



STATE OF NEW JERSEY

Board of Public Utilities

Two Gateway Center

Newark, NJ 07102

www.nj.gov/bpu

IN THE MATTER OF THE IMPACT OF FEDERAL)
TAX LEGISLATION ON CUSTOMER ON-SITE)
RENEWABLE ENERGY (CORE) PROGRAM)
REBATE LEVELS)

CLEAN ENERGY ORDER

DOCKET NO. EO04121550

(SERVICE LIST ATTACHED)

BY THE BOARD:

This Order memorializes actions taken by the Board at its December 16, 2008 Agenda meeting.

On February 9, 1999, the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq. ("EDECA") was signed into law. EDECA established requirements to advance energy efficiency and renewable energy in New Jersey through the Societal Benefits Charge ("SBC"), as set forth in N.J.S.A. 48:3-60(a)(3). EDECA further empowered the Board to initiate a proceeding and cause to be undertaken a comprehensive resource analysis of energy programs. This proceeding is currently referred to as the comprehensive energy efficiency ("EE") and renewable energy ("RE") resource analysis. After notice, opportunity for public comment, public hearing, and consultation with the New Jersey Department of Environmental Protection ("NJDEP"), within eight months of initiating the proceeding and every four years thereafter, the Board would determine the appropriate level of funding for EE and Class I RE programs (now collectively called New Jersey's Clean Energy Program) that provide environmental benefits above and beyond those provided by standard offer or similar programs in effect as of February 9, 1999.

As required by EDECA, the Board initiated its first comprehensive EE and RE resource analysis proceeding in 1999. At the conclusion of this proceeding, the Board issued its initial order, dated March 9, 2001, Docket Nos. EX99050347 et al. ("March 9th Order"). The March 9th Order set funding levels for the years 2001 through 2003, established the programs to be funded and budgets for those programs.

By Order dated May 7, 2004, Docket Nos. EX03110946 and EX04040276, the Board initiated its second comprehensive EE and RE resource analysis proceeding and established a procedural schedule for the determination of the funding levels, allocations and programs for the years 2005 through 2008. By Order dated December 23, 2004, Docket No. EX04040276, the Board concluded its proceeding, set funding levels for the years 2005 through 2008, and approved

2005 programs and budgets. The Board approved funding levels of \$140 million for 2005, \$165 million for 2006, \$205 million for 2007 and \$235 million for 2008.

On October 19, 2006, Honeywell International, Inc. ("Honeywell" or "Market Manager") was awarded a contract to manage the residential energy efficiency programs and renewable energy programs. By Summary Order dated January 2, 2008 and Order dated March 31, 2008, Docket No. EX04040276, the Board approved 2008 programs and budgets for New Jersey's Clean Energy Program ("NJCEP").¹ These Orders approved Honeywell's 2008 compliance filing, which included detailed budgets and program descriptions for the programs managed by Honeywell. Among the approved programs is the Customer On-Site Renewable Energy ("CORE") Program, which offers incentives to New Jersey utility customers investing in eligible on-site renewable electricity generation using photovoltaic, wind, biomass, and fuel cell systems.

The Board has recognized that federal tax credits for certain renewable energy systems are one of a number of incentives available to customers. In the Matter of Renewable Energy Portfolio Standard, Docket No. EOO6100744 (Jan. 19, 2007). In early 2007, the United States Congress began consideration of changes to federal tax law that would impact federal tax credits for renewable energy systems. In May of 2007, Honeywell, at the direction of the Board's Office of Clean Energy ("OCE" or "Staff"), included notice about the impact that proposed federal tax legislation would have on CORE rebate levels into all CORE program rebate commitment letters issued to private projects. Specifically, the revised letters stated that "[c]onsistent with Board policy, if this project is eligible for any new Federal tax incentives the program manager will modify the final rebate amount to off-set part or all of anticipated additional tax benefits."²

On October 3, 2008, President Bush signed the Energy Improvement and Extension Act of 2008 ("the Act").³ The Act extended through 2016 the tax credit for solar energy systems, modified energy tax credit rules to allow offsets of tax credit amounts against Alternative Minimum Tax ("AMT") liabilities, and removed the \$2,000 limitation on tax credits for residential solar systems to be effective January 1, 2009. Upon its enactment, the OCE commenced discussions with Honeywell regarding potential modifications to CORE program rebate levels. This issue was discussed further at the October 14, 2008 meeting of the Renewable Energy Committee of the Clean Energy Council.⁴

To facilitate the consideration of potential modifications to residential solar rebate levels, the OCE divided applications into three groups as follows:

1. Applications for residential solar projects submitted to the CORE program that have already received a rebate commitment letter from the CORE program but have not been completed and will not be completed prior to December 31, 2008.

¹ By Order dated September 30, 2008, Docket No. EX04040276, the Board approved revised program budgets, but the Board did not modify the programs or the rebate levels.

² Approximately eight projects are in receipt of rebate commitment letters that predate May 2007 and do not contain the above-quoted language. The OCE recommendations and the Board's discussion and decision in this matter only apply to those customers with rebate commitment letters that reflect the revised language.

³ The Board's discussion and decision in this matter does not constitute tax advice.

⁴ The Clean Energy Council ("CEC"), Committees, and Working Groups are open to public participation and input from any interested party. The CEC, Committees, and Working Groups function as public stakeholder groups.

2. Applications for residential solar projects submitted to the CORE program in 2008 or earlier that have not received rebate commitment letters.
3. Applications for residential solar projects to be submitted to the proposed successor to the CORE program in 2009.

At the October 14th meeting of the Renewable Energy Committee, the OCE requested comment on whether rebates should be reduced for each of the three groups of customers. Comments were received from: The New Jersey Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel"); Corbin Solar Solutions; Four Point Heating/Cooling and Solar; Ecological Systems; Sea Bright Solar; The Gemstone Group; the Mid Atlantic Solar Energy Industry Association ("MSEIA"); Vanguard Energy partners; and The Solar Center, Inc ("Solar Center"). These comments are discussed below.

In addition, this matter was presented to the Board at its Agenda Meeting held on October 23, 2008. The Board directed the OCE to solicit additional comments. On October 30, 2008, the Board issued a request for public comment. The request was posted on the Board's web site and on the New Jersey Clean Energy Program web site and was circulated to the Clean Energy Council and the Renewable Energy and Energy Efficiency Committees of the Clean Energy Council. Additional comments were received from: Rate Counsel, Solar Center, Ecological Systems, Trinity Solar, Solar Solutions, Sidley Austin LLP, Matthew Wachala, Mr. and Mrs. Skacel, Kanwal J. Kaur, Manny Kohli, Thomas and Christine Sheridan, John T. and Jennifer Oliver, Mark Curto, Barry and Theresa Maxon, Anthony E. Mannucci, Ingrid Heldt, Mr. Craig, and Cynthia and David Hill. These comments are discussed below.

Following the December 8, 2008 agenda meeting, the Staff posted a request for comments on a report from the Berkeley Lab entitled "Shaking Up the Residential PV Market: Implications of Recent Changes to the ITC" ("Berkeley Lab Report"). Staff anticipated that the Berkeley Lab Report may be relevant to its review of the rebate levels impacted by the recent changes to the ITC and recommendation to the Board.

SUMMARY OF COMMENTS

Most of the comments recommended that the rebates of customers in the first group, which have received a rebate commitment letter, should remain unchanged. The comments noted that the increase in the federal Investment Tax Credit ("ITC") does not solve the problem of the considerable increase in out of pocket costs for the customers that would be created by a reduction in the rebate. Commenters stated that reducing rebates by \$1 or \$2 per watt would decrease the rebate for a 10 kW system by \$10,000 or \$20,000 respectively. It was noted that even if payback time is better for systems installed under the rebate program with the new tax credit, the financial burden of carrying increased expenses of this magnitude may make installing solar infeasible for many households which have already made the commitment to solar. Rate Counsel and Trinity Solar maintained that rebate levels for applicants who have received approval letters but have not completed their projects by December 31, 2008 should be adjusted downwards to reflect the changes in tax laws. Rate Counsel distinguished between projects completed before December 31, 2008, which it says should receive the approved incentive levels for 2008, and projects completed by December 31, 2009, which it argues should have a rebate of \$1.75 per watt. Trinity Solar also proposes a rebate of \$1.75 per watt for these applicants. Rate Counsel also submitted comments on rebate levels that will be addressed in the 2009 Clean Energy Programs and Budgets, Docket Number EO07030203 (2009 Budget). Jennifer and John Oliver proposed increasing the rebate levels to 50% and Mr. Craig proposed increasing rebate levels to 70% of project costs.

With regard to customers in the second group, who are in the queue, but have not received a rebate approval letter, Honeywell, the NJCEP Renewable Energy Market Manager, proposed a rebate of \$1.75 per watt for applications on queue during the review with the Renewable Energy Committee.⁵ Most commenters, however, supported keeping rebates at the levels in place when the application was received. Many of these commenters are applicants in the queue who argue that the rebate levels in place at the time of their application were essential to their decision to commit to solar technology and that any rebate reduction will render their project unaffordable. Some commenters claimed that they have no relevant federal tax exposure and are unable to benefit from the changes in taxation laws. In addition, most commenters pointed out that the tax incentives do not help with initial investments and stated that they have already invested economic and/or planning resources in their projects. Several emails were received from ratepayers urging that the rebate program be continued at current levels in the interest of preserving the developing solar energy-based businesses in the State. Corbin Solar Solutions and Solar Solutions supported a slight rebate reduction, while Trinity Solar proposed reducing the rebates to \$1.75 per watt. MSEIA noted that with the passage of the ITC extension, which includes the removal of the current \$2,000 residential cap, and the newly added availability of the ITC even for those paying the alternative minimum tax, State and federal incentives have increased, resulting in what MSEIA characterizes as attractive economics for residential projects. MSEIA recommended that the rebate levels be reduced to \$2.50 per watt for this class of customers, or \$2.25 if energy efficiency measures were not incorporated into the project. MSEIA also proposed linking rebate levels to the installation of energy efficiency measures. This proposed linkage will be more appropriately addressed in the Board's consideration of the 2009 Programs and Filings.

With regard to the third group, new applications submitted in 2009, Honeywell proposed a rebate level of \$1.75 during the Renewable Energy Committee meeting. Comments received on rebate levels for 2009 are being considered in a separate proceeding, for the 2009 Budget.

In addition, comments were submitted on the relevance of the Berkeley Lab Report. Comments were received from Dale Meadows, Herbert Klei, and Michael Boches.

Mr. Klei criticized the conclusions of the Berkeley Report for an alleged failure to consider either the time value of money or the greater difficulty a homeowner in receipt of a rebate commitment letter or waiting on queue will experience in financing a solar installation because of the likelihood that invested funds had lost value and loans were more difficult to obtain. In addition, the commenter asserted that any rebate reduction should have been implemented earlier in the year in order to give customers time to install a system in 2008. In light of the market decline, he concluded, an increased ITC at current rebate levels would amount to only a partial offset of lost value.

Staff's recommendations, which are fully explained in the following paragraphs, do not rely on the conclusions of the Berkeley Lab Report at this time. Staff acknowledges that a homeowner may have difficulty obtaining financing to compensate for the rebate reduction. For that reason, Staff has not recommended a rebate reduction.

Mr. Boches stated that given the move to market-based incentives through SRECs and the SACP, the most important goal for residential PV incentive is establishing a long-term floor price for SRECs so third-party private financing can be secured to finance PV installations. This comment is beyond the scope of this Order.

⁵ Honeywell is an independent contractor for the Board; as set forth in its contract with the Board Honeywell makes proposals in its role as Market Manager and is not a commenter.

Mr. Meadows commented that the change in the residential ITC brought it into line with the existing federal tax credit for businesses. He alleged that based on his understanding of the rebate amounts provided to commercial and residential applicants, respectively, the CORE program, provided more rebate funding to businesses than to homeowners and stated that the Board should not "discriminate" against residential applications.

Different queues exist for private applications under 10 kW and private applications over 10 kW. In the interest of meeting the goals in the RPS and the Energy Master Plan, funding allocations must balance meeting the needs of different market sectors, while supporting the installation of the greatest number of kilowatts.

OCE RECOMMENDATIONS

The OCE has reviewed the comments and recommends the following for each group of customers:

- 1. Group One: Applications for residential solar projects submitted to the CORE program that have already received a rebate commitment letter from the CORE program that have not been completed and will not be completed prior to December 31, 2008.**

There are approximately 400 applicants in Group One. In considering the effect of the change in the ITC and the impact of any reduction in rebate level, Staff notes that a tax credit may not be available until after the close of the year in which the project is placed in service and it may take years before the customer can realize the full benefit of the tax credit.⁶ Staff also recognizes that reducing the rebate will likely result in greater upfront costs to the customer, since a tax credit will not be available in the same timeframe as a rebate payment. The increased upfront financial burden, which may not have been anticipated at the time the application was submitted or the rebate commitment letter was received, may be unsustainable for many customers. On the other hand, Staff recognizes that lowering rebate levels could make funds currently committed to this group available to fund additional projects.

Staff notes that on November 28, 2008 the Business Cycle Dating Committee of the National Bureau of Economic Research determined that the decline in economic activity in 2008 met its standard for a recession and that the United States economy began an economic recession in December 2007. The National Bureau of Economic Research is a non-profit group of leading economists and the primary role of its Business Cycle Dating Committee is to maintain a monthly chronology of the business cycle. On December 16, 2008, the Federal Reserve lowered the federal funds rate to a range of zero to .25 percent. Accordingly, the competing options before the Board must be considered in the context of the current recession and economic conditions now being faced by many applicants.

Thus, in the present difficult economic climate it will likely to be harder to obtain financing. If rebate amounts are reduced and if applicants are required to refinance their projects, this economy may impose a significant obstacle for many customers. Moreover, the investments upon which a customer had relied for a home improvement project of this sort may have lost value. Although the increased ITC appears to provide customers with an enhanced financial incentive for their solar projects, the financial realities imposed by current difficult economic conditions may not permit applicants to absorb the increased up front costs in order to realize

⁶ The OCE recommendations do not constitute tax advice. Moreover, an individual's eligibility for the ITC is subject to confirmation by the appropriate taxing authority.

this incentive and may instead result in a significant number of projects being canceled or deferred. In short, the totality of the current difficult economic conditions surrounding the commitment to solar generation renders reductions to the incentive package rebate levels highly problematic at this time.

In addition, Staff is mindful of the likely impact of a rebate reduction upon the fledgling solar industry in the State. Should customers be unable to follow through on the installations for which they applied, due to current economic conditions, it is possible that the volume of cancelled orders or orders not placed will likely have a negative impact on New Jersey's solar businesses. Staff considers this risk to be more likely than the speculative prospect of industry growth from orders placed by additional customers should the rebates for approved projects be reduced and those dollars redirected. When changes to the rebate levels were first considered nearly two years ago in early 2007 and when applicants were put on notice that rebates would be modified to offset additional tax benefits in May 2007, Staff did not anticipate the current, difficult economic conditions. Therefore, notwithstanding the language in the commitment letters, Staff recommends retaining the current rebate levels for the reasons set forth above.

2. Group Two: Applications for residential solar projects submitted to the CORE program in 2008 or earlier that have not received rebate commitment letters.

The Board established a budget of \$195.049 million for the 2008 CORE program I/M/O Comprehensive Energy Efficiency and Renewable Energy Resource Analysis for 2005-2008: Revised 2008 Programs and Budgets, Dkt. No. EX04040276 (September 30, 2008). Subject to the Board's decision on rebate levels in this Order, the OCE proposes that Honeywell recommence issuing rebate commitment letters to residential customers in the CORE program queue. The OCE anticipates that the 2008 CORE budget will allow Honeywell to issue rebate approval letters to all the customers in the queue and some, but not all, of the customers in the supplemental queue. The supplemental queue is made up of applications received by the program but not reviewed because funding, available or likely to become available, appeared insufficient to reach these applications pursuant to the Board's decision, I/M/O Request to Suspend the Acceptance and Processing of New Solar Rebate Applications in New Jersey's Customer On-site Renewable Energy Program, Dkt. No. EO07100773 (Dec 20, 2007). To reduce the rebate at this time, under the current difficult economic conditions, may likely result in customers, who have demonstrated their desire to participate actively in the clean energy market, withdrawing from their projects.

Honeywell's 2009 program filing proposes termination of the CORE program and the implementation of a new program, "Renewable Energy Program: Customer Sited." The proposal would carry the 2008 CORE program budget forward into 2009 only for the purpose of paying rebates to projects that have already received a rebate approval letter. Once the 2008 CORE budget is fully committed, through issuance of rebate approval letters in either 2008 or early 2009, the CORE program would terminate. This proposal is contingent on the Board's approval of the 2009 Budget.

In light of Honeywell's proposal, the OCE further proposes that the group of residential customers that submitted solar project applications to the CORE program in 2008 or earlier, that have not received rebate commitment letters (i.e., projects in the queue), be further subdivided into two subgroups as follows:

The first subgroup would consist of the customers in the queue or supplemental queue, which are eligible to receive a rebate commitment utilizing the remaining funding from the 2008 CORE budget. That is, if the Board approves Honeywell's proposal, Honeywell would issue rebate letters to residential projects in the queue and supplemental queue until the entire 2008 CORE

budget is committed. For this first subgroup of customers, the OCE believes that rebates should be approved at the level in effect at the time the application was deemed complete. As stated in the Board's September 30, 2008 Order, all applications on the queue can be served from the 2008 budget.

The second subgroup would be comprised of customers who remain in the supplemental queue after the entire 2008 CORE program budget is committed. The OCE believes that these customers should be eligible for the same level of rebate as other customers participating in the new 2009 Renewable Energy Program: Customer Sited. The OCE further believes that these customers should be provided an opportunity to participate in the new program prior to other applicants. The Solar Alliance objected that the proposal gave preferential treatment to a "secondary queue" (the supplemental queue). Staff proposes that its recommendations and objections by The Solar Alliance be considered by the Board in conjunction with its review and consideration of the 2009 Budget, which will contain a more detailed discussion of the proposal.

3. Group Three: Applications for residential solar projects to be submitted to the new Renewable Energy Program: Customer Sited in 2009.

The OCE recommends that specific details regarding the rebate level for new applications submitted in 2009 and the right of participation given to customers formerly on the queue but not served by the 2008 CORE budget be addressed by the Board in its consideration of Honeywell's 2009 compliance filing in the context of the 2009 Budget.

DISCUSSION AND FINDINGS

The Board has carefully reviewed and considered the comments submitted by stakeholders and interested members of the public along with OCE's recommendations and has taken note of the current recession and difficult economic conditions. The newly enacted federal ITC may change project economics for residential solar projects. However, in light of current difficult economic conditions, the new financial stress under which many customers are already laboring, and the probable difficulty of obtaining additional financing at this time, any improvement in incentives may well be more theoretical than actual.

Reducing rebates could possibly free up limited rebate dollars to offer rebates to additional customers. However, the Board's desire to serve additional customers must be balanced not only against the Board's interest in treating customers fairly but also against the actual conditions under which those customers could be obliged to seek financing for a larger portion of the system cost than anticipated when the customer submitted its application. Due to the recession and resulting difficult economic conditions it appears more appropriate to maintain rebate levels and facilitate the installation of specific projects to which customers have already made some degree of commitment than to reduce incentives for those customers and trust to the ability of customers, whose applications have not yet been approved, to meet program requirements and install additional generation. The Board notes that it may well have made a different policy decision were it not for the current recession and difficult economic conditions.

In addition to the ITC and CORE rebate, the Board recognizes other incentives available to customers and believes that it is appropriate to consider whether to reduce the length of time during which a solar project can generate Solar Renewable Energy Credits ("SRECs"). For example, the current 15 year period during which a solar project may generate SRECs may be reduced to a lesser number of years. Such a reduction, if approved, would be applicable to

those projects installed after December 31, 2008, which receive CORE rebates.⁷ This potential reduction would be added for discussion in the on-going stakeholder process.

Based on the foregoing, the Board makes the following findings. The Board **FINDS** that it may take time for a customer to realize the benefits of a tax credit. The Board further **FINDS** that reducing rebate levels by one to two dollars per watt would decrease the rebate for a 10 kW system by \$10,000 or \$20,000 respectively. The Board **FINDS** that the National Bureau of Economic Research has determined the United States economy is in a recession which began in December 2007. The Board also **FINDS** that a household in receipt of a rebate commitment letter may be unable to shoulder the increased financial burden resulting from a lower rebate given the recession and current economic conditions. The Board **FINDS** that additional financing for solar energy projects may be more difficult to obtain in the current economic climate. The Board **FINDS** that the benefits of the increased federal ITC for solar energy systems placed in service after December 31, 2008 may be insufficient to compensate customers for a reduction in rebate level. The Board **FINDS** that a reduction in rebate levels, given the current difficult economic conditions, may result in customers withdrawing from solar projects and a reduction in the amount of solar generation installed in the State. The Board **FINDS** that the solar industry may be negatively impacted if orders are cancelled or are not placed due to a reduction in rebate levels and/or current difficult economic conditions. The Board, therefore, **CONCLUDES** that due to the recession and resulting difficult economic conditions it is appropriate to maintain rebate levels for applicants in the first two groups as set forth below.

The Board **FINDS** that the determination of the appropriate rebate levels for customers who apply to the proposed new 2009 Renewable Energy Program: Customer Sited or currently hold a place in the supplemental queue and do not receive a rebate commitment from the 2008 CORE budget are more appropriately addressed in the context of the Board's consideration of the 2009 Budget.

Therefore, the Board **HEREBY DIRECTS** Board Staff to authorize Honeywell to:

1. Proceed with payment of rebates at levels in commitment letters to those applicants in possession of rebate commitment letters who have fulfilled all program requirements for payment.
2. Issue rebate commitment letters to qualified applications for residential solar projects appropriately submitted to the CORE program that have not received rebate commitment letters (projects in the queue) and can be reached utilizing the remaining 2008 CORE program budget. Projects in the supplemental queue that are not reached utilizing the 2008 CORE program budget and the proposal to offer those projects the first opportunity to participate in the new 2009 Renewable Energy Program: Customer Sited will be considered in the context of the 2009 Budget.
3. The Board will determine specific rebate levels for applications for residential solar projects to be submitted to the Customer Sited Renewable Energy Program in 2009 in its consideration of Honeywell's 2009 compliance filing in the context of the 2009 Budget.

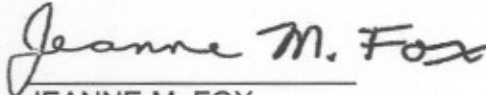
The Board **FURTHER DIRECTS** Staff to add the following issue to the ongoing stakeholder process on revisions to the Renewable Portfolio Standards and Solar Renewable Portfolio

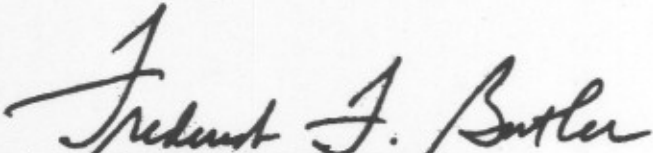
⁷ The Board's discussion and decision in this matter does not apply to customers with rebate commitment letters that pre-date the revised language.

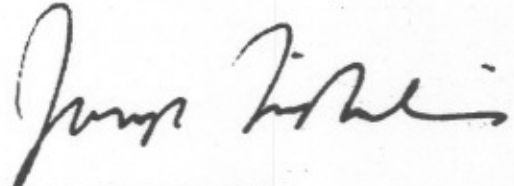
Standards: consideration of the possible reduction of the time during which a solar project can generate Solar Renewable Energy Credits. Such a reduction, if approved, would be applicable to those projects installed after December 31, 2008, which receive CORE rebates.

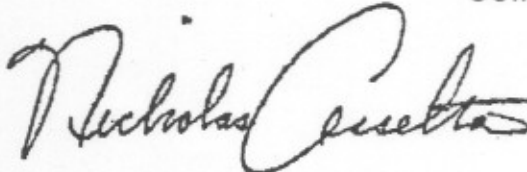
DATED: 12/31/08

BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER

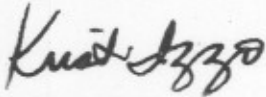

NICHOLAS V. ASSELTA
COMMISSIONER

DISSENTING OPINION OF COMMISSIONER ELIZABETH E. RANDALL

I dissent from the majority ruling because of my colleagues' unwillingness to modify the rebate levels for the Group One recipients described above. In light of the recent changes to the federal ITC, I would have modified the rebates for those projects which received the following notice in rebate commitment letters, "[c]onsistent with Board policy, if this project is eligible for any new Federal tax incentives the program manager will modify the final rebate amount to off-set part or all of anticipated additional tax benefits."


ELIZABETH E. RANDALL
COMMISSIONER

ATTEST:


KRISTI IZZO
BOARD SECRETARY

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

