



STATE OF NEW JERSEY

Board of Public Utilities

Two Gateway Center

Newark, NJ 07102

www.bpu.state.nj.us

CLEAN ENERGY

IN THE MATTER OF COMPREHENSIVE ENERGY)
EFFICIENCY AND RENEWABLE ENERGY)
RESOURCE ANALYSIS FOR 2005 – 2008:)
2007 PROGRAMS AND BUDGETS:)
COMPLIANCE FILINGS)

INTERIM DECISION MODIFYING
SMART GROWTH
RESTRICTIONS
AND COMBINED HEAT &
POWER ELIGIBILITY

DOCKET NO. EX04040276

(SERVICE LIST ATTACHED)

BY THE BOARD:

On February 9, 1999, the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq. ("EDECA" or "the Act") was signed into law. One provision of EDECA, N.J.S.A. 48:3-60(a)(3), required that the Board of Public Utilities ("Board") undertake a "comprehensive resource analysis" ("CRA") of existing energy efficiency policies and programs. The CRA was to include, but not be limited to, "an assessment of existing market barriers to the implementation of energy efficiency and renewable technologies that are not or cannot be delivered to customers through a competitive marketplace." N.J.S.A. 48:3-51. This directive led to the creation, consideration, and assessment of a myriad of programs and technologies, ranging from the familiar energy efficiency appliance programs to new programs utilizing "Class I renewable energy," which is defined as "electric energy produced from solar technologies, photovoltaic technologies, wind energy, fuel cells, geothermal technologies, wave or tidal action, and methane gas from landfills or a biomass facility provided that the biomass is cultivated and harvested in a sustainable manner." N.J.S.A. 48:3-51.

In its March 4, 2003 Order in BPU Docket No. EO02120955, the Board adopted a variety of program guidelines for both residential and non-residential Clean Energy programs. To be eligible for certain energy efficiency incentives, applicants for Clean Energy program funding are required to comply with the program guidelines set forth in that Order and subsequent Orders. One of the guidelines for Commercial Energy Efficiency Programs provides that "incentives for new construction [are] allowed only in areas designated for growth in the State Plan."

In its Order dated April 3, 2006 (Non-Docketed Matter), the Board modified its March 4, 2003 Order and adopted Staff's recommendation that replacement or expanded buildings in areas not designated for growth be eligible for Clean Energy program benefits, provided that the replacement construction or expansion will result in structures that no more than double the

amount of square footage of the building as it existed prior to the expansion or replacement. The Board also adopted Staff's recommendation that hospitals, military facilities and municipal buildings should be eligible for program benefits, provided that the replacement construction or expansion would result in structures that no more than double the amount of square footage of the existing building prior to replacement or expansion, as discussed herein. Finally, the Board adopted Staff's recommendation that there be a "good cause" exemption whereby the Board may grant exceptions to the foregoing requirements on a case-by-case basis, based on designated criteria. Specifically, staff proposed that qualification for the "good cause" exemption requires an applicant to demonstrate to the Board that the following criteria are met:

The project or activity served by the expansion or replacement would improve energy efficiency by exceeding minimum building code requirements and would complement the State's Renewable Portfolio Standard ("RPS") goals; and

2. Moving to an area designated for growth, as defined in N.J.A.C. 14:3-8.2, is not economically feasible for the applicant and would result in job loss in New Jersey.

Pursuant to the Board's Order of December 22, 2006 in this docket, all entities managing programs for the New Jersey Clean Energy Program submitted compliance filings detailing their programs, target markets, customer incentives and other required information.¹ On August 1, 2007, the Board approved the compliance filings for the 2007 programs.

DISCUSSION

There may be instances where new development, as opposed to the expansion of existing development, in an "area not designated for growth," as defined in N.J.A.C. 14:3-8.2, could be consistent with New Jersey's smart growth goals and the State Development and Redevelopment Plan. The Board's main extension rules, found at N.J.A.C. 14:3-8.1 et seq., recognize this possibility and provide various exemptions to applicants for new regulated entity service in those areas. See N.J.A.C. 14:3-8.8. Although N.J.A.C. 14:3-8.6(f) states that "[a]fter January 1, 2007, a regulated entity shall not pay for or financially support an extension or portion thereof," the regulation makes an exception for "exemption[s] under N.J.A.C. 14:3-8.8."

With regard to Clean Energy Programs, two exemptions are particularly relevant. First, projects that will result in a "significant public good" can be exempt from the provisions of the main extension rule provided that a person demonstrates to the Board that all of the following criteria are met:

1. The project or activity served by the extension 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.

¹ Compliance filings were submitted by the utilities, OCE, DEP, Honeywell International, Inc., and TRC, Inc.

N.J.A.C. 14:3-8.8(h). Second, the rules provide for an "extraordinary hardship" exemption provided that a person demonstrates to the Board that all of the following criteria are met:

1. Compliance with [the provisions of the main extension rule] 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.

N.J.A.C. 14:3-8.8(i). In an effort to make the Clean Energy Programs and the extension rules work together more closely and in accord with the previous Orders, Staff recommends that applicants who are constructing new buildings in areas not designated for growth and who wish to participate in the SmartStart Buildings Program, the Residential Gas and Electric HVAC Program, and/or the Residential New Construction Program be eligible for the program benefits if they can demonstrate that they meet the criteria set forth in N.J.A.C. 14:3-8.8(h) for projects that result in a "significant public good" or if they meet the criteria for the "extraordinary hardship" exemption, N.J.A.C. 14:3-8.8(i). By extending these existing exemption provisions to participants in the SmartStart Buildings Program, the Residential Gas and Electric HVAC Program, and/or the Residential New Construction Program, Staff hopes to further reconcile and balance the objectives of the smart growth and energy efficiency policies. Therefore, Staff recommends that the Board adopt this approach.

In addition, while not related to the central issue of this discussion, the Compliance Filing of TRC adopted by the Board by Order dated August 1, 2007 contained an error regarding the description of the CHP Program. The words "start-up" should have been removed in regard to the use of diesel in the following section of the previously approved TRC Compliance Filing:

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.

Staff, therefore, recommends that the Board also adopt this correction set forth in the attached Compliance Filing of TRC for the 2007 programs.

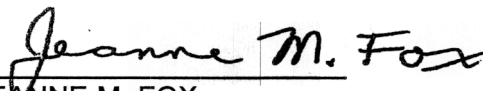
FINDINGS AND CONCLUSIONS

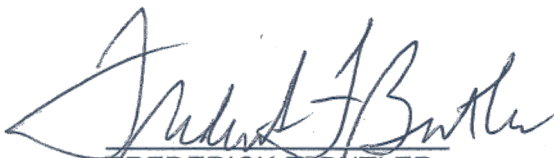
The Board HEREBY ADOPTS, ON AN INTERIM BASIS, Staff's recommendation that applicants who are constructing new buildings in areas not designated for growth and who wish to participate in the SmartStart Buildings Program, the Residential Gas and Electric HVAC Program, and/or the Residential New Construction Program be eligible for program benefits if they can demonstrate to the Board that they meet the criteria set forth in N.J.A.C. 14:3-8.8(h) for projects that result in a "significant public good" or if they meet the criteria for the "extraordinary hardship" exemption, N.J.A.C. 14:3-8.8(i). The Board HEREBY ADOPTS, ON AN INTERIM BASIS, Staff's recommendation to correct the Compliance Filing of TRC for the 2007 programs.

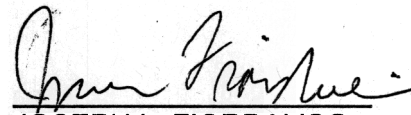
The Board seeks public input and comments prior to finalizing this Order and HEREBY DIRECTS Staff to provide notice and opportunity for the public to comment. The Board HEREBY DIRECTS that all comments must be submitted no later than 5:00 p.m. December 12, 2007, with the caption "Comments on amendments to the requirements limiting provision of Clean Energy Program services to entities in non-Smart Growth areas of the state," for consideration at the Board's December 20, 2007 special agenda meeting.

DATED: 2/4/07

BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER


CHRISTINE V. BATOR
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities

