude suggested on page 8 of the Executive Summary presented by Staff in their March 25 Report on Recommendations for the EEPS Proceeding. Electric funding levels of \$137.54 and \$267.82 for years 2008 and 2009 respectively need continuing discussion as to magnitude and do cause bill impact compression as may be noted in Attachment 3 of Staff's Recommendations regarding Impact of EEPS on Utility Rates. Using the impact on Central Hudson non-residential electric delivery rates for 2008 and 2009 the rates go up by 4.0% and 7.9% respectively. Other utilities have similar increases in magnitude although Central Hudson's happens to be the highest.

The County will, in the section on the Pareto Principal, Section III, propose an alternative proposal that builds from the Fast Track suggested by Staff. The 2008 electric alternative proposal allows for the continued capture of 90%+ of benefits with 16.7% of the funding.

The County believes that a significant amount of work remains to be done in regard to developing a complete record on the EEPS prior to recommending significant funding

levels as presented in the Staff's March 25 Fast Track proposal. The County agrees with the Administrative Law Judges and Staff that a more appropriate term for the programs developed in the short term would be Bridging Programs to remove the impression that haste makes waste which is the antithesis of what is intended with the EEPS.

II. Utility Delivery of Energy Efficiency Programs

The Administrative Law Judges in their Straw Proposal indicated that the jurisdictional utilities in the State should receive energy efficiency program funding on a par with NYSERDA.

Staff indicates that the approach in the Straw Proposal is a "top down" approach and the Staff approach which effectively eliminates up front utility participation builds from highly successful programs in New York, California, Vermont, Connecticut, and Massachusetts and is market-centric. Staff also claims that they have researched programs from around the world. If the Straw Proposal is a "top down" approach then the Staff approach may be classified as a "centralized command and control" approach as noted in Staff's treatment of utilities it regulates.

As described by the utilities the Staff of the Commission has relegated the utility resource programs to a sideline position for the foreseeable future. Most of the Fast Track programs proposed by Staff have NYSERDA as the "Lead Administrator" with utilities answering the phones of customers who call, and customers requiring assistance are then referred to NYSERDA. This utility position is supported by Staff's discussion of the Role of Utilities presented below.

Staff in discussing the Role of Utilities in its March 25 submission, states on p. 4 of the Executive Summary:

However, the utilities need to demonstrate that they are able to manage programs effectively and coordinate their efforts within a statewide structure. Thus far with the exception of Central Hudson, the utilities have not provided detailed information about the types of programs they propose to implement or expected costs, energy savings, and benefit/cost ratios associated with specific programs. That type of information will be critical to an expanded role for utilities in energy efficiency delivery.

Staff believes that it is important for the State's utilities to begin to gain experience in the planning and implementation of energy efficiency programs. The most efficient way to proceed is to allow them to implement the programs that Staff has identified.

Staff then identifies two utility programs (p.13 of the Executive Summary) and dictates that within 30 days of a Commission order that compliance filings be made by utilities "regarding interim programs, for the Residential ENERGY STAR HVAC and Efficient Gas Equipment and small commercial/industrial direct installation programs." Not only does Staff dictate what should be in the programs but also designates lead utilities to ensure consistency on a statewide basis with a "common look and feel to customers throughout New York State."

For the Small Business Direct Installation Program the Lead Administration will be from the utilities (p.20-22 Attachment 5), "working with installation contactors that offer

turnkey partnerships with local governments, community based organizations, and other selected organizations.

Staff recommends that a program design team, consisting of the utilities, NYSERDA, and DPS be formed to develop a specific program implementation plan, principles, and plan to be submitted to the Commission.”...”The plan should address customer eligibility, incentive levels, contactor selection and administration, bulk equipment purchasing, financing, etc. The same basic program should be implemented in all regions of the state, with each utility implementing this common program in its service territory.”

The question is how may the New York State utilities demonstrate they can manage a program if NYSERDA and Staff design the programs? Also can programs work uniformly throughout the State as Staff requires? Staff suggests utilities demonstrate they are able to manage programs effectively but then turns around and controls program design and centralizes the program in order to look and feel the same on a state wide basis.

Staff thus is recommending centralized control either through NYSERDA or with the programs that utilities develop. Unfortunately this leaves active parties such as Dutchess County who would like to participate in the development of energy efficiency programs with the local utility that understands the market place, out of step with Staff’s recommendation. Even though Staff references the Central Hudson Energy Efficiency PSC filing (Case 07-M-1139) in which the County of Dutchess is an active party, where that filing fits into the overall EEPs is not indicated by Staff. The County believes that the Staff proposed centralized command and control management of programs will not achieve the EEPs goals that have been projected. The best application will be designed and developed locally by parties that are part of the region. Forced centralized program requirements will be very costly to promote.

In essence Staff suggests that utilities are currently incapable of developing, delivering, and managing energy efficiency programs in the State. Staff’s alternative to current utility participation is to rely almost exclusively upon NYSERDA. Staff’s confidence in NYSERDA’s capability to ramp up and deliver, with a utility customer feeder network for a number of the programs listed in the Fast Track, is questionable.

The Administrative Law Judge’s Straw Proposal as it related to utilities provided clarity to an audience in the market place that historically views utilities as energy gurus. This is not to say that New Yorkers love their utilities but they do respect them as knowledgeable energy providers. New Yorkers have a tendency to approach things differently than the rest of the nation but when it comes to electric and natural gas, utilities are considered the go to organizations. In New York of course there is the role in energy efficiency that is played by NYSERDA but even the title of the organization speaks of a Research and Development Authority which is viewed by many electric and natural gas energy users as an authority and not a service or program provider. Utilities in the State of New York deliver services, answer phones, and talk to customers. NYSERDA does R&D and that is the perception of a typical New Yorker. Typical New Yorkers do not understand the difference between a watt, a ccf of natural gas, or a Btu but they know utilities do understand the differences and are selling those energy units. New Yorkers also believe that if a utility says it can help you save energy, because it is incented to do so, New Yorkers will be skeptical, but will believe the utility can perform.

The state utilities have indicated a desire to participate in the energy efficiency programs being developed. Utilities in the State are more than capable of developing and managing energy efficiency programs. The utilities need to be rolled into program funding, design, delivery, and management on an equal footing with NYSERDA. The programs developed need to accommodate local and regional needs. The Staff's centralizing position that one "brand" fits the State is an unsubstantiated belief that in the County's opinion has no basis in fact for a State with the size and diversity of New York.

III Application of the Pareto Principle to Fast Track Program Funding

Using the tables provided by Staff in the Program Budget on pages 8 & 9 of the Executive Summary the following information may be derived. All the numerical listings which follow in the table are in millions of dollars. In the short term with the price of fossil fuels escalating at an alarming rate and conservation occurring based upon the impact of higher energy prices on disposable income, pulling significant dollars from jurisdictional customers should be avoided. The table below provides an alternative proposal and indicates that significant funding reductions may be made with a very limited impact on program implementation and long term results.

	<u>Electric</u>		<u>Total Electric</u>
	Costs		Savings
	<u>2008</u>	<u>2009</u>	
CFL Expansion	3.49	4.90	217.6
Flex Tech Industrial Process	13.40	27.36	299.9
Standards and Code Support	2.55	2.61	9623.2
Energy Star HVAC	<u>3.63</u>	<u>6.73</u>	<u>52.2</u>
Total	23.07	41.60	10,192.9

The total electric Fast Track budget numbers proposed by staff for 2008 and 2009 respectively are \$137.54 and \$267.82 million. The total electric savings over the entire period are \$11,179.50 million. Thus the 4 listed programs above produce 91% of the savings by 2015. However the 4 programs listed for 2008 and 2009 are responsible respectively for 16.7 and 15.5% of the total original Fast Start costs projected for the years stipulated. The 4 program alternative proposal, assuming that Dutchess County accounts for 40% of Central Hudson's electric energy delivery and using Staff's Central Hudson Table in Attachment 4, reduces electric program costs for County customers from the Fast Track amount of \$2,240,000 to \$520,000 in 2008 and from \$4.720,000 to \$1,000,000 in 2009.

The reduction in program size from the Fast Track proposed by Staff would also significantly improve on the Central Hudson non residential delivery rate impact. Using

the Central Hudson listings in Staff's Attachment 3 the non residential delivery rate impacts would be reduced from 4% to .92% in 2008 and from 7.9% to 1.7% in 2009.

Reiterating, the alternative proposal to the Staff Fast Track proposal of March 25, would be to fund only the listed 4 programs, all with benefit to cost ratios over 3. Against Fast Start funding requirements, this would save jurisdictional rate payers a total of \$340.69 million over a two year period. It is suggested that the continuing EEPS collaborative process be focused upon realigning the proposed Fast Track expenditures of \$340.69 million. In-between each of the utilities should be required to develop program proposals similar to that developed by Central Hudson in Case 07-M-1139. Staff of the Commission should finalize upon and have Central Hudson implement the Energy Efficiency Program currently before the Commission. Development of utility programs should be coordinated with NYSERDA programs and implemented along with NYSERDA modified programs. Finalizing the Central Hudson program and rolling it out immediately would then allow for Staff to gain experience from the roll out, in the design of other utility programs.

IV Focusing of the Proceeding

In the Ruling on the Staff Motion of March 20 the Administrative Law Judges on p.9 indicated that, "Further collaboration is necessary but we intend to focus it on (1) certain targeted policy issues; and (2) implementation."

For some time Dutchess County has been concerned that the EEPS preceding that started last year was not converging. It is encouraging to note that the Administrative Law Judges are moving to provide convergence and focus.

The County is apprehensive about the change in regulatory posture taken by the Commission and Staff. In the EEPS preceding the regulator in effect is regulating itself. The Commission is proposing programs, designating the cost to support programs and authorizing the collection of revenues from jurisdictional utility customers to fund the programs. Specific concerns revolve around the number of committees that seem to proliferate in the proceeding, including an Oversight Committee that in many regards is proposed to function with similar responsibilities to Commission Staff and Administrative Law Judges. Committees hiring consultants, such as is proposed for the Evaluation and Reporting Task Force, will have an impact on all other committees in the proceeding. Committees spawn meetings which spawn resource commitments which create implementation delays. It appears that there is a general tendency to establish committees if in fact there is a difficult decision to be made. Committees are no substitute for proper regulatory due diligence, oversight and decision making.

A number of topics have crept into the proceeding that are important but in the County's opinion are tangential to energy efficiency discussions. These tangential topics take up time and resources, delaying the process. Discussions on power plant emissions, caring for the impoverished, modifying human behavior and tending to non jurisdictional customers are all worthwhile topics but in the opinion of the County are better placed in proceedings other than an energy efficiency portfolio standard proceeding.

V County Involvement in Program Development

Dutchess County continues to seek to provide services to residents of the County. As the price of energy continues to rise there is no better way in the County's opinion to control the cost than through appropriately applied energy efficiency measures. The County has been involved directly with NYSERDA and Central Hudson in a number of energy related issues. Of significant concern to the county is access to appropriate personnel. The County is apprehensive about the ability to interact with NYSERDA in the delivery of programs if overall program implementation becomes too extensive. The local presence of Central Hudson has significant advantages to providing access.

It goes without saying that the County knows the ins and outs of the mid Hudson community and is interested in keeping electric and gas delivery rates attractive to the business community. The County also knows how to create programs, deliver services and communicate with County residents.

The County wants to be assured that tax payers are receiving an adequate return on funds invested through the SBC. In that regard the County takes exception to the subsidy of non jurisdictional electric or natural gas customers. This position relates specifically to the Staff position on non jurisdictional customers having the opportunity to cherry pick SBC programs paying back a small percentage of overall total value received through an SBC charge of limited term.

The County is also interested in the overall well being of the local utility that happens to be a significant property tax payer.

Finally the County wants benefits to accrue from site specific programs and communications. The Staff proposal to centralize and homogenize all communication as it relates to energy efficiency is problematic. Forced conformity will be an inefficient use of limited resources.