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DEPARTMENT OF THE PUBLIC ADVOCATE
DIVISION OF RATE COUNSEL
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November 13, 2009

VIA ELECTRONIC MAIL
Kristi Izzo, Secretary
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Re: Comments on the 2010 Budget and Program Proposals and Compliance Filings Submitted by the EE and RE Market Managers and Others

Dear Secretary Izzo:

Please accept for filing the Comments of the New Jersey Department of the Public Advocate, Division of Rate Counsel in response to the request for comments made by the Office of Clean Energy Staff at the October 13, 2009 public meeting regarding this proceeding.

Respectfully Submitted,

RONALD K. CHEN
PUBLIC ADVOCATE

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**Comments on the 2010 Budget and
Program Proposals and Compliance Filings
Submitted by the EE and RE Market Managers and Others**

**By the New Jersey
Department of the Public Advocate,
Division of Rate Counsel
November 13, 2009**

I. Introduction

The within comments address the draft program proposals and compliance filings submitted by the Market Managers and others for the New Jersey Clean Energy Program ("CEP") 2010 program and budget year and presented at the October 13, 2009 public meeting. The New Jersey Office of Clean Energy ("OCE") is considering several proposals. As input to drafting its own overall proposal, OCE has invited comments on the several draft proposals submitted to date. Herein, the Division of Rate Counsel ("Rate Counsel") offers selective comments on three of the proposals submitted to date. Rate Counsel's comments focus on programmatic content, delivery, marketing, and budget levels. Rate Counsel reserves the right to supplement these comments.

II. 2010 EE and RE Budget

The draft 2010 budget circulated by the OCE shows that available funds will greatly exceed the funding level approved for 2010 Energy Efficiency ("EE") and Renewable Energy ("RE") programs by the Board in its Order addressing the Comprehensive Energy Efficiency and Renewable Energy Resource Analysis for the 2009-2012 Clean Energy Program ("2009-2012 CRA Order").[1] The Board previously approved a funding level of $269 million for 2010 EE and RE programs. Meanwhile, the OCE anticipates $552 million will be available for EE and RE programs in 2010, including approximately $283 million in carry-over funds from prior years and $269 million in new 2010 collections from ratepayers. Even if 2009 program commitments amounting to $171 million are

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[1] *I/M/O Comprehensive Energy Efficiency and Renewable Energy Resource Analysis for the 2009-2012 Clean Energy Program*, BPU Dkt. No. EO07030203, Order dated 9/30/08, p. 57.

removed, that still leaves over $381 million available for EE and RE programs in 2010, which is far in excess of the $269 million approved by the Board for 2010 EE and RE programs. Moreover, the available funds are far in excess of past levels of actual EE and RE program expenditures.

In light of the current economic climate, Rate Counsel respectfully urges the Board to consider reducing the amount recovered from ratepayers at this juncture, when the budget and funding levels for 2010 are set. In its 2009-2012 CRA Order, the Board recognized that the funding levels may be revisited in the future. Rate Counsel respectfully submits that the Board should either credit ratepayers for program over-collections or reduce the charge going forward in order to better align rate recovery with actual program expenditures. The suggested adjustments will provide much needed rate relief to ratepayers during the current economic downturn.

III. TRC 2010 C&I EE Program & Budget Filing[2]

Rate Counsel is generally supportive of the program proposals put forward by TRC, OCE's Market Manager for commercial/industrial ("C&I") EE programs. However, Rate Counsel has five comments and questions as presented below.

A. KEMA Recommendations. In its recently completed evaluation of C&I efficiency programs for the OCE, KEMA made a number of specific recommendations for improvements to program practices.[3] It would be useful if TRC's final submission could indicate a proposed disposition of KEMA's recommendations. For example, this could be a simple as a check list indicating whether each recommendation has been incorporated, will be incorporated, will be considered, or is rejected.

B. Marketing. Participation in CEP C&I EE programs to date in 2009 has been disappointing. The TRC filing describes sector-specific marketing strategies, which have already begun.[4] There is an obvious need to increase the effectiveness of sector-specific marketing so as to accelerate the rate of customer participation in relevant programs. This is a multifaceted challenge for which there is no "silver bullet." The emphasis on working with trade allies in the TRC marketing plan is sound. Rate Counsel would, however, like to also endorse the need for the Market Manager to directly solicit individual enterprises.[5] For example, waves of individual letters followed by personal phone calls could be used to advise eligible customers of the enhanced incentives that will be available to them in 2010, based on the combination of CEP and complementary

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[2] TRC, *New Jersey Clean Energy Program 2010 Program Description and Budget: Commercial & Industrial Energy Efficiency Programs* ("TRC 2010 Programs and Budget"), dated September 29, 2009.

[3] See KEMA, Inc., *New Jersey's Clean Energy Program Energy Impact Evaluation and Protocol Review: Summary Report* ("KEMA Report"), dated September 30, 2009.

[4] TRC 2010 Programs and Budget, Appendix A.

[5] TRC 2010 Programs and Budget, p. A-5.

utility programs. We believe a direct mail approach is consistent with TRC's overall draft marketing plan.

C. C&I Construction Program Incentives. We note that TRC proposes to eliminate the $300 incentive for a gas furnace that has an Annual Fuel Utilization Efficiency ("AFUE") of 90% or more (p. 10). The corresponding proposal of Honeywell (see below) is to provide a $300 incentive for a gas furnace with an AFUE of 92% or more. This difference is not necessarily a problem, but we ask TRC to consider whether the Honeywell approach may be beneficial in the non-residential market. Both TRC and Honeywell would maintain the identical incentive of $400 per gas furnace that has both an AFUE rating of 92% or more and an Electronically Commutated Motor ("ECM").

D. Direct Install Program Quality Control. TRC's description of the proposed quality control procedures for this important new program is presented on page 24 of its draft submission. Notably, this description does not mention the on-site inspection strategy and inspection frequency that will be employed. A minimum rate of on-site inspections is critical given the nature of this program, i.e. the fact that it is delivered through selected installation contractors. We suggest an initial inspection rate of at least ten percent of completed jobs, and would be open to an even higher rate. Quality control inspection provisions must be included in the final compliance filing.

E. Teaching Energy Awareness with Children's Help ("TEACH"). Rate Counsel welcomes the proposed expansion of this important program. We do, however, have a question about program evaluation. Program evaluation is important not only because it will help us gauge program effectiveness, but also because it will provide pointers for how to best expand activities of the type supported by TEACH. At page 43, the program description references an independent evaluator to be involved from the outset of the program. If such evaluator has not yet been retained, the mechanism for evaluator selection should be specified there.

III. Honeywell 2010 Residential EE and RE Program & Budget Filing[6]

The submission of Honeywell, OCE's Market Manager for both residential EE programs and for RE programs, proposes plans for both residential EE and for RE. Rate Counsel's comments here concern EE. We have one over-arching comment on cost-effectiveness, and several specific comments and questions.

A. Cost-effectiveness. During 2009, Rate Counsel has reviewed several CEEEP cost-benefit analyses of proposed residential efficiency programs. We refer specifically to CEEEP's analyses of utility energy efficiency proposals made pursuant to the Governor's Economic Stimulus Plan.[7] For the several utilities whose plans "piggy-back" on the

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[6] Honeywell, *New Jersey's Clean Energy Program: Honeywell's Residential Energy Efficiency and Renewable Energy Program Plan Filing for 2010*, October 8, 2009.

[7] CEEEP's analyses have not been submitted formally at this writing, but are referenced in stipulations that have been approved by the Board, such as that of New Jersey Natural Gas Co. (BPU Docket Nos.

CEP, these analyses are really, in considerable part, assessments of CEP cost-effectiveness. Rate Counsel is concerned that the prospective cost-effectiveness of residential EE programs projected in these CEEEP analyses has been much lower than the projected cost-effectiveness of non-residential EE programs. For example, without considering the value of temporary federal tax credits, the Home Performance with Energy Star ("HPES") program seldom appeared to be cost-effective. At the same time, KEMA's evaluations of CEP programs, recently completed for OCE, have suggested lowering the estimates of savings for key gas & electric HVAC measures, going forward.[8] In light of developments such as these, we suggest that a cross-cutting theme in delivering 2010 programs must be to improve not only the effectiveness, but also the cost-effectiveness, of key residential EE programs. We do not find this challenge explicitly addressed in the Honeywell submission. While concern with operational efficiency and cost-effectiveness may be implicit in the Honeywell proposals, Rate Counsel would welcome some explicit acknowledgement of the cost-effectiveness challenge, as well as some focused discussion of strategic approaches to addressing these issues in 2010.

B. Residential Gas HVAC Program Incentives. We note that Honeywell's C&I EE plan proposes that the CEP provide a $300 incentive for a gas furnace installation that has an AFUE of 92% or more (p. 27). As discussed in the section above addressing TRC's programs, the corresponding proposal of TRC (see above) for residential customers is to provide no incentive for a gas furnace with an AFUE of 92% or more, unless it has an ECM. This difference is not necessarily a problem, but we ask Honeywell to consider whether the $300 is needed in the residential market. We note that both TRC and Honeywell would provide an incentive of $400 per furnace installation that has both an AFUE rating of 92% or more and an ECM.

C. Energy Efficient Products Program — Room Air Conditioners. Overall, Rate Counsel supports the continuation and expansion of the Efficient Products program as described by Honeywell. We do, however, have a concern about the room air conditioner program. Page 39 of Honeywell's submission proposes another seasonal promotion of efficient room air conditioners in 2010. We are concerned that this measure is not cost-effective for the ratepayers, since there has been an increase in the efficiency of room air conditioners available in the market. Additionally, room units operate for fewer hours than do central units, so that the incremental costs of more efficient units must be recovered over less baseline usage. We urge Honeywell to revisit assumptions behind proposing to operate this sub-program again, and to consider omitting it in 2010 if its cost-effectiveness seems poor.

D. Residential New Construction Program – Tier 1 incentives. Honeywell's plan refers to the phase-out of this program's "tier 1" incentives at some future date, presumably some time within 2010 or later. We suggest that Tier 1 incentives be phased

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EO09010056 and EO09010057, *Decision and Order Approving Stipulation*, dated July 1, 2009. See Order, point 21.)

[8] KEMA Report, *Id.*

out now, i.e., not be included in the 2010 program. The basis for this proposal is found in KEMA's report entitled *Residential New Construction Program Impact Evaluation*, dated June 17, 2009, which was conducted for OCE:

> It appears that the new homes market in New Jersey has been transformed so that all new homes in the current ENERGY STAR Homes market segments are constructed to the minimum ENERGY STAR standards in place prior to the 2007 upgrades. From that perspective, homes being constructed with incentives from the ENERGY STAR Homes Program should be using the 2006 ENERGY STAR standards as the "Reference Home."[9]

If this finding is accepted, it is questionable whether the Tier 1 incentives are cost-effective going forward, since they would only bring new homes up to the efficiency level that KEMA reports is now common.

F. Home Performance with Energy Star – Marketing. With the improved incentives for HPES that are proposed for 2010, accompanied in part of the State by supplementary subsidized financing through utilities, the market appeal of this program can be expected to grow in 2010. Yet, even with enhanced incentives, we believe it will be very difficult to utilize anything approaching all of the budget of over $43 million suggested for this program by Honeywell for 2010 (p. 126). Accelerating the uptake of this centerpiece EE program for existing homes should be a priority for 2010. In describing marketing plans, Honeywell states that "direct mail has proven effective" in marketing HPES (p. 119). However, Honeywell does not detail a quantity of direct mail or a budget for direct mail for this program for 2010.

IV. Other EE Proposals

Rate Counsel also has comments on the following proposal:

A. New Jersey Housing and Mortgage Finance Agency ("HMFA"). HMFA submitted three home mortgage financing program options to promote incremental energy efficiency in homes. Rate Counsel understands that more work would be needed to turn any of these options into an HMFA-conducted, CEP-supported program. Rate Counsel believes that one of HMFA's proposals for the existing home market, which it calls "option 2", has promise. "Option 2" would involve the CEP providing funds for home energy audits and grants to cover the cost of all recommended energy efficiency upgrades. The new program would encourage applicants eligible for mortgage financing through HMFA to avail themselves of these additional resources. We encourage HMFA and OCE to work together to see if this preliminary option can become a viable final program design. One issue for HMFA to address in such a discussion is how what it envisions differs from what the existing Home Performance with Energy Star program

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[9] KEMA's *Residential New Construction Program Impact Evaluation*, report dated June 17, 2009, pp. 1-6.

offers to all homeowners.

HMFA's other program options appear less promising. Its "option 1" proposal for existing homes might be problematic because it envisions the CEP getting directly involved in the home mortgage financing business. Additionally, HMFA's proposal for new homes is deficient because the program for which HMFA seeks additional support, "CHOICE", already requires that participating new homes be energy-efficient. Absent some further refinement of this option, providing CEP monies for the CHOICE program as proposed would not necessarily yield any energy savings that would not otherwise occur.

V. RE Programs

At this time, Rate Counsel is concerned and disagrees with the expansion of the Renewable Energy Incentive Program ("REIP"). The current program offers a $1.75 per watt incentive to each qualifying residential application up to the first 10 megawatts ("MW") of residential solar installation incentive requests. All incentive requests that exceed the initial 10 MW block will continue to receive an incentive, but at a lower rate of $1.55 per watt.

OCE's proposal was to extend the first block from 10 to 20 MW, thereby expanding the scope of the subsidy being offered to the market to encourage solar installations. While it is not entirely clear, OCE appeared to make this proposal to expand the existing set of solar energy subsidies because there are additional dollars available from other budgeted renewable energy support mechanisms (wind, biomass) that have not materialized. OCE's proposal would effectively divert these unused dollars into solar energy, and not credit them back to ratepayers. By Order dated October 19, 2009, in Docket No. : EO07030203, the Board concurred with OCE's recommendation to expand the capacity block for residential solar rebates. In the last sentence of the Order, the Board stated that it would "revisit the capacity blocks for the REIP program when it considers the 2010 programs and budgets." These comments urge reconsideration and rejection of that expansion of the REIP capacity blocks.

Rate Counsel disagrees with this expansion and instead recommends that all unused dollars that were originally budgeted to support wind and biomass, but have gone unspent, be credited back to ratepayers. There is no need to provide additional support for solar energy at this time. OCE indicated in the most recent RE meeting that expanding the first tier incentive block by 10 MW would help make up what it believes is an ongoing solar energy development shortfall. Rate Counsel disagrees with the suggestion that there would be a shortfall, and that the Board, and other solar energy programs recently approved by the Board, have already taken this shortfall into account. To do so again, under the REIP, is both redundant and unnecessary.

As of October 31, 2009, over 108 MW of solar capacity has been installed. Almost 90 percent of this capacity has completed the OCE rebate process. This amounts to 96 MW of capacity and $269.7 million paid in rebates though the CORE Rebate Program, the

REIP, and the SREC Registration Program.[10] Another 1.3 MW ($3.3 million) is being processed; almost 9.9 MW ($17.6 million) is QC Selected; and 750 kW ($1.9 million) is ready for rebate.

In addition to these programs, ratepayers are also supporting the securitization of solar energy in: a long-term SREC contracting mechanism for Jersey Central Power & Light Company ("JCP&L"), Atlantic City Electric Company ("ACE"), and Rockland Electric Company ("RECO");" a "Solar 4 All" program for Public Service Electric & Gas Company ("PSE&G"); and two separate Solar Loan Programs for PSE&G.

Table 1(below) shows that the currently installed capacity supported by the ratepayer supported programs under the Clean Energy budget and each of the programs being funded through the EDCs for each reporting year up to 2013. The Table clearly shows that there will be significant solar energy development without the need for additional financial support.

Table 1: Estimated Solar Capacity Development By Sources of Support (MW)

	Installed 2009	2010	Anticipated Program Size 2011	2012	2013	Total
	---------------------------------- (MW) ----------------------------------					
Current capacity	108.1					108.1
JCP&L SREC-based financing		23.0	10.0	9.0	-	42.0
ACE SREC-based financing		10.0	5.0	4.0	-	19.0
RECO SREC-based financing		2.3	0.8	0.7	-	3.8
PSE&G Solar Loan		30.0	-	-	-	30.0
PSE&G Solar 4 All		12.1	31.0	28.2	8.7	80.0
PSE&G Solar Loan 2		-	33.8	17.2	-	51.0
CORE Anticipated		29.3	5.5	-	-	34.8
REIP Anticipated		3.8	2.6	2.4	2.0	10.8
ARRA		0.5	6.8	-	-	7.3
HMFA		-	0.5	0.5	-	1.0
Total	**108.1**	**111.0**	**96.0**	**62.0**	**10.7**	**387.8**
Cumulative Total		**219.1**	**315.1**	**377.1**	**387.8**	
Solar RPS Requirement		**160.2**	**222.2**	**288.6**	**365.9**	

Rate Counsel recommends that the Board reconsider and reject the OCE proposal and refund any remaining support dollars to ratepayers through the SBC-related charges. An expansion of the first residential solar incentive block is unnecessary since there is sufficient anticipated capacity development in both the RE program support mechanisms and the support mechanisms funded by residential customers through various EDC RE programs.

Expanding incentives, as proposed by OCE, simply over-incents solar energy installations by transferring earmarked dollars away from wind and biomass development

[10] According to the "NJCEP Installation Summary Reports" circulated by the OCE on November 11, 2009.

and towards solar. As OCE acknowledged in a recent RE meeting, there are many applications waiting for support under the current REIP program. This would indicate that the current incentive levels are appropriately set. Expanding incentives amounts by an additional 10 kW would be inefficient and create a free ridership problem.

OCE's REIP expansion proposal also raises regulatory credibility issues and could potentially contribute, over the long run, to solar installation shortfalls. If potential solar developers or customers know that the Board is likely, at the end of any given year, to offer expanded incentives through the redistribution of unutilized clean energy funding, it sends the signal for the market to "sit on the sidelines" awaiting these potential Board moves. Over time, this could lead to, at best, a solar installation lag, and at worst, a potential annual solar installation shortfall. These market failures, unfortunately, would simply be the result of the market reacting to the inconsistent Board actions and should be avoided at all costs.

For all the foregoing reasons, Rate Counsel recommends that the Board reconsider and reject OCE's proposal to expand the REIP from 10 to 20 MW and instead dedicate those unused funds towards rate reductions for all ratepayers.