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**Re: In the Matter of the Comprehensive Energy Efficiency and Renewable Energy Analysis for 2005-2008, Final 2007 Programs and Budgets: Compliance Filings – Modification of Smart Growth Restrictions and Combined Heat and Power (CHP) Eligibility.  
Docket No. EX04040276**

**Comments On Amendments To The Requirements Limiting Provision Of Clean Energy Program Services To Entities In Non-Smart Growth Areas Of The State.**

**Submitted by the Department of the Public Advocate  
Division of Rate Counsel**

**December 12, 2007**

Please accept this letter as the formal comments of the Department of the Public Advocate, Division of Rate Counsel (“Rate Counsel”) regarding the proposed EE program amendment and the proposed correction of certain provisions of market manager TRC’s compliance filing concerning the Combined Heat and Power (“CHP”) Program. The within comments are filed in response to the public notice (“Notice”) issued by the Secretary to the Board of Public Utilities (“Board”, “BPU”) on or about November 30, 2007.

**1. Modification to the Smart Growth Restrictions**

As set forth in the Notice, the guidelines for commercial energy efficiency (“EE”) programs provide that incentives for allowed only in areas designated for growth in the State Plan, i.e., Smart Growth areas. There are limited exceptions to this rule for replacement buildings or expanded buildings in areas not designed for growth. The proposed amendment would extend the areas in which Clean Energy Program (“CEP”) EE services are available to those eligible for an exemption from the “designated growth area” limits for projects that will result in a “significant public good” and for those projects meeting the criteria for an “extraordinary hardship.”

In order to qualify for an exemption under the “significant public good” exemption under the proposed amendment, the following criteria would need to be met:

1. The project or activity served by the request for a rebate would provide a significant benefit to the public or to the environment;
2. That the project described above is consistent with smart growth, or that the benefit of the project outweighs the benefits of smart growth. In making this determination, the Board will consult with the Office of Smart Growth and other State agencies; and
3. There is no practicable alternative means of providing the benefit while still complying with this subchapter.

Under the proposed amendments, CEP services would also be available to those projects meeting the following criteria for the “extraordinary hardship”:

1. Compliance with [the designated growth area limits] would cause an extraordinary hardship;
2. The extraordinary hardship results from unique circumstances that do not apply to or affect other projects in the region;
3. The unique circumstances arise from the project itself and not from the circumstances or situation of the regulated entity or its customers; and
4. Neither the extraordinary hardship nor the unique circumstances are the result of any action or inaction by the regulated entity, its shareholders, or its customers.

The Office of Smart Growth, with the assistance of the InterAgency Smart Growth Team, has developed several criteria which have been used to designate “Smart Growth” areas in New Jersey. Rate Counsel recognizes the many benefits that the Smart Growth policy offers, including protecting watershed areas for the benefit of the State’s water users.

A number of state agencies have aligned certain of their policies with Smart Growth areas so as to provide incentives for development to occur within these areas. One of these agencies is the Board’s Office of Clean Energy (“OCE”), which has employed the Smart Growth area definition as an eligibility criterion in certain CEP programs described above.

However, anecdotal evidence from CEP market managers and trade allies suggests that CEP incentives are unlikely, by themselves, to substantially influence locational decisions in New Jersey. In general, it costs builders more—not less—to build to the levels of efficiency that qualify for CEP incentives, and CEP incentives defray only a portion of that incremental cost. Under the current Smart Growth restrictions affecting eligibility for CEP EE services, there is a risk that the State will lose energy efficiency benefits for certain projects that will nonetheless be built in designated no-growth areas. In the case of projects meeting the criteria or a “significant public good” exemption, Rate Counsel submits that the proposed “significant public good” amendment is a reasonable

compromise that fosters reductions in energy use, while also providing assurances that the covered projects are consistent with Smart Growth objectives and provide significant public and environmental benefits. On the other hand, Rate Counsel submits that the “extraordinary hardship” exemption is vague and provides no assurances that the exempted projects will provide any type of significant public benefit. Thus, absent more stringent criteria for a hardship exemption, Rate Counsel does not support the hardship exemption as proposed.

## **2. Combined Heat and Power (“CHP”) Program Correction**

The Compliance Filing of market manager TRC, adopted by the Board by Order dated August 1, 2007, contained an error regarding the description of the CHP program. The correction proposed by Board OCE Staff removes the words “start-up” from the following provision in TRC’s Compliance Filing regarding the use of diesel generators:

### Not Eligible Under the Program

The following types of generating systems/equipment are not eligible for the program:

- Back-UP Generators – systems intended for emergency or back-up generation purposes.
- Any system/equipment that uses diesel fuel, other types of oil and coal for start up or continuous operation.

Rate Counsel understands that this is a technical correction to the description of the CHP program and supports making this correction as proposed.

Respectfully submitted,

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