

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on June 18, 2009

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman  
Patricia L. Acampora  
Maureen F. Harris  
Robert E. Curry, Jr.  
James L. Larocca, recused

CASE 09-M-0311 - Implementation of Chapter 59 of the Laws of  
2009 Establishing a Temporary Annual Assessment  
Pursuant to Public Service Law §18-a(6).

ORDER IMPLEMENTING TEMPORARY STATE ASSESSMENT

(Issued June 19, 2009)

BY THE COMMISSION:

INTRODUCTION

On April 7, 2009, New York State enacted the New York State Budget for 2009-2010, which, in part, requires the Department of Public Service to collect a Temporary State Energy and Utility Service Conservation Assessment (Temporary State Assessment) (Public Service Law (PSL) §18-a(6)), effective from April 1, 2009 to March 31, 2014.<sup>1</sup> The Temporary State Assessment is applicable to electric, gas, steam, and water corporations, municipal electric and gas corporations subject to Commission jurisdiction (jurisdictional municipal corporations), and the Long Island Power Authority (LIPA) (regulated entities). The Temporary State Assessment is expected to generate an estimated \$540 million in additional revenue during the 2009-2010 State Fiscal Year for the support of the State's General Fund.

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<sup>1</sup> Chapter 59 of the Laws of 2009, Part NN.

In this Order, we authorize recovery of the revenues required for payment of the Temporary State Assessment, including carrying charges, subject to reconciliation over five years, July 1, 2009 through June 30, 2014. To recover the revenues necessary to pay the Assessment, our Order establishes a separately stated surcharge as the preferred collection method for electric, gas, steam, and water corporations and LIPA and we authorize the municipal electric and gas corporations to incorporate the charges in their adjustment clauses or through a delivery rate adjustment, if the costs associated with establishing a line item surcharge are prohibitive.

PROCEDURAL HISTORY

In accordance with State Administrative Procedure Act (SAPA) §202(1), a notice of this rulemaking was published in the State Register on April 22, 2009, providing 45 days for public comments. The SAPA 45 day period for submission of comments on proposed agency actions expired on June 8, 2009. On April 28, 2009, the Secretary to the Commission issued a Notice Requesting Comments at an earlier date (May 15, 2009), if possible, due to the need for a Commission decision as soon as possible after compliance with SAPA procedural requirements.

The Notice elicited comments from: (1) electric, gas, and steam utilities, specifically Brooklyn Union Gas, KeySpan Gas East Corporation and Niagara Mohawk Power Corporation d/b/a National Grid (National Grid); Central Hudson Electric & Gas Corporation (Central Hudson); Consolidated Edison Company of New York, Inc. and Orange & Rockland Utilities (Con Edison and Orange & Rockland); Fillmore Gas Company, Inc. (FGC); National Fuel Gas Distribution Corporation (NFG); New York State Electric & Gas Corporation and Rochester Gas & Electric Corporation (NYSEG/RG&E); (2) municipal electric corporations

and associations, specifically New York Association of Public Power (NYAPP); New York Municipal Power Agency (NYMPA); and Plattsburgh Municipal Lighting Department (PMLD); (3) Public Utility Law Project (PULP); and (4) energy services companies (ESCOs), specifically Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. (Constellation); National Energy Marketers Association (NEM); New York State Energy Marketers Association (NYSEMC); Retail Energy Supply Association (RESA), and Small Marketer Customer Coalition (SCMC). Multiple Intervenors (MI) submitted comments in response to the SAPA notice; Con Edison and Orange & Rockland and RESA replied to the proposals contained in the MI comments.<sup>2</sup> No water corporation submitted comments.

#### STATUTORY PROVISIONS

The Temporary State Assessment (PSL §18-a(6)) imposes a charge of 2% of gross operating revenues from intrastate utility operations (intrastate gross operating revenues) of electric, gas, steam, and water utilities and jurisdictional municipal corporations,<sup>3</sup> less the amounts assessed for Department

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<sup>2</sup> Although the Notice Requesting Comments did not authorize parties to reply to comments, we will consider the replies because they advance the record in this proceeding and provide additional information for our consideration.

<sup>3</sup> The rates, services and practices of municipal electric corporations that purchase full requirements for their customers from the New York Power Authority (NYPA) are governed by contracts and are not subject to the provisions of the Public Service Law (Public Authorities Law §1014 and §1005(6)(d)), with certain exceptions not relevant here. Municipal electric corporations that purchase or generate power from sources other than NYPA and municipal gas corporations are subject to Commission jurisdiction and the requirements of Chapter 59 of the Laws of 2009. Thirty-nine municipal electric corporations and two gas corporations (Village of Bath and Village of Woodhull) are subject to Commission jurisdiction.

of Public Service costs and expenses (General Assessment) that are authorized in the annual State Budget. It establishes a charge of one percent of intrastate gross operating revenues applicable to LIPA.<sup>4</sup> Because LIPA is exempt from the general jurisdiction of the Commission, LIPA does not pay the General Assessment. The minimum assessment billed to any regulated entity is \$200. Telephone corporations, subject to the General Assessment, are exempt from the Temporary State Assessment, although the law requires submission of a study by October 1, 2009 of the assessments, fees, and tax rates relating to the telecommunications industry, including cable, satellite, and wireless companies. The State Comptroller is required to pay funds collected under the Temporary State Assessment to the credit of the State General Fund after reserving the amount to pay any necessary refunds. The stated purpose of the Temporary State Assessment is to encourage conservation of energy and other resources provided by electric, gas, steam, and water utilities.

Chapter 59 of the Laws of 2009 increased the General Assessment cap limitation from a maximum of one-third of one percent to one percent of a public utility's gross operating revenues derived from intrastate utility operations (PSL §18-a(1) and (2)) in each calendar year. The revenues required to pay the General Assessment are included in the revenue requirements and base rates established for the utilities. Chapter 59 also raised the level of revenues from electric, gas,

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<sup>4</sup> The state law that established LIPA provides that its electric rates, services, and practices are not subject to the jurisdiction of the Public Service Law, except to the extent PSL §18-a provides for assessment for certain costs, property, or operations (Public Authorities Law §1020-s). Thus, the Commission's implementation of PSL §18-a applies to LIPA.

steam, telephone, and water utilities and jurisdictional municipal and gas corporations exempt from the assessment from \$25,000, established in 1972,<sup>5</sup> to \$500,000.

Pursuant to the statute, intrastate gross operating revenues earned by electric and gas utilities that are subject to the Temporary State Assessment and General Assessment include amounts derived from the sale and delivery of electricity and natural gas (bundled service) and delivery to end-users of gas and electricity purchased from third parties, specifically ESCOs. These revenues are separate and apart from the revenues earned by gas and electric utilities that provide delivery service and bundled service (local distribution companies). For the purpose of calculating the General Assessment and the Temporary State Assessment, the law requires these electric and gas local distribution companies to include in their reported revenues an estimate of the sales revenues for the electric and/or natural gas commodities sold to end-use customers by ESCOs.

The April 1, 2009 effective date of the new law imposes an obligation upon utilities to pay the Temporary State Assessment in full for the State Fiscal Year 2009-2010. According to procedures established by PSL §18-a for payment of the assessment, the State will require payment of the Temporary State Assessment for State Fiscal Year 2009-2010 on or before September 10, 2009. For successive years, the general procedures in the law require payment of the Temporary State Assessment by April 1<sup>st</sup> of the fiscal year (e.g., April 1, 2010 for the State Fiscal Year 2010-2011), or in two fifty percent installments by March 10<sup>th</sup> of the preceding fiscal year and September 10<sup>th</sup> of the fiscal year.

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<sup>5</sup> Chapter 446 of the Laws of 1972.

RATE ORDERS

In rate cases pending after the enactment of the law and before the expiration of the SAPA procedural requirements applicable to the timing of our decision in this case, we authorized Con Edison<sup>6</sup> and National Grid<sup>7</sup> to recover revenues for payment of the 2009-2010 Temporary State Assessment: approximately \$198 million for Con Edison electric customers and \$25.1 million for National Grid gas customers beginning in May 2009. We required the companies to estimate ESCO revenues by multiplying the known amount of kilowatt hours or therms delivered to ESCO customers by the system-wide commodity/supply price levied by the company for sales to its own bundled customers, continued the authority to recover the current level of General Assessment cost recovery in base rates, and authorized a separate surcharge to recover the Temporary State Assessment. The Rate Orders adopted an allocation method for each customer class based on the class contribution (delivery and supply charges of the class), relative to the company's total revenues, including delivery and supply charges. For Con Edison, we authorized collection by applying a cent per kilowatt hour (¢/kWh) or dollar per kilowatt (\$/kW) (depending on the specific rate class) surcharge to the delivery rates billed by the company. For National Grid, we authorized collection of a ¢/therm surcharge to the delivery rates billed by the company.

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<sup>6</sup> Case 08-E-0539, Consolidated Edison Company of New York, Inc. - Electric Rates and 08-M-0618, Consolidated Edison Company of New York, Inc., Allocation of Certain Tax Refunds, Order Setting Electric Rates (April 24, 2009) (Con Edison Electric Rate Order), pp. 250-252.

<sup>7</sup> Case 08-G-0609, Niagara Mohawk Power Corporation -Gas Rates, Order Adopting the Terms of a Joint Proposal and Implementing a Temporary State Assessment Surcharge (issued May 15, 2009) (Niagara Mohawk Gas Rate Order).

The companies were directed to file an updated assessment surcharge calculation amount with the Secretary to the Commission with the most recent calculations for working capital, ESCO commodity prices, and delivery revenues.

SUMMARY OF COMMENTS AND DISCUSSION

The Commission exercises general jurisdiction over the imposition of charges by public utilities and jurisdictional municipal corporations and implementation of the PSL §18-a(6) Temporary State Assessment over LIPA (Public Authorities Law §1020-s). Although the Commission has no discretion in authorizing the collection of the necessary revenues because it is a statutory requirement, it does exercise authority over the methods for the recovery of sufficient revenues to enable the utilities, municipal electric and gas corporations, and LIPA to pay the Temporary State Assessment to the State.

Collection of Revenues

The Temporary State Assessment takes effect retroactively on April 1, 2009 to apply to the 2009-2010 State Fiscal Year. The obligation to pay the Temporary State Assessment (and the second installment of the General Assessment) for 2009-2010 falls on September 10, 2009, approximately six months after its enactment and two months after compliance with SAPA requirements and the issuance of this Order. Payment of the first installment of the 2010-2011 Temporary State Assessment is due March 10, 2010, approximately 11 months after its enactment. The result of the immediate imposition of the Temporary State Assessment is to compress the obligation for payment of the 2009-2010 Temporary State Assessment into a very short period, with an additional payment due soon after. The timing of the payments of the Temporary State Assessment in the early years raises issues relating to

the effect of the significant increases in bills required to collect the necessary revenues.

Comments

Con Edison and Orange & Rockland recommend recovery of the full annual Temporary State Assessment during the State Fiscal Year during which it is incurred and state that they are amenable to using for their electric, gas, and steam services the 12-month May to April cycle for collection of the revenues from ratepayers approved in its Electric Rate Order. NFG requests immediate attention to recovery of the Temporary State Assessment, which it describes as an expense of significant magnitude exceeding any materiality requirements. It states that its rates include approximately \$2.4 million for the General Assessment; and, it will need to bill an additional \$24 million to its customers to pay the Temporary State Assessment. National Grid asserts that it is critical to permit recovery of the Temporary State Assessment on a current basis or by the end of the applicable State Fiscal Year to mitigate build-up of deferrals and facilitate more equitable recovery from customers. NYSEG/RG&E note that a July 1, 2009 effective date will result in a lag in collections from customers and that companies will be responsible for remitting payments for two full fiscal years (April 2009-March 2010 and April 2010-March 2011) by September 2010. The companies, therefore, propose the imposition of a surcharge at a level sufficient to collect two years of estimated costs over a 15-month period (July 1, 2009 - September 30, 2010), while subsequent amounts would be collected over annual periods. FGIC states that it does not have ready access to appropriate financing and, therefore, cannot afford a large deferral of these costs.

PMLD requests accelerated recovery of the revenues necessary to pay the 2009-2010 Temporary State Assessment. It seeks to recover 1.67% of its gross annual revenues by September 2009, or through the June, July, and August billing months, which, it estimates, would require an 8.75% bill increase. It explains that it has no ability to draw any appreciable revenues from reserves or other sources; and, its rate request is pending to resolve an insufficient revenue position.<sup>8</sup> NYMPA asserts that its members are hard-pressed to raise the money to make payments in September because they do not carry large reserves for discretionary spending and suggests immediate collection of revenues.

Discussion

While we recognize the significant cash flow burden caused by paying two State Fiscal Years worth of Temporary State Assessments over a 15-month period, to recover all of those costs over 15 months, as NYSEG/RG&E recommend, would result in bill impacts of approximately 3% and average delivery rate increases approaching 10% for some companies. We determine that recovery of such large amounts over the requested period would increase the initial surcharge/adjustment by over 50%, compared to collecting 2009-2010 and 2010-2011 Temporary State Assessments over 24 months. Thus, to ameliorate the impact during the initial year, we authorize the recovery of the amount of each State Fiscal Year's Temporary State Assessment that is

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<sup>8</sup> Case 08-E-1227, Plattsburgh Municipal Lighting Department - Electric Rates.

not recovered in base rates<sup>9</sup> and associated costs over a 12-month period, from July 1 through June 30. In other words, the regulated entities would collect the Temporary State Assessment relating to the April 2009 to March 2010 State Fiscal Year from July 1, 2009 through June 30, 2010. The same arrangement would apply to collections over the remaining four years that the Temporary State Assessment is in effect. This arrangement would avoid the accelerated recovery of the payments for the 2009-2010 State Fiscal Year within an abbreviated period.

The delayed recovery of these expenses will require the use of a deferral accounting mechanism that will allow the full recovery of the additional revenue requirement caused by the imposition of the Temporary State Assessment. We authorize the electric, gas, steam, and water corporations and municipal electric and gas corporations to defer the difference between their total assessment expense (Temporary State Assessment and General Assessment) and the amount collected from customers. As part of this methodology, we authorize them to calculate carrying charges by applying their authorized pre-tax rate of return to the net of tax un-recovered assessment amounts that have been paid. This option would require the regulated entities to collect extra revenues to pay for the carrying charges. For example, this methodology would result in Con

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<sup>9</sup> PSL §18-a(6) requires payment of the Temporary State Assessment, after deduction of the amount of revenues necessary to pay the General Assessment. This means that an electric, gas, steam, and water corporation and municipal electric and gas corporation will, if the General Assessment decreases below the level included in the revenue requirements authorized for recovery in rates, pay the excess to the State as part of the Temporary State Assessment and recover the remainder of the Temporary State Assessment in the surcharge/adjustment authorized in this Order. LIPA is not subject to the General Assessment.

Edison electric customers paying approximately \$6.5 million in carrying charges, on an estimated \$192 million Temporary State Assessment. These carrying charges would add slightly over three percent to the amount collected to pay the 2009-2010 Temporary State Assessment. This cost is the result of the benefit of avoiding its immediate collection in full from customers. We will direct the regulated entities to use the timing of collections for the initial State Fiscal Year, collected from July 1st through June 30th, for the remaining four years during which the Temporary State Assessment is in effect. This means that the collection of the Temporary State Assessment would end in June 2014, three months after its statutory expiration.

This method is consistent with our Con Edison Electric Rate Order and the National Grid Gas Rate Order. Although the dollar amount of the Temporary State Assessment may increase or decline in subsequent years, due to market and price fluctuations that impact gross operating revenues, future updates of the surcharge/adjustment amount will provide an opportunity for making the regulated entities whole on a cash basis.

Given the method of recovery authorized in this Order, it is likely some regulated entities will obtain long-term financing to pay the extra amounts in the first year. If a regulated entity requires a different arrangement for the timing of the collection of revenues to pay the Temporary State Assessment for State Fiscal Year 2009-2010, it may file a petition requesting the establishment of a plan that differs from the July-June Cycle for the 2009-2010 payment, including a justification demonstrating that net ratepayer benefits will accrue, such that, ratepayers will enjoy a financial advantage if an alternative plan is put into effect, instead of the July-

June Cycle, for recovery of the necessary revenues. In addition, the Commission's review of the petition is subject to SAPA notice and opportunity for public comment requirements, which necessitates about 60 to 120 days for review. Pursuant to SAPA §202(6), an agency may take action as an emergency measure prior to compliance with these requirements, "if the agency finds that immediate adoption of the rule is necessary for the preservation of the public health, safety or general welfare and that compliance with the requirements would be contrary to the public interest. . . ." In its petition for an alternative plan, the regulated entity shall explain if immediate adoption of the alternative plan put forward in its petition is necessary and provide a justification for the findings necessary to adopt the rule as an emergency measure.

PMLD, a municipal electric corporation, and NYMPA, an association with members that are municipal electric corporations, specifically raise financing concerns in their comments and assert that they lack the ability to obtain revenues from reserves or other sources or to access financing of the payment due in September and request immediate authority to recover the necessary revenues to pay the 2009-2010 charges. PMLD requests authorization for a highly accelerated recovery during the summer months (July and August) to collect the revenue necessary to pay the 2009-2010 Assessment, because it cannot draw appreciable revenues from its reserves. These entities did not submit detailed financial information substantiating their claims of complete lack of access to financing and reserves. Because of the need for prompt initiation of the charge and the particular circumstances that may limit a municipal electric or gas corporation's access to external financing or its lack of cash reserves, we grant the request to allow these corporations to file a tariff authorizing

an accelerated method for collection of the necessary revenues to pay the 2009-2010 Temporary State Assessment. The municipal corporation seeking this treatment shall provide a statement with evidence from its Executive Officer that the corporation does not have access to external financing at reasonable terms and it has insufficient cash reserves, given ongoing needs.

In sum, we prefer the July-June Cycle for recovery of the revenues necessary to make the 2009-2010 payment because it ameliorates, to the extent possible, the bill impact resulting from the need to recover the necessary revenues before the September 10, 2009 due date. However, we recognize that inability to obtain financing or reasonable financing terms and to access reserves may necessitate accelerated collection of the amounts necessary to pay the 2009-2010 Temporary State Assessment by September 10, 2009.

In the Con Edison Electric Rate Order and Niagara Mohawk Gas Rate Order, we authorized 12-month May to April cycles for collection of the revenues from ratepayers. As stated in the Niagara Mohawk Gas Rate Order, prompt implementation of a new surcharge on May 20, 2009 is required to collect the Temporary State Assessment "in a manner that will reduce any build-up of the amount due and thereby ease its implementation and avoid a spike in customer bills."<sup>10</sup> A consistent collection schedule is important for the administration of the Temporary State Assessment procedures, including annual reconciliation of the amounts. In order to achieve a consistent collection schedule among the regulated entities, we require Con Edison, for its electric ratepayers, and National Grid, for its gas ratepayers, to file a tariff authorizing imposition of a new surcharge amount for July 1,

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<sup>10</sup> National Grid Gas Rate Order, pp. 21-22.

2009 through June 30, 2010, recognizing that these companies have collected a portion of the revenues to date. The remaining other electric, gas, steam, and water utilities, municipal gas and electric corporations, and LIPA are authorized to recover the first year of the Temporary State Assessment during the 12-month period of July 1, 2009 through June 30, 2010. Each regulated entity subject to the Temporary State Assessment is authorized to recover the Temporary State Assessment for the subsequent years during the 12-month period beginning July 1st and ending on June 30th for the time it is in effect.

Carrying Charges and Administrative Costs

Comments

National Grid requests authorization to include associated costs in the amounts recovered from ratepayers, including uncollectible expenses, working capital (related to the lag between payments and recovery from customers), applicable taxes, and other related costs. Con Edison and Orange & Rockland propose inclusion of a working capital component in the surcharge to compensate utilities for remitting payment before collecting the full amount of the Temporary State Assessment, as required by PSL §18-a pre-payment provisions. It describes this arrangement as comparable to the one allowing utilities to include any un-recovered General Assessment costs in rate base and earning a full rate of return on average outstanding balances. National Grid would also include in the Temporary State Assessment surcharge recovery of costs required to program billing systems to include a line item on customer bills and incremental communication costs for outreach and education.

MI requests that the Commission exclude recovery in the Temporary State Assessment of costs associated with its

collection. These costs include working capital, gross receipts taxes, and expenses for uncollectible amounts. It recommends that, instead, the Commission consider recovery of the costs in individual rate proceedings. Con Edison and Orange & Rockland reply that utilities are permitted to recover their costs of doing business, including the costs associated with remittance of a substantial payment and working capital costs before collection of the amounts from customers. They assert that costs relating to payment of the Temporary State Assessment are no different.

Discussion

We authorize electric, gas, steam, and water corporations and municipal electric and gas corporations to include uncollectible expenses in the development of the Temporary State Assessment surcharge/adjustment, based on the allowed net write-off for uncollectible amounts reflected in their base rates. The recovery of revenue taxes imposed on the Temporary State Assessment surcharge/adjustment revenues will be recovered through the operation of the corporations' existing revenue tax surcharge tariffs and so need not be considered here. Finally, the working capital requirement will be provided in the deferral mechanism we are authorizing here by providing carry charges at the corporations' pre-tax return on the net of tax un-recovered Temporary State Assessment payments.

Although the regulated entities will need to perform administrative tasks to implement the Temporary State Assessment surcharge/adjustment, it is difficult to determine whether the new responsibilities will result in additional costs or if available employees may perform the new duties as part of their on-going work efforts. In addition to the difficulty of isolating and quantifying any Temporary State Assessment implementation costs, the recovery of these administrative costs

were not specifically authorized by statute. Further, the State through statutory enactments may impose requirements on regulated entities from time to time which require the entities to implement programs and incur costs. These costs are a necessary part of doing business in the State; and, the work to implement the Temporary State Assessment is limited and does not require the adoption and management of a major program. For these reasons, we deny National Grid's request related to recovery of any surcharge implementation costs.

MI's proposal to postpone to future rate cases consideration of costs associated with the recovery of revenues to pay the Temporary State Assessment would require deferral of these costs and payment of interest which would increase costs for ratepayers when they are eventually included in service charges. It is less costly to recover them at the time incurred and in association with the new charge that imposes the additional costs upon the utilities.

#### Recovery Mechanism

##### Department of Public Service Staff Proposal

The Staff recommended use of a separate surcharge identified as a specific line item on customer bills to collect the Temporary State Assessment. Because public utilities, including jurisdictional municipal corporations, are required to include any rate or charge in public schedules, or tariffs, open for inspection,<sup>11</sup> each utility would submit a tariff amendment authorizing the surcharge or adjustment to the Commission for its approval.

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<sup>11</sup> Public Service Law §66(12)(a) and (b), relating to electric and gas corporations, §80(10)(a) and (b), relating to steam corporations, and §89-c(10)(a) and (b), relating to water corporations.

Comments

Central Hudson, Con Edison and Orange & Rockland, National Grid, NFG, and NYSEG/RG&E agree with the recommendation to recover the revenues required to pay the Temporary State Assessment through a surcharge.<sup>12</sup> Con Edison and NFG request that we allow the utilities to use methods other than a surcharge, in the event that the reprogramming and reformatting costs required for adding a line item to the bill are prohibitive. NFG suggests that the Commission allow a utility the option of rolling the surcharge into delivery charges included on a customer's bill, if this method works better for the utility's billing system than inclusion of a line item surcharge on the bill. NYSEG/RG&E propose to collect the Temporary State Assessment surcharge amount from their customers through the Systems Benefits Charge (SBC) surcharge from July 1, 2009 through December 31, 2009, prior to the establishment of a separate line item surcharge effective January 1, 2010, consistent with their other electric supply rate changes occurring on January 2, 2010. The companies state that they can establish a separate surcharge for non-residential customers by July 1, 2009, because of the relatively low number of customers.

FGC, PMLD, and NYMPA state that a separate surcharge, although desirable, would impose significant costs for relatively expensive changes to billing software. FGC explains that it does not have access to financing and cannot afford a large deferral of these costs, due to the "decimation" of the

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<sup>12</sup> Central Hudson recommends that, as the opportunity arises, we remove the General Assessment from base rates and recover the entire PSL §18-a obligation through a surcharge. The administrative effort required to accomplish this objective is not worthwhile, due to the temporary nature of the Temporary State Assessment and the relative consistency of the General Assessment from year to year.

western New York State economy. PMLD states that it would need an outside service to change its billing systems. NYMPA adds that some of its members are unable to include another line item on customer bills; and NYAPP requests authority to opt for the surcharge or other mechanism. FGC, PMLD, and NYMPA request specific authority to collect the revenues needed to pay the Temporary State Assessment through adjustment clauses.

NEM supports the use of a surcharge expressed as a separate line item on the bill because it will transparently communicate to consumers this component of their energy bills and achieve the law's objective of encouraging energy conservation by influencing energy consumption decisions. SCMC and RESA state that it is reasonable to recover assessments greater than amounts in base delivery rates via a surcharge because this ensures that a utility recovered the appropriate funding and the basis for the charge is transparent.<sup>13</sup>

Discussion

A line item surcharge is preferable because it provides important information to consumers, and eliminates confusion associated with a charge that is not transparent and clearly stated. Establishing a separate line item surcharge may require time, when urgency for recovery of the revenues is intensified due to the immediate requirement for payment of the 2009-2010 Temporary State Assessment and the prepayment of the Assessment for the next four years it is in effect, and additional resources, when the imposition of the Temporary State Assessment significantly raises costs for electric, gas, steam, and water customers. To expedite the ability of a company to

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<sup>13</sup> NYMPA suggests immediate implementation of the surcharge, preferably this summer when customer bills are lowest. We agree and will require that tariff amendments and statements authorizing the surcharge become effective July 1, 2009.

recover the necessary revenues and to avoid any unnecessary additional expenses, we authorize a regulated entity to recover the charge through a delivery rate adjustment, instead of a surcharge, if sufficient impediments cause a delay in establishing a line item surcharge or impose significant costs that should be avoided. The increase in the SBC surcharge, recommended by NYSEG/RG&E, would cause unnecessary confusion for customers and lacks transparency as to the use of the funds.

The municipal gas and electric corporations argue that they do not have access to the financial resources necessary to establish a line item surcharge and suggest recovery through adjustment clauses used to recover commodity costs. We cannot authorize the major electric and gas distribution companies to recover the Temporary State Assessment through their commodity adjustment clauses because it could affect the competitive market for commodity as customers may switch to ESCOs to bypass the Temporary State Assessment. Because no third party suppliers of commodity services operate in municipal service territories, this effect would not occur if municipal electric and gas corporations recovered the Temporary State Assessment through adjustment clauses. We authorize municipal electric and gas corporations to recover the amounts necessary to pay the Temporary State Assessment through their adjustment clauses or other methods suitable and efficient for this purpose, including adding the amounts to their delivery charges. The municipal electric and gas corporations shall identify in the tariffs filed in compliance with this Order the method most suitable for recovery of the Temporary State Assessment from their customers.

Rate Design

Department of Public Service Proposal

For electric, gas, and steam corporations, to align cost causation with cost recovery, the Staff proposed allocation

of the Temporary State Assessment to each customer class based on the class contribution (total delivery and supply charges of the class) to the entity's total revenues including delivery and supply charges. Collection of the amount allocated to each class would be obtained by applying a cent/kWh or \$/kW (depending upon the specific rate class) charge to the delivery rates of electric customers, a per therm charge to the delivery rates of gas customers, and a per thousand pound (Mlb) charge to the delivery rates of steam customers. For water corporations, the Department of Public Service Staff recommends calculation of the surcharge by applying a percentage increase to billed revenues.<sup>14</sup>

Comments

Central Hudson suggests a volumetric charge across rate classes to facilitate administration of the charge and avoid development and application of specific sub-service class changes. It also proposes imposition of a surcharge for gas customers based on the volumetric basis per one hundred cubic feet (CCF), instead of a per therm charge to achieve uniformity across rate classes.

Con Edison proposes imposition of a kW surcharge on electric customers subject to a contract demand charge, and a

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<sup>14</sup> The Notice of Proposed Rulemaking in this proceeding stated that the Commission will consider accounting and rate design treatment for telephone corporations that are subject to a reduction in the General Assessment level. After an analysis of the effect of the General Assessment on telephone corporations, the Department of Public Service Staff advises that established procedures and policies are sufficient to guide these corporations and the Department in disposition of any changes in the General Assessment, as has occurred in the past, and no new determinations are required.

per-kWh charge on other electric customer classes.<sup>15</sup> The company asserts that the same principle should apply to the design of surcharges applicable to customers taking gas and steam service, with the surcharge based on demand in classes subject to contract demand charges and all other classes subject to a per-therm or per-Mlb surcharge. National Grid would reserve to utilities the option of assigning the surcharge because certain tariffs and/or contracts excuse certain customers<sup>16</sup> from paying incremental surcharges.

MI requests exemption of revenue associated with the commodity portion of NYPA allocations from the surcharge and asks that the Temporary State Assessment be charged only on associated delivery revenues, because the allocations are provided primarily for economic development reasons and the imposition of the Temporary State Assessment charge on NYPA allocations would defeat their purpose. Con Edison and Orange & Rockland, in reply comments, agree with MI's conclusion. They explain that NYPA revenues from the sale of its power are not included in a regulated entity's intrastate gross operating revenues subject to the Temporary State Assessment and that the revenues derived from the delivery service that they provide for NYPA power are clearly included in the intrastate gross operating revenues. They assert that it would be unfair to recover the NYPA share of the Assessment from the rest of the corporation's customers. The companies state that, under the

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<sup>15</sup> MI supports the Staff proposal and also recommends collection through rate mechanisms specific to each class, including a per-kWh charge for classes subject to contract demand charges.

<sup>16</sup> Including customers taking power under programs involving Economic Zone Rider, NYPA Power under Replacement Power, Expansion Power, Economic Development Power, and/or Power for Jobs.

Con Edison Electric Rate Order, only the revenues from Con Edison's delivery service are included in the calculation of the Assessment; and, NYPA's share of the Assessment is based on the ratio of NYPA delivery service revenues to total electric revenues, including delivery charges and supply charges for other than NYPA and Economic Development Delivery Service. They state that this arrangement should continue.

Discussion

The Temporary State Assessment should be allocated to customers on a revenue basis; this is the fair and expedient method of administering recovery of the necessary revenues. Accordingly, we adopt the Staff rate design proposal. In addition, we authorize electric and gas utilities to calculate the surcharge in the manner in which the utilities bill, on a per kW/kWh, therm, or CCF basis. The surcharge must be class and voltage-level specific and allocated to the rate classes as discussed herein. Hence, Central Hudson's request to allow a uniform surcharge across all classes is denied; however, its request not to require subclass-specific surcharges is granted.

Contracts, including flex-rate contracts, and statutory requirements may prevent recovery of the surcharge from certain customers. In these cases, the utility may collect the surcharge amounts owed by these customers proportionately from other customers.<sup>17</sup>

The revenues that NYPA derives from the sale of its power are not subject to the Temporary State Assessment imposed on regulated entities (Public Authorities Law §1014). As Con

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<sup>17</sup> National Grid expresses concern that the imposition of the Temporary State Assessment will have an effect on results of customer satisfaction surveys and complaint rates. The companies should raise these concerns during the Commission's evaluation of the results of the surveys and complaint rates.

Edison and Orange & Rockland explain, the revenues derived from provision of delivery service to NYPA are clearly included in intrastate gross operating revenues subject to the Temporary State Assessment. Accordingly, the requirements relating to imposition of the Assessment have the effect of establishing the conditions that MI requests.

Exemption Requests

Comments and Discussion

PULP expresses concern that the Temporary State Assessment will unnecessarily and unfairly burden low income customers, because it would significantly diminish or offset reductions available under low income programs. Thus, PULP requests exemption from the Temporary State Assessment for low income customers or, alternatively, reopening rate cases to increase the low income rate discounts. The statute does not authorize an exception for any customer class, including low income customers, although, as PULP suggests, the imposition of the Temporary State Assessment may offset benefits from low income programs. Since the Temporary State Assessment surcharge will be collected from all customers on an equal basis within a class, the low income customers' discount relative to other customers will remain unchanged, on a dollar basis. In addition, it is impractical to reopen rate cases to increase the low income rate discounts in conjunction with implementation of the Temporary State Assessment. Accordingly, PULP's requests are denied.

Central Hudson suggests exemption of interruptible gas service classifications from Temporary State Assessment as the imposition of the charges risk loss of interruptible revenue, considered when establishing the company's revenue requirements, and thus compel the company to absorb a portion of the Temporary State Assessment. MI recommends exemption of natural gas

interruptible customers, as such customers depend on a price ceiling set forth in utility tariffs to make production decisions. Con Edison and Orange & Rockland note that application of the surcharge for interruptible gas customers charged market-based rates may make an alternate fuel more economically attractive; and, they propose that we allow utilities discretion to discount or omit the surcharge, if reasonable basis exists for concluding that it will drive customers to an alternate fuel. National Grid expresses similar concerns regarding dual-fuel customers who may switch to oil, rather than pay the surcharge. Despite concerns expressed regarding interruptible customers, we note that the statute does not provide any exemption for customers, including interruptible customers. However, we share the concern that imposition of the Temporary State Assessment surcharge/adjustment could result in fuel switching and loss of revenues that may have already been imputed into gas utility rates, thereby decreasing utility earnings. To address this, we will allow utilities to increase their interruptible tariff maximum ceiling rates by the surcharge amount, thus ensuring contribution from the class when permitted by alternate fuel prices and any shortfalls will be borne by the other customer classes, who accrue benefits from such interruptible sales.

MI argues in favor of exempting all NYPA allocations, flex-rate contracts,<sup>18</sup> and certain other tariff categories from

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<sup>18</sup> Under flex-rate contracting, a utility may negotiate a contract with a business customer that includes rates and conditions outside the scope of a utility's standard tariff requirements, when the customer is considering alternatives to utility service, such as on-site generation, relocation out-of-state, or ceasing operations. Flex-rate contracts are allowed because of the concern that loss of the customer will result in discontinuance of the contributions it makes to marginal costs and system common costs.

the Temporary State Assessment surcharge, because they constitute a valuable tool for promoting economic development. There is no statutory provision to exclude such customers from the surcharge. To the extent such customers' revenues are part of a company's gross intrastate operating revenues, they are subject to the General Assessment and Temporary State Assessment. Thus, these customers would pay their share of the Temporary State Assessment cost.

Estimate of ESCO Revenues

Department of Public Service Staff Proposal

The Staff recommends that the Commission require electric and gas corporations to estimate ESCO revenues by multiplying the known amount of electricity or gas delivered to ESCO customers by the commodity supply price charged by the company for sales to its bundled service customers. This information is known to electric and gas corporations, provides a reasonable basis for estimating ESCO sales revenues, and is an expedient method to obtain an estimate of these revenues. Also, no other direct source of the information is readily available, due to the fact that ESCOs are not required to file the information with the Department of Public Service or with utilities.

Comments

Central Hudson, Con Edison and Orange & Rockland, National Grid, and NYSEG/RG&E support the Staff proposal. Con Edison and Orange & Rockland state that the simplest substitute for actual ESCO revenues is the product of the deliveries in kWh's and therms for the ESCO in the preceding calendar year and the utility's average commodity price for the same year. For gas, the companies note that the commodity price for firm gas should include both commodity and capacity costs and exclude balancing costs. Con Edison and Orange & Rockland also state

that a separate commodity price is needed to determine gas marketer revenues associated with interruptible service: either the costs associated with interruptible sales service customers, or a proxy based on utility's cost of gas for firm sales customers minus capacity costs and hedging costs. Con Edison and Orange & Rockland would also exclude gas commodity revenues associated with bundled sales or gas transported for power or steam generation from computation of gross operating revenues. Otherwise, they argue, a double assessment would occur (gas revenues relating to value of natural gas delivered for generation and electric and steam revenues related to the value of the gas after conversion to electricity or steam).

Constellation, NEM, NYSEMC, RESA, and SCMA support Staff's proposal. Constellation describes the proposed methodology as the most logical means to implement the Temporary State Assessment, to assure competitive neutrality, and to take advantage of the local distribution companies' access to relevant data to calculate the estimate. NEM states that reliance upon information in the possession of the local distribution companies will simplify data collection and computation, promote efficiency by relying on existing, reliable information sources, and, to the extent possible, facilitate the need to implement the Temporary State Assessment in short order. NYSEMC describes the method as the most practical, immediate, and effective way to determine the assessments; RESA and SCMS state that the proposed mechanism is the most reasonable, effective and expedient method to raise sufficient revenues

without impairing the competitive marketplace and is consistent with the proposal advanced in a Commission proceeding.<sup>19</sup>

PULP states that utilities that provide billing and collection services for ESCOs have access to actual ESCO prices and revenues and can provide these actual revenues for the purpose of estimating ESCO revenues. For other ESCOs that directly bill customers, it proposes that the electric and gas local distribution companies use information reported to the U.S. Department of Energy's Energy Information Administration (EIA). PULP suggests that we should require ESCOs to submit the data that it provides to the local distribution companies and/or EIA, until the Commission develops its own data request forms on ESCO prices and revenues to obtain the required revenue estimates directly from ESCOs. PULP submits that ESCO end-user prices often exceed utility prices, and thus, utility supply prices should not be used to estimate ESCO revenues because they would underestimate ESCO intrastate revenues.<sup>20</sup>

MI recommends use of the actual commodity price to calculate ESCO revenues collected from large users, which it claims is available to local distribution companies that include charges for ESCO commodity service in their bills, and, for the

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<sup>19</sup> Case 98-M-1343, et al., Retail Access Business Rules, Order Adopting Amendments to the Uniform Business Practices, Granting in Part Petition on Behalf of Customers and Rejecting National Fuel Gas Distribution Corporation's Tariff Filing (issued October 27, 2008) (Retail Access Business Rules), involving consideration of issues relating to ESCO payment of the General Assessment.

<sup>20</sup> PULP states that ESCOs that charge more also generate a higher level of complaints, thus, using more of the Department's resources. This claim is highly speculative, and does not provide a reasonable basis for adjusting the Temporary State Assessment which is not based upon the amount of work generated by a class of regulated entities. Rather, it is solely dependent upon revenue levels.

remainder, use of the EIA commodity price information. In support, it argues that (1) it is intuitive that large users choose ESCO service based upon favorable prices; (2) EIA data reveals a significant cost difference, approximately 13% higher commodity prices for commercial and industrial customers taking bundled service from local distribution companies; and, (3) the higher Temporary State Assessment that, it asserts, results from the use of utility commodity prices would place an additional burden on New York businesses. Con Edison and Orange & Rockland respond in their reply comments that Con Edison does not record ESCO charges in its consolidated billing system in the same manner as it tracks its own sales prices for its full-service, or bundled service, customers. It explains that, in order to use ESCO charges to calculate ESCO revenues, it would incur costs for modifying its billing system to extract the required information and these costs would inordinately burden its customers with additional costs to compute an assessment that is temporary in nature. RESA makes similar statements that local distribution companies do not maintain ESCO commodity charges in their billing systems in an easily retrievable format and that billing system modifications are required to implement MI's proposal. It notes that the statute requires an estimate of ESCO revenues and does not direct identification of the exact amounts and that use of the utility commodity costs provides a reasonable and administratively effective method for estimating ESCO revenues.

Discussion

The commodity price should, as Con Edison and Orange & Rockland argue, include both commodity and capacity (pipeline transportation) costs. Regarding balancing costs, for these companies, such costs shall be excluded from the commodity price because they are already included in the delivery rate; and

thus, inclusion in the commodity price would result in a double recovery. We agree with Con Edison and Orange & Rockland that the rates charged for interruptible service are market-based, and include no capacity charge for off-peak service.

Gas commodity revenues associated with bundled sales of gas transported for power or steam generation from computation of gross operating revenues are excluded because they relate to sales for resale; and, as Con Edison and Orange & Rockland point out, a double assessment would occur if these revenues were included in the revenue base subject to the Temporary State Assessment.

The methodology that Staff proposes, as noted by SCMC and RESA, relies on information that is in the possession of utilities, and allows for swift and timely implementation of the surcharge or adjustment, required by the impending September 10, 2009 deadline for payment of the 2009-2010 Temporary State Assessment. It is not feasible to undertake the more complex, uncertain, and multi-faceted plan to estimate ESCO revenues proposed by PULP and MI. According to Staff, data is often not posted on EIA's Web site for several months. As both SCMC and RESA point out, use of commodity supply prices charged by local distribution companies for sales to its bundled service customers to estimate ESCO revenues is consistent with the methodology supported by the 18-a Working Group during consideration of issues relating to ESCO payment of the General Assessment in the Retail Access Business Rules proceeding.<sup>21</sup>

The pricing of ESCO end-user prices is more complex than PULP and MI represent; and, the broad conclusions (which contradict each other) that PULP and MI advance do not provide sufficient justification and analysis for adopting their

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<sup>21</sup> Cases 98-M-1343, et al., supra.

proposals. It is also possible that ESCOs may offer various pricing options, including the pricing option associated with a product that bundles commodity supply with additional value-added services and price certainty that are not included in assessed revenues. As Con Edison and Orange & Rockland and RESA point out, the operation of some consolidated billing systems may make unfeasible the use of ESCO end-user prices; and, additional expenditure to reconfigure the systems to obtain the information would impose additional costs for a temporary charge and add to the increased expenses imposed by the Temporary State Assessment.

Estimating ESCO commodity revenues based on each utility's average commodity price provides the most practical, expedient, and reasonable methodology to determine the Temporary State Assessment. Consistent with our decisions in the Con Edison Electric Rate Order and National Grid Gas Rate Order, we adopt the Staff's proposal for estimating ESCO revenues. As stated, this information is known to electric and gas corporations, provides a reasonable basis for estimating ESCO sales revenues, and is an efficient method of obtaining an estimate of these revenues.

Filing Requirements for Estimates of ESCO Revenues

Because the Department is required to calculate the Temporary State Assessment for each affected utility, prepare the necessary billing information, and send the bills to the utilities 30 days before the September 10, 2009 payments are due for 2009-2010, we direct the electric and gas local distribution companies to submit the estimates of ESCO revenues to the Secretary to the Commission within 10 days after the issuance of this Order. To facilitate the preparation of the tariff filing, Appendix A to this Order contains a detailed explanation of the

method that the regulated entities may use for calculation of an estimate of the Temporary State Assessment.

For successive State Fiscal Years, the Department will use the statement of annual revenues reported in the Annual Reports filed by each utility to determine assessable revenue levels. Because the statute requires electric and gas corporations to add estimated ESCO revenues to the utility's revenues, from this point forward we will require each gas and electric corporation to file with its Annual Report its estimate of the ESCO revenues for the year subject to the Annual Report.

NYAPP notes that there are no third party suppliers of commodity services operating in municipal service territories. NYAPP requests exemption from the requirement to file an estimate of ESCO revenues. Under our electric restructuring order,<sup>22</sup> the jurisdictional municipal corporations are not subject to the retail access program. Thus, municipal electric corporations are not required to estimate and include any ESCO revenues in the revenue base subject to the General Assessment and the Temporary State Assessment.

#### Authorization to Recover Revenues

Given the need to make full payment of the 2009-2010 Temporary State Assessment on September 10, 2009, we are directing the electric, gas, steam, and water corporations and municipal electric and gas corporations to file tariff changes within 10 business days after issuance of this Order, implementing a mechanism to recover the Temporary State Assessment consistent with this Order, to become effective July 1, 2009. Because LIPA is not required to file tariffs subject to Commission approval, it is required to file a letter for the

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<sup>22</sup> Cases 94-E-0952, et al., Competitive Opportunities Regarding Electric Service, Opinion 96-12 (issued May 20, 1996).

same purpose, describing its method of recovering the Temporary State Assessment, consistent with this Order, effective July 1, 2009.

Thereafter, a new Temporary State Assessment will be established, adjusted for changes in intrastate gross operating revenues and any other variations in the General Assessment. For the years from July 1, 2010 through June 30, 2014, we authorize the electric, gas, steam, and water corporations, and municipal electric and gas corporations to file changes to the tariffs (tariff statements), or in the case of LIPA, a letter, authorizing recovery of the Temporary State Assessment to become effective on 15 days' notice. To the extent the amount of the Temporary State Assessment decreases in any year due to a fluctuation in annual intrastate gross operating revenues, we authorize the companies to maintain the prior year's surcharge in order to improve their cash flow position without increasing customers' bills.

The tariff statement and LIPA letter will not be subject to the requirements of SAPA notice and newspaper publication, because this Order establishes authority for recovery of the revenues necessary to pay the Temporary State Assessment and the tariff statements simply adjust the amounts collected according the level of intrastate gross operating revenues subject to the Temporary State Assessment. The 15-day period will provide Department of Public Service Staff the opportunity to review the proposed statements to the tariff and,

if necessary, recommend further investigation and Commission review and consideration.<sup>23</sup>

Reconciliation

Department of Public Service Proposal

Because the Temporary State Assessment is a cost that is not under the utility's control and, therefore, its recovery does not result in a profit or loss to the corporation, the Staff recommended that we allow the amounts collected through the surcharge to be subject to an annual reconciliation, to the extent sales variations result in a level of collection of the Temporary State Assessment which differs from the amount originally forecast.

Comments

Central Hudson proposes that reconciliation recover not more nor less than actual costs incurred for the purpose of collecting the Temporary State Assessment, instead of the amount originally forecast for collection. The company also proposes annual reconciliation with monthly true-ups; differences would be deferred with carrying charges applied at the authorized pre-tax cost of capital on the deferred balance and annual reconciliation each year. Con Edison requests reconciliation for changes in the assessment amount at the end of each annual collection cycle and within the cycle. It suggests that the Department of Public Service would revise the assessment amount, based on updates to the preceding-year data and, when assessments are revised, reconciliation for changes and

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<sup>23</sup> NYMPA requests authority to revise its NYMPA-generic tariff, on behalf of its municipal system members, to avoid filing by the members of separate tariffs. NYMPA has filed a generic tariff on file with the Commission applicable to its members and is authorized to submit amendments providing for recovery of the Temporary State Assessment, if its members prefer to include the authorization in the generic tariff.

differences between actual and forecast sales revenues would take place. Further, Con Edison requests that, if the surcharge is applicable to "as-used" demand-billed customers and charged on a per-kW or per Mlb/hr basis, then this reconciliation would treat sales variations in demand in the same manner as sales variations in energy volumes. National Grid proposes return or collection of under- and over-recoveries when a surcharge is reset, including any variance in the General Assessment, to assure that regulated entities recover the Temporary State Assessment, "no more and no less." NYSEG/RG&E support an annual reconciliation, and would factor in uncollectible amounts. They propose an interim adjustment to prevent accumulation of large over- or under-collection balances.

NYSEMC agree with the reconciliation to avoid a detrimental impact or windfall to the utility. RESA and SCMC state that regulated entities act as revenue collectors and should not assume the risk for recovery of funds or become subject to potential profit or loss.

MI supports the proposal for annual reconciliation, because of the potentially large load and price shifts from one year to the next. It states that industrial usage is expected to decline significantly in 2009; and, an annual reconciliation is required to prevent potential windfalls and/or losses by a utility or the State. It recommends allocation on a customer class-specific basis, consistent with the charges and rate structure of each specific service classification.

Discussion

As proposed by the commentators, instead of the limited annual reconciliation proposed by Staff, dependent upon the extent sales variations result in a level of collection which differs from the amount originally forecast, we authorize full reconciliation of actual costs of the Temporary State

Assessment. The regulated entities are acting as collection agents, working on behalf of the State to recover funds that are considered necessary to augment its General Fund, during difficult financial and fiscal circumstances. The regulated entities have no discretion or control over the amount of the payments to the State that it collects. Accordingly, we authorize annual reconciliations of actual costs, which, in view of our attempt to recover payments in as level a manner as possible throughout the five years that the Temporary State Assessment is in effect, is sufficient. We view reconciliations within the annual cycle and interim adjustments as unnecessary, at this time. When assessments are revised at the end of each July to June cycle, reconciliation for any changes and variations should take place at that time. We agree with MI that any over- or under-recoveries from such reconciliations should be returned or charged to customers using the same class allocation method in which the Temporary State Assessment surcharge is collected.

Customer Information

Comments and Discussion

NYMPA proposes that customers receive notice and information regarding the increased assessment, anticipating increased customer interaction and associated challenges in handling the surge in customer contacts. The regulated entities may provide their customers with an explanation of statutory requirements relating to the Temporary State Assessment, the method used for recovery of the necessary revenues, and impact on customer bills. To facilitate this effort, the Department's Office of Consumer Services (OCS) is available to review any text prepared by a regulated entity that explains the Temporary

State Assessment, to assure consistency and accuracy in the description.

CONCLUSION

This Order authorizes the regulated entities to recover the necessary revenues required to pay the Temporary State Assessment, including carrying charges, subject to reconciliation, over five years, July 1, 2009 through June 30, 2014, in order to ameliorate the effect of collecting the payment required for the 2009-2010 State Fiscal Year, due September 10, 2009. The Order establishes a separately stated surcharge as the preferred collection method for electric, gas, steam, and water corporations and LIPA to recover the Temporary State Assessment. To expedite the ability of a company to recover the necessary revenues and avoid any unnecessary additional expenses, we authorize a regulated entity to recover the charge through a delivery rate adjustment, instead of a surcharge, if sufficient impediments cause a delay in establishing a line item surcharge or impose significant costs that should be avoided. We authorize jurisdictional municipal electric and gas corporations to incorporate the charges in their adjustment clauses or delivery rate adjustments, if the costs associated with establishing a line item surcharge are prohibitive.

The Commission orders:

1. Each electric, gas, steam, and water corporation and municipal electric and gas corporation shall file tariff amendments and the Long Island Power Authority (LIPA) shall file a letter describing its protocol, within 10 business days of issuance of this Order to become effective July 1, 2009, authorizing collection of the Temporary State Assessment

required in Public Service Law §18-a(6) for the period April 1, 2009 through March 31, 2014. These amendments and protocol shall not become effective on a permanent basis until approved by the Commission. For the years from July 1, 2010 through June 30, 2014, electric, gas, steam, and water corporations, and municipal electric and gas corporations are authorized to file annual changes to its Temporary State Assessment surcharge tariffs (tariff statements), or in the case of LIPA, the protocol established in its letter, to become effective on 15 days' notice, authorizing a change in the revenues that the entity plans to recover from ratepayers to pay the Temporary State Assessment.

2. Subject to the conditions in the body of this Order, each electric, gas, steam, and water corporation and municipal electric and gas corporation are authorized to defer the difference between total assessment expense (Temporary State Assessment and General Assessment) and the amount collected from customers. Carrying charges should be calculated by applying the corporations' authorized pre-tax rate of return to the net of tax un-recovered Temporary State Assessment payments. The deferred assessment expense and accrued carrying charges are to be recovered through the Temporary State Assessment surcharge or adjustment and reconciliation mechanism described in this Order over five years, July 1, 2009 through June 30, 2014.

3. The provisions of Public Service Law §66(12)(b), applicable to gas and electric corporations, §80(10)(b), applicable to steam corporations, and §89-c(10)(b), applicable to water-works corporations, and Commission rules (16 NYCRR §§720-8.1), that require publication of tariff changes are waived.

4. LIPA and each electric and gas corporation, with the exception of municipal electric and gas corporations, are

directed to file with the Secretary to the Commission within 10 business days of this Order's issuance its estimate of energy service company revenues in accordance with the discussion in the body of this Order and included in its Temporary State Assessment revenue base and each electric and gas corporation, with the exception of municipal electric and gas corporations, is required to file its estimate of such revenues with each Annual Report submitted in the future.

5. This proceeding is continued.

By the Commission,

(SIGNED)

JACLYN A. BRILLING  
Secretary

Example of Temporary State Assessment Surcharge Calculation

Electric Operations - Based on Calendar Year 2008 Revenues

Total Operating Revenues	\$100,000,000
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## Adjustments:

Sales for Resale(1)	2,000,000
Transmission of Elec. for Others(2)	<u>8,000,000</u>
Total Adjustments(3)	\$10,000,000

Assessable Utility Electric Revenues	\$90,000,000
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## ESCO Revenue Calculation:

kWh Delivered for ESCOs	200,000,000
Avg. Full Service Customer Commodity Cost/kWh	<u>\$0.10</u>
Estimated ESCO Energy Revenues	\$20,000,000

Total Electric Assessable Revenue Estimate	\$110,000,000
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Assessment Rate	<u>2.0%</u>
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Estimated Combined General Assessment and Temporary State Assessment Amount	\$2,200,000
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Amount of 18-a Currently in Base Rates (4)	<u>300,000</u>
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Estimated Temporary State Assessment Surcharge Amount	\$1,900,000
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- (1) Sales for Resale are the amounts of excess commodity sold, for instance, sales to the NY Independent System Operator.
- (2) Transmission of Electricity for Others revenue is the revenue received for delivering power, for instance on behalf of another utility or a municipality. This has to do with transmission to non-end users of the power.
- (3) If there are no gas operations, then the \$500,000 in revenues exempt under PSL 18-a would be deducted here. If there are also gas operations, then the \$500,000 is deducted in the gas calculation.
- (4) If the exact amount that is allowed in base rates is unknown, use the annual amount billed by the Department in February 2009.

## Gas Operations - Based on Calendar Year 2008 Revenues

Total Operating Revenues	\$50,000,000
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## Adjustments:

Sales for Resale (1)	400,000
Distribution Facilities (2)	4,100,000
Exempt Revenues per 18-a	<u>500,000</u>
Total Adjustments	\$5,000,000

Assessable Utility Electric Revenues	\$45,000,000
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## ESCO Revenue Calculation:

DTH Delivered for ESCOs	25,000,000
Avg. Full Service Customer Commodity Cost/DTH	<u>\$1.00</u>
Estimated ESCO Energy Revenues	\$25,000,000

Total Electric Assessable Revenue Estimate	\$70,000,000
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Assessment Rate	<u>2.0%</u>
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Estimated Combined General Assessment and Temporary State Assessment Amount	\$1,400,000
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Amount of 18-a Currently in Base Rates(3)	<u>\$150,000</u>
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Estimated Temporary State Assessment Surcharge Amount	\$1,250,000
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- (1) Sales for Resale are the amounts of excess commodity sold.
- (2) Distribution Facilities revenue is the revenue received for delivering gas to non-end users, such as generating stations.
- (3) If the exact amount that is currently allowed in base rates is unknown, use the annual amount billed by the Department in February 2009.