

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

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Proceeding on Motion of the Commission to
Examine Programs to Address Energy
Affordability for Low Income Utility Customers

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Case 14-M-0565

**ENERGY EFFICIENCY
FOR ALL RESPONSE TO
PETITIONS FOR REHEARING**

Pursuant to Title 16, Section 3.7(c) of the New York Code of Rules and Regulations, the Association for Energy Affordability, the Center for Working Families, Enterprise Community Partners, Green and Healthy Homes Initiative, Pace Energy and Climate Center, Natural Resources Defense Council, and WE ACT for Environmental Justice, filing jointly as Energy Efficiency for All (“EE for All”),¹ hereby respond to the Petition for Rehearing of Multiple Intervenors and the Petition for Rehearing and Clarification of the City of New York, both filed on June 20, 2016. For the reasons set forth below, EE for All respectfully requests that the New York State Public Service Commission (the “Commission”) deny Multiple Intervenor’s Petition, and accept the City of New York’s Petition to clarify the Commission’s Order Adopting Low Income Program Modifications and Directing Utility Filings, issued May 20, 2016 (the “Order”).²

Introduction

The Commission’s Order addresses the compelling public interest of ensuring energy affordability for all New Yorkers and establishes a more robust framework to secure low income

¹ Energy Efficiency for All is a coalition that advocates for energy efficiency and complimentary renewables in affordable multifamily housing and a just and inclusive clean energy transition for all New Yorkers, including low income, green workforce and environmental justice concerns.

² Case 14-M-0565. Proceeding on Motion of the Commission to Examine Programs to Address Energy Affordability for Low Income Utility Customers. Order Adopting Low Income Program Modifications and Directing Utility Filings (May 20, 2016).

energy access across New York. Among other elements, the Order establishes an energy burden target of 6% or less for low income households; directs utilities to open their low income programs to all Home Energy Assistance Program (HEAP) recipients; sets a program funding ceiling of 2% of electric or gas revenues; establishes a default process for setting benefit levels; establishes statewide program budget targets; establishes levelized or budget billing for program participants; and allows utilities to continue arrears forgiveness programs.

The Commission instituted this proceeding in January 2015 to examine programs for addressing energy affordability for low income utility customers, to ensure that these programs continue to be consistent with the Commission's statutory and policy objectives, and to streamline the regulatory process to conserve administrative resources. Notice was issued soliciting comments on several low income affordability topics. More than a dozen parties filed comments, and four collaborative meetings were held with Department of Public Service Staff ("Staff") to discuss major issues outlined in the Notice. On June 1, 2015, Staff filed a report with recommendations concerning the design and implementation of utility low income programs for further party comment. Numerous parties filed comments on the Staff report, and eight different public hearing sessions were held across the state through Fall 2015, all of which informed the Commission's Order in May, 2016.

The City of New York's Petition for Rehearing and Clarification demonstrates that the Commission erred in assuming that direct voucher and utility guarantee customers do not continue to have a high energy burden. EE for All also supports the City of New York's concern that the Order leaves ambiguity on the ability of Consolidated Edison and National Grid to continue to provide bill assistance based on their currently used eligibility criteria and

respectfully requests the Commission clarify for all parties that current eligibility criteria used by these utilities may continue.

Multiple Intervenors' (MI) Petition for Rehearing fails to demonstrate that the Commission committed an error of fact or law, as required by 16 NYCRR § 3.7. Multiple Intervenors' reading of Public Service Law (PSL) § 66(12)(c) mistakes the standard for determining a "major change" to rates. MI also makes a variety of arguments that, on their face, do not indicate an error of fact or law made by the Commission. For example, MI's preference that the Commission offset assistance to low-income customers by the amount of energy efficiency support provided to those customers is not an error of fact or law. Furthermore, MI's argument that low-income program modifications should be phased in would seem to indicate a policy preference.

Based on the foregoing, and as further explained below, the City of New York's Petition should be granted, and Multiple Intervenors' Petition for Rehearing should be denied.

I. The City of New York's Petition Should Be Granted Because the Commission Committed an Error of Fact and Because Ambiguous Language in the Order Requires Clarification

Energy Efficiency for All supports the request by the City of New York for rehearing on the question of removing customers who receive social service agency vouchers from the utility bill assistance programs, and believes that without further clarification, many New York City low income customers will be denied necessary and appropriate benefits.

A. The City of New York is Correct that the Commission Erred in Assuming Customers with Utility Vouchers or Pay Guarantees are not Responsible for their Utility Bills

The Order appears to assume that customers receiving bill payment assistance in the form of vouchers from social service agencies removes the obligation to pay from customers;

furthermore, the Commission leaves unaddressed how social service agencies then would recover the costs for providing bill payment assistance. In fact, as New York City demonstrates in its Petition,³ customers must sign repayment agreements with the social service agencies and are ultimately held responsible for these bills, which in turn enables the social service agencies to be made whole again. Removing these customers from the utility bill assistance programs is counter to the goals of the Order and unfairly harms the affected low income consumers and social service agencies. For this reason, EE for All supports New York City's request for rehearing and believes utility voucher customers should be included in bill assistance programs.

B. Ambiguous Language in the Order Jeopardizes the Ability of Low income Customers to Continue to Receive Assistance and the Commission's Language Requires Clarification

The City of New York requests clarification that Con Edison and National Grid may use Con Edison's existing eligibility criteria and file match process, whereby a broader range of customers are served than those receiving HEAP benefits. Numerous other low income programs are currently used by Con Edison to identify households in need of bill payment assistance (such as SNAP or WIC). EE for All is aware that this was the subject of discussion during the proceeding, including the fact that restricting this approach would immediately subject many customers to significant bill increases (expressly counter to the goal of reducing household energy burden). However, the Commission Order contains conflicting language on the right of Con Edison and National Grid to "grandfather" current practices with regard to bill payment assistance.

On page 21 of the Order, the Commission states that "...the unique challenges presented by the New York city metropolitan service area for identifying the low income population and

³ City of New York Petition at 4.

estimating the level of need justify allowing existing eligibility criteria to be grandfathered.”⁴ However, just one page later, the Commission provides confusing directives on the applicability of this grandfathering, where it notes a minimum discount of \$3.00 for all other utilities (“besides Con Edison and National Grid NY”) but concludes the paragraph by saying the modification applies to all programs providing discounts, including these same utilities.⁵ In order to ensure low income households in New York City continue to receive discounts they have historically been entitled to and which clearly help reduce their high energy burden, we support the City of New York’s request for clarification that the utilities may continue their current eligibility and assistance payment approaches.

II. Multiple Intervenors’ Petition for Rehearing Should Be Denied Because It Failed to Meet Its Burden of Demonstrating That the Commission Committed an Error of Fact or Law

Pursuant to 16 NYCRR Part 3.7(b), a petition for rehearing may be “sought only on the grounds that the Commission committed an error of law or fact or that new circumstances warrant a different determination,” and the petition must “separately identify and specifically explain and support each alleged error or new circumstance said to warrant rehearing.”⁶ In the instant case, Multiple Intervenors has not alleged the existence of new circumstances, and has failed to meet its burden of demonstrating that the Commission committed an error of law or fact in adopting the reliability credit described above.

Multiple Intervenors makes a number of arguments, not all of which are addressed in this response, including that: (1) The Commission’s Order constitutes a “major change” in rates that required a hearing; (2) The Commission failed to analyze the rate impacts of the approved

⁴ Order at 21.

⁵ Order at 22.

⁶ 16 NYCRR Part 3.7(b).

budget increases on nonparticipating customers of the Upstate Utilities; (3) The Commission failed to account of the energy efficiency subsidies that already are directed to residential low income customers; (4) The Commission should have phased in budget increases over a multi-year period; and (5) The Commission should have ruled that residential low-income program costs should be allocated on a per customer basis. These arguments do not articulate an error of fact or law by the Commission.

A. The Commission did not err by approving rate increases without a hearing, because the rate increase approved specifically avoided qualifying as a “major change” under PSL § 66(12)(c).

Multiple Intervenors cites to PSL § 66(12)(f), which requires the Commission to “hold a hearing before implementing a ‘major change’ in rates,” and PSL § 66(12)(c), which defines “major changes” to rates as any that would increase utility aggregate revenues by “the greater of \$300,000 or 2.5%.” MI argues that “the Order violates this threshold for at least some of the Upstate Utilities.”⁷ The Commission’s Order, however, established a funding limit for low income programs of “2% of electric revenues and gas revenues, respectively; for sales to end-use customers, i.e., including both total utility revenues and the commodity portion of Energy Service Company revenues collected through consolidated utility billing to those customers.”⁸ For all affected utilities, total electric or gas revenue increases will exceed \$300,000 but will be less than 2.5% of aggregate revenues.⁹ Therefore, the Commission’s 2% funding limit on total low income program budgets will avoid the PSL §66(12)(c) definition of “major change,” thereby obviating the need for hearings.

⁷ Case 15-E-0565, Petition for Rehearing of Multiple Intervenors (Jun. 20, 2016) at 5 (hereinafter “MI Petition”).

⁸ Order at 3.

⁹ Order at C1.

B. The Commission adequately considered impacts on non-participating customers and investments currently being made to low-income energy efficiency programs, but even had they not, these factors would not represent “an error of law or fact.”

MI states that the Commission “failed to analyze adequately, if at all, the impacts or the fairness of its decisions on non-participating customers of the Upstate Utilities.”¹⁰ MI lists a series of metrics or other equity-related arguments it wishes the Commission had addressed in its Order. MI also contends that the Commission “failed to consider, quantify or offset the hundreds of millions of dollars that already have been – and presumably will continue to be – expended on a statewide basis on residential low-income energy efficiency programs, which are paid for by all customers.”¹¹

These purported omissions are actually addressed in the Commission’s Order. On the question of costs borne by non-participating customers, the Commission noted that “proposals that would provide large, unbounded discounts to broad segments of the residential class, and/or that would shift a disproportionate share of the costs of such subsidies to commercial and industrial customers, or utility shareholders, are inappropriate.”¹² This framework guides the Commission’s conclusions on program budgets and how they are accounted for between customer classes.

The Commission also considered other categories of assistance provided to low-income customers, as it explicitly describes the impact of low income provisions within the NY Sun program, the EmPower-NY low income energy efficiency program, the prioritization of Community Distributed Generation projects serving low-income customers, and new programs

¹⁰ MI Petition at 4.

¹¹ MI Petition at 5-6.

¹² Low Income Order at 29.

for low income customers being developed through the Green Bank. The Commission notes that “as these new markets and tools continue to develop ... a greater portion of the burden for ensuring affordability for low income customers will shift from direct financial assistance to such innovative approaches.”¹³ In the future, these programs may shift the profile of energy demand from low-income customers, causing the Commission to reallocate program budgets away from direct financial assistance while meeting the same energy burden targets prescribed by the Order. The Commission clearly considered the impacts of low income energy efficiency programs on the low income programs at issue. However, even had the Commission not addressed the impacts to non-participating ratepayers or the relation of low-income customer support to other energy-related programs targeting low-income customers, these omissions would not represent an error of law or fact, as required by 16 NYCRR Part 3.7(b).

C. The Commission describes several phased features of the low income program in its Order, addressing Multiple Intervenors’ concerns relating to gradualism.

MI contends that the Commission erred by failing to direct that the material increase to the upstate utilities’ residential low-income program budgets be phased-in over time, consistent with the principle of gradualism. MI does not articulate how this failure would amount to an error of fact or law. While the Commission did not address the principle of gradualism in the manner MI would prefer, it has clearly articulated several ways in which it would inform program elements. The Commission notes that “achievement of the 6% energy burden goal for all low income utility customers will also require a phased approach to implementing program changes.”¹⁴

¹³ Low Income Order at 11-12.

¹⁴ Low Income Order at 9.

Further, the Commission identifies several facets of program design that will operate under a phased approach, including (a) the filing of updated implementation plans identifying “proposals for programs for introduction by utilities in areas that are not being served by markets as part of ongoing REV development”¹⁵; (b) the phasing out of minimum customer discount levels that exceed what is required to reduce bills to the target energy burden level¹⁶; (c) the gradual contraction of direct financial assistance as innovative approaches for addressing low income energy needs provided by the Clean Energy Fund are developed¹⁷; and (d) the phased development of more effective identification of eligible customers through coordination with the Office of Temporary and Disability Assistance.¹⁸ The Commission has applied a gradualist approach to several aspects of the Order. However, even if it had not, MI has not articulated why this omission would constitute an error of law or fact, as required by 16 NYCRR Part 3.7(b).

D. Cost allocation across all customer classes is appropriate as a matter of policy.

MI argues that “based on cost causation and beneficiaries pay principles, none of these [low income program] costs arguably should be allocated to non-residential customers,”¹⁹ and recommends that the cost of residential low income programs should be allocated to customer classes on a per customer basis. This position is neither a grounds for rehearing, nor sound from a policy perspective. Given the importance of ensuring energy affordability for all New Yorkers, as a matter of public policy, it is reasonable to spread the costs of the programs to all customers without unfairly burdening some classes at the expense of others. This is appropriate as low income programs achieve social policy goals, and society as a whole benefits from their

¹⁵ Low Income Order at 46.

¹⁶ Low Income Order at 22.

¹⁷ Low Income Order at 11-12.

¹⁸ Low Income Order at 16.

¹⁹ MI Petition at 15.

successful implementation, as the Commission itself noted.²⁰ Cost allocation among the classes must be fair and impartial, and avoid adverse impacts on any customer class.

III. Conclusion

EE for All supports the Commission's Order as a necessary tool that, together with other measures and additional funding streams, will bring New York closer to ensuring energy affordability for all New Yorkers. EE for All has consistently argued for comprehensive energy services for low income households, including the vital provision of energy efficiency in multifamily buildings, to ensure long term affordability and healthy homes. We are pleased that the Commission has acknowledged that a suite of programs will be necessary to address household energy burden and urge the Commission to make energy efficiency for low income households a priority in related proceedings under the Reforming the Energy Vision process. Only with a comprehensive approach will the 6% energy burden goal be reached. The rejection of Multiple Intervenors', and granting of New York City's, petition will help bill assistance programs fulfil their piece of the ongoing work of ensuring energy affordability and energy efficiency for all.

Based on the foregoing, EE for All respectfully requests that the Commission deny Multiple Intervenor's Petition for Rehearing and grant the City of New York's Petition for Rehearing and Clarification of the Order.

²⁰ Order at 29.

Respectfully submitted,



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[Signatures to follow]

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