through the RAIS. Further, Con Edison states that it is willing to develop for interested customers and their consultants access equivalent to the RAIS access for ESCOs. When such access becomes available, the customers and consultants will be able to view and download account-specific information one account at a time. This will reduce the manual labor that is currently needed to prepare the spreadsheets that contain the customer information.

In response, CPA states that Con Edison has not adequately demonstrated that it is providing customers and their authorized representatives a fair opportunity to make informed decisions about the supply offers they receive from ESCOs. CPA reiterates that an interested customer must request information in advance and the information is provided on an account-by-account basis that requires a long and laborious collation. Since this information is provided to ESCOs on a complete and continuous basis, CPA believes that it should also be shared with the customers in the same manner. It urges us to direct the Company to provide customer access to RAIS without delay.

We find that Con Edison should provide interested customers, and their authorized representatives, the means for obtaining access equivalent to that which the RAIS provides to ESCOs. Con Edison should provide to Staff and interested parties an implementation plan and timetable for achieving equivalent access for non-ESCOs. It should do so in 45 days.

DEMAND SIDE MANAGEMENT (DSM)/ENERGY EFFICIENCY

In Case 07-M-0548, Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio Standard ("EEPS"), the Commission established a goal of reducing electricity usage 15% from expected levels by 2015. The Commission identified the rationale for the EEPS goal as "to reduce consumer bills, mitigate increasingly volatile fuel prices, prevent stress on the State's delivery system and reduce fossil fuel-related emissions …."

The Company has proposed a program to achieve 500 MW of permanent energy efficiency reductions by 2016. The program target date and the reduction goal reflect the NYISO 2007 Reliability Needs Assessment, in which the NYISO determined there was need for 1,000 MW in new capacity in the downstate area by 2016. The Company's proposal consists of a targeted initiative focused on load relief in certain T&D load areas, where the proposed levels of DSM reductions would result in deferral of Company planned load relief projects (approximately 150 MW) and programs designed to reduce demand throughout the Company's service territory (approximately 350 MW). Although the goals of the program would be expressed in demand, all measures to implement the program would achieve permanent energy efficiency reductions.

Under the 2005-2008 Rate Plan, Con Edison administers a targeted program to achieve 150 MW of permanent energy efficiency reductions, targeted to load areas to provide deferral of necessary load relief projects. Under the rate plan, NYSERDA also administers a 150 MW system-wide demand reduction program. The budget for each program was established at $112 million, not including administration and evaluation fees. For the targeted program, additional expenditures are allowed up to the present value of construction revenue requirement reductions achieved by the deferral of planned T&D investments. At the conclusion of the rate plan, any funds collected by NYSERDA for the system-wide program that have not been committed will be returned to the Company.

Con Edison's costs under its targeted program have been approximately $1,000/kW, which represents the outer limit authorized by the Commission and includes an allowance for deferred construction costs. Con Edison explains that this price is influenced by the fact the targeted program has geographic limits because it must target specific load areas.

The RD adopted Staff's recommendation that the Commission not authorize any new efficiency programs pending a determination in the EEPS proceeding of the optimal role to be played by utilities in delivering energy efficiency services. The RD noted that the Company had proposed a six-month ramp-up period for the initiation of any new programs, and stated that it would be counterproductive for the Company to expend the resources to ramp up new programs while there is a possibility that a generic decision in the EEPS proceeding might determine a different role for the Company. The RD also found that the Company's proposals lack sufficient detail, and that a collaborative would be needed to develop detailed programs.

The RD found that the target for a new Con Edison program would be difficult to enumerate outside the context of an EEPS decision, in which the participation of other providers toward meeting the 15 x 15 goal would be determined. The RD also found that the Company's proposed 500 MW target would not, in itself, meet the 15 x 15 goal and would not fully address the Company's demand-driven construction needs.

The Company suggested in its Reply Brief that, short of implementing new programs, it is important for the Company to begin the market research component of its proposal. The RD found that market research is a priority, but that the Company could undertake market research with existing funds, under the assumption that market research could result in higher incentive payments.

As an interim measure, to maintain continuity until the EEPS proceeding produces a long term program, the RD recommended that Con Edison's Targeted Program be continued on its existing terms, with the Company authorized to contract for up to 30 MW in the rate year. The RD further recommended that NYSERDA's System-wide program be continued for the same reason.

For purposes of the interim program, the RD proposed that Con Edison continue to receive the $22,500/MW incentive that it receives under the 2005-2008 Rate Plan, without establishing a precedent for incentive policies to be developed in the EEPS proceeding. The RD did not specify whether this incentive should apply only to the Targeted Program or, as provided in the 2005-2008 Rate Plan, to the System-wide program, SBC programs, and NYISO demand response programs.

Parties’ Positions on Exceptions

New Programs

Con Edison argues that the RD errs in not authorizing it to proceed with its proposed 500 MW Energy Efficiency Program. Con Edison is joined by the New York City Government Customers and by NRDC/Pace in arguing that targets should be established and programs authorized in this proceeding. NYC notes that the City has already committed to invest 10% of its energy bill, or $80 million in the fiscal year, to fund energy efficiency initiatives and that nowhere in the State is the need for increased energy efficiency more pronounced than in New York City. NYC further notes the January 24, 2008 Ruling in the EEPS proceeding declining to pursue a “fast track.” NYC argues that the Commission should take action in this proceeding to avoid a delay in implementation of new DSM programs that could extend well into 2009. NYC states that Con Edison could expand its DSM initiatives and begin implementation no later than the summer of 2008.

NRDC/Pace observes that, while the EEPS proceeding will address certain generic policy issues, those matters could be decided in the case at hand, and there is ample evidence in the record to do so. NRDC/Pace argues that Con Edison should be assigned a 15% reduction target, consistent with the EEPS proceeding. NRDC/Pace opposes the suggestion that program size could be based on the extent of the Company’s demand-driven construction needs. NRDC/Pace also notes that the issue of performance incentives has been more thoroughly examined in this proceeding than it has in the EEPS proceeding and is ripe for determination here.

Finally, the Company argues that at a minimum it should be allowed to begin to study market potential. The Company objects to the denial of $2 million in labor costs necessary to begin ramping up, which would include funds for employees to conduct market studies. The Company opposes the RD's rationale that it could initiate its own market research work which would likely pay for itself in the form of performance incentives. The Company notes that the Commission has authorized customer funding for a DSM Market Study Program for Orange and Rockland Utilities. The Company proposes that, if the Commission is reluctant to authorize the full increased labor expense, then it should at a minimum authorize a customer-funded study between $500,000 and $750,000, which could be used by the appropriate program administrator.

NYC and NRDC/Pace argue that the Company should be allocated a target based on its share of the goal. The Company responds that these parties do not take into account the potential contributions of other factors including building codes and appliance standards.

NYECC responds that Con Edison's request on Exceptions for market study funding does not identify an error in the RD and is not supported in the record.

Staff responds that it is troubling that the Company proposed specific budgets and program goals without identifying programs. Staff disagrees with the Company's alternative proposal to begin spending on marketing studies, arguing that they are not always essential and that some programs, e.g., the "fast track" proposals of the EEPS, are able to proceed without market studies.

Staff responds to NRDC/Pace by arguing that its position would undermine the progress of the EEPS proceeding which will determine policy on a statewide basis. Staff also argues that a collaborative process, if formed, should result in a proposal for the Commission's approval rather than authorizing the Company to unilaterally select programs.

Joint Supporters observe that a collaborative structure of stakeholders already exists and can be readily mobilized to assist in setting priorities for an interim program.

Interim Programs

Staff concurs with the rationale for continuing the existing programs on an interim basis, with three provisos. First, Staff notes that the current rate plan allows for lost revenue recovery by the Company. Because an RDM will be in place, the Company should not be eligible for recovery of lost revenues. The Company agrees, but argues that for the same reason it should not be required to institute a revenue decoupling mechanism unless new DSM programs are authorized.

Staff also urges that the Company be required to conduct an independent evaluation to measure program effectiveness. Staff argues that an independent program evaluation is essential because as the RD noted, simply meeting targets does not imply that the program cannot be made more cost-effective. Staff notes that independent program evaluation is a requirement for most major energy efficiency programs. Staff notes that Con Edison has not administered a major energy efficiency program portfolio in more than ten years and that its references to its former program are irrelevant to its present capability to conduct programs.

NYSERDA and NYECC agree with Staff that the Company should be required to provide measurement and verification data on the targeted program. The Company states that it does not object to independent valuation prospectively if it does not delay progress in establishing a program.

NYECC argues that there is no clear rational basis for recommending 30 MW of efficiency measures in the rate year, because Con Edison’s revised request for continuation of its targeted program over an eight-year period estimated zero megawatts of installed reductions during the first year. The Company responds that installations in the first year are irrelevant to a program targeted to load relief, so long as installation schedules conform to the scheduled need for load relief.

Staff urges that the Company and NYSERDA be required to consult with Staff to develop the terms of interim programs.

The Company responds that it has met with Staff continually and there has been no showing that these meetings are inadequate.

Joint supporters urge that the Targeted Program be modified to include demand response and more effective deployment of distributed generation. The Company responds that the Targeted Program utilizes energy efficiency measures to establish permanent load relief that does not rely on intervention to reduce demand.

Staff supports continuation of the NYSERDA program, noting that it has exceeded its target at below-budget costs. Staff states that it is open to meeting with the Company and NYSERDA to consider updating the terms of the program.

Staff notes that an extension of the NYSERDA system-wide program needs to clarify whether the extension is up to the original target of 150 MW, or up to the budget allowance of $112 million. The Company also notes that the program should not be extended for two years where the RD’s recommendations are applicable for the most part to the rate year only.

The Company objects to any extension of NYSERDA’s system-wide program, arguing that it has resulted in demand response, not permanent energy efficiency.[55] NYSERDA responds that the record demonstrates 55% of the MW reduction achieved through its program are either energy efficiency or distributed generation, both of which are permanent measures. The Company also argues that the Con Edison territory has not received a fair share of SBC funding. Staff agrees with the RD that this rate case is not the proper venue for considering the issue of SBC allocations.

Regarding the System-wide program, Joint Supporters support its continuation but urge that it be modified to enable smaller systems to participate.

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[55] The Company also claims that NYSERDA’s programs cost Con Edison’s customers more than Con Edison’s programs when the same amount of money is spent, because NYSERDA requires pre-payment for its programs. Con Edison’s example of programs of equivalent cost is hypothetical.

NYC opposes the continuation of interim programs in lieu of immediate measures to establish new programs. NYC proposes that an immediate collaborative effort be ordered to produce a program proposal within 60 days. The Company does not oppose this proposal on condition that the collaborative be merely advisory and have no decision-making power.

Incentives

The Company urges the Commission to adopt, in this proceeding, the principle that utility DSM incentives should be at least as profitable as supply-side investments. The Company also argues that the proposed interim $22,500/MW incentive would be plainly inadequate as a permanent incentive, and even on an interim basis should be adjusted for inflation.

Staff urges the elimination of the $22,500/MW incentive and states that even if it were applied to the targeted program, it should no longer apply to the NYSERDA System-Wide SBC 3 Program and NYISO Demand Reduction Programs. The Company notes this is an interim measure, lasting at most one year, and that there has been no demonstration of a need to change the incentive during its expected short remaining life.

NYECC excepts from the recommendation to allow the continuation of the $22,500/MW incentive, arguing that no incentives should be awarded for demand side management programs. NYECC argues that there is no inherent entitlement to incentives; that Con Edison did not request an incentive in the previous electric rate case; that a revenue-decoupling mechanism eliminates a need for an incentive; and that in no event should an incentive be granted for attainment of any goal that is less than superior in achievement.

NRDC/Pace urges the adoption of an incentive mechanism based on the structure recently adopted by the California Public Utilities Commission, which authorizes an incentive of 9% of net benefits upon achievement of 85% of the base energy savings goal, increased to 12% if the Company meets or exceeds its goal.

The CPUC model also provides for negative adjustments if the Company fails to meet a specified percentage of its target.

NYC states that an appropriate incentive payment can be included in the design of new programs within the 60-day period that it recommends.

The Company argues that negative incentives are unnecessary and unjustified. The Company analogizes to incentives for promoting retail access, which were not accompanied by negative adjustments. The Company argues that promoting efficiency is not a duty under the Public Service Law and that in no event should the Company be held responsible for voluntary decisions of customers.

Staff argues that the development of Con Edison's incentive proposal was not based on an economic analysis of its return on supply side investment. Staff notes that under the California incentive system, a utility would have to achieve 125% of its target to receive incentives amounting to 20% of program budget, and that the California mechanism also includes negative adjustments. Staff also argues that the parallels drawn by the Company between incentives for property tax refunds and for DSM programs ignore the testimony of the Company that it has reasons for pursuing DSM independent of financial incentives.

Other DSM Issues

NYC urges the Commission to adopt its proposal to create a DSM coordination board that would apply the expertise of its members to optimize the results of Con Edison's DSM Program. NYC claims that without proper coordination, money will be wasted and the achievement of targeted goals may suffer.

Joint Supporters argue that the Board proposed by NYC would not provide adequate stakeholder participation. Staff continues to maintain that a Board has the potential to delay planning and implementation and should not be adopted outside the context of the EEPS proceeding.

The RD did not recommend that the City's proposal be adopted, but recommended that it be considered in the context of the EEPS or in a subsequent proceeding. The RD noted that Con Edison is unique in having most of its territory represented by a single municipal entity that has committed substantial financial resources to energy efficiency.

NYC also urges the Commission to adopt two proposals: (1) that Con Edison reduce contributions in aid of construction that it charges to customers if they fully participate in DSM programs for new construction; and (2) that Con Edison amend its BIR tariff to require customer participation in applicable energy efficiency programs as a condition to receiving the BIR discount. Although the RD found that the proposals had merit but lacked specificity, NYC argues there is sufficient evidence to support a Commission order requiring Con Edison to develop draft tariffs so that other parties could comment, or for the Commission to require a small collaborative to develop the details of these proposals.

The Company responds that customers implementing DSM will reduce the need for CIAC and there is no justification for further reductions. Regarding the BIR proposal, the Company states that it is willing to discuss the proposal with NYC but there is no need for the Commission to order such a meeting.

Con Edison states that the RD errs by failing to specify the form that a collaborative would take if, as it recommends, a collaborative becomes necessary due to delay of a final determination in the EEPS proceeding. Con Edison urges that the Commission should specify the collaborative model approved in the Con Edison gas rate proceeding for developing an efficiency program for the last two years of the gas rate plan. This is a collaborative model that requires consultation but does not prevent the Company from moving forward with programs in the absence of a consensus.

Discussion

We agree with the RD that policy decisions regarding energy efficiency programs should be made in the EEPS proceeding. No new programs will be authorized at this time. In the context of the continuation of the targeted program, as discussed below, new measures may be adopted in consultation with interested parties and Staff.

Taking notice of developments in the EEPS proceeding, our assessment is that it is likely the proceeding will result in substantial utility involvement in delivering efficiency programs. In anticipation of further decisions to be made in the EEPS proceeding, we will authorize funds for hiring personnel, program development and market research. Because a lead time is needed to develop staffing and programs, it is reasonable to authorize the company to begin these activities now, without predetermining the outcome of the EEPS proceeding. The Company’s proposal for $2 million will be adopted, provided that the costs will be recovered through the MAC. A minimum of $250,000 of that sum will be spent on market research, in coordination with Staff and interested parties, and the results of that research will not be deemed proprietary. The Company will submit to Department Staff within 30 days of this order its plan regarding the expenditure of the $2 million. In the event that an order is issued in the EEPS proceeding that is not consistent with the efforts authorized here, any uncommitted funds will be credited to customers.

The RD found that the Company is meeting its targets within the budget established by the Commission, and that while the program could potentially achieve more cost-effective results, continuation of the program is justified by the need to maintain continuity pending a determination in the EEPS proceeding.

We concur with the RD and accept the recommendation that the Company be authorized to contract during the rate year for up to 30 MW of targeted energy efficiency measures, subject to the funding limits and other terms established under the

2005-2008 Rate Plan. The Company will consult with interested parties and will present an implementation plan for Staff review and comment.

In light of our determination establishing a revenue decoupling mechanism, no lost revenue recovery mechanism will be applied to the Company's Targeted Program or to any other efficiency programs.

We also agree with Staff that an independent evaluation of the Targeted Program must be performed in order to assess that general effectiveness of the Company's program as well as the effectiveness of targeted programs versus system-wide programs. The evaluation should be performed by an outside contractor selected through a competitive process in consultation with the parties to the collaborative formed under the 2005-2008 Rate Plan. Staff will review the RFP, the contractor selection process, and important draft work products. The results of the evaluation should be submitted to the Commission within eight months of this order. Funding for this evaluation should be recovered through the Company's MAC.

The results of the evaluation shall be available to the public. The evaluation shall include: (a) evaluation of program design, delivery, and implementation including opportunities for program improvement; (b) quantification of energy and demand savings and other potential impacts such as environmental benefits; and (c) a net to gross analysis.

Regarding incentives, the Company has noted the probable short duration of the interim Targeted Program. The rationale of providing program continuity on an interim basis does not support the extension of any incentives at this time. This decision should not be interpreted as a precedent with respect to any consideration of incentives in the context of the EEPS proceeding.

NYSERDA's administration of the system-wide program under the 2005-2008 Rate Plan has been consistent with the intent of the program, including the proportion of permanent efficiency represented by energy efficiency and distributed generation programs. NYSERDA has exceeded the program target at a cost below the amount of funds that Con Edison's customers have provided through the MAC. Using the funds already provided to NYSERDA under the 2005-2008 Rate Plan, the system-wide program administered by NYSERDA should be extended for the duration of the rate year, under the terms established in that plan. The extension of the system-wide program will not be limited to any specific MW level, but will be limited to the spending rate experienced under the 2005-2008 Rate Plan; NYSERDA may commit up to $5 million per quarter, as well as administration and evaluation costs. Prior to commitment of funds, NYSERDA will also consult with Staff and the collaborative to update its system-wide implementation plan.

Under the terms of the system-wide program, NYSERDA is required to return all unencumbered funds plus interest to Con Edison. The contract will be amended - or a new contract will be executed - to allow NYSERDA to continue the system-wide program under the terms described above, for no longer than the rate year. All other unencumbered funds will be returned to Con Edison as originally scheduled under the existing agreement, and any unencumbered funds that may be held by NYSERDA if the continuation of the system-wide program is preempted by a decision in the EEPS proceeding will be returned to Con Edison.

Such funds returned to Con Edison will be reserved, with interest, and dedicated toward funding of EEPS programs implemented by program administrators authorized by the Commission in a future order in the EEPS proceeding. The Company is also ordered to add to this reserve by continuing to collect, through the MAC, funds that were formerly dedicated to the system-wide program, at a monthly rate of collection equal to that which was utilized for the last six months to fund the system-wide program. Such funds will also be reserved and dedicated toward funding of EEPS programs pursuant to a future order of the Commission in that proceeding.

The extensions of the Targeted Program and the System-Wide program are both subject to revision or revocation pending a determination in the EEPS proceeding that may be inconsistent with the continuation of either program, provided that any contracts previously entered into shall be honored.

Regarding the proposal of NYC to establish a separate DSM coordinating board, the issue of how efficiency programs will be structured among interested parties should be determined in the EEPS proceeding. NYC's proposal to reduce Contributions in Aid of Construction will not be adopted at this time, due to the potential impacts on ratepayers. NYC's proposal to require participation in efficiency programs from recipients of economic development power discounts is an issue that should be considered in the context of the EEPS proceeding.

RELIABILITY PERFORMANCE MECHANISMS

The 2005-2008 Rate Order established a reliability performance mechanism (RPM) for Con Edison.[56] The RPM consisted of seven performance metrics to encourage the Company to provide reliable service both generally, and with respect to several parameters of special importance. Four special metrics applied to the repair of poles, removal of shunts installed as temporary repairs, renewal of service to street lights and traffic signals, and the replacement of circuit breakers with high fault-current levels (over-duty breakers). General metrics measure system-wide frequency of outages and duration of outages, as well as major outages. Exclusions are provided for incidents beyond the Company's control such as major storms or other catastrophic events.

Staff proposed: 1) that the RPM continue into the rate year; 2) that adjustments under the system-wide duration index

[56] Case 04-E-0572, Consolidated Edison of New York, Inc. – Electric Rates, Order Adopting Three-Year Rate Plan, issued March 24, 2005 (the 2005-08 Rate Plan). The Commission expressed a strong preference for performance-based ratemaking in Case 94-E-0952, In the Matter of Competitive Opportunities Regarding Electric Service, Opinion and Order Adopting Principles to Guide the Transition to Competition, June 7, 1995, at 8 (Opinion 95-7).