



Agenda Date: 12/20/07
Agenda Item: 8D

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.nj.gov/bpu

CLEAN ENERGY

IN THE MATTER OF COMPREHENSIVE ENERGY)	ORDER MODIFYING
EFFICIENCY AND RENEWABLE ENERGY RESOURCE)	SMART GROWTH RESTRICTIONS
ANALYSIS FOR 2005 – 2008: 2007 PROGRAMS AND)	AND COMBINED HEAT &
BUDGETS: COMPLIANCE FILINGS)	POWER ELIGIBILITY
)	

DOCKET NO. EX04040276

(SERVICE LIST ATTACHED)

BY THE BOARD:

BACKGROUND

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:

- 1 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.

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

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.

SUMMARY OF PUBLIC COMMENTS AND AGENCY RESPONSES:

The following persons submitted timely comments on Staff's recommendations:

The Division of Rate Counsel, Department of the Public Advocate

COMMENT: The Department of the Public Advocate, Division of Rate Counsel (Rate Counsel) submitted comments by letter dated December 12, 2007. Rate Counsel commented that: "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 of 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 the exempted project 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."

RESPONSE: The Board appreciates Rate Counsel's comments on the proposal to modify the Compliance filings of Honeywell International, Inc. and TRC, Inc. to include existing regulatory standards for exemption from requirements for the cost of extensions to serve developments in an area not designated for growth as set forth in N.J.A.C. 14:3-8.8(h) and (i). The Board appreciates Rate counsel's comments in support of the "significant public good" standard set forth in N.J.A.C. 14:3-8.8(h). With respect to the concerns expressed by Rate Counsel about the "extraordinary hardship" criteria set forth in N.J.A.C. 14:3-8.8(i) the Board notes that it received and comments to the contrary when the this rule was adopted stating that the criteria would be too difficult to meet and responded that the "unique circumstances" term used in the extraordinary hardship standard is commonly used in federal and state environmental statutes (see 36 N.J.R. 5944).

John F. Stanziola, South Jersey Gas

COMMENT: South Jersey is supportive of the Board's proposed amendment and believes this is a good but extremely small step toward achieving the aggressive goals and objectives of the State regarding conservation and energy efficiency. [South Jersey] urge[s] the Board to do more.

RESPONSE: The Board appreciates the commenter's support of the proposed amendment and acknowledges the commenter's encouragement to do more.

COMMENT: If New Jersey is to achieve the aggressive goals contained within the Energy Master Plan and the Governor's Greenhouse Gas Initiative, South Jersey believes that the State needs to take advantage of all potential conservation and energy efficiency opportunities including opportunities which exist in non-smart growth areas. [South Jersey] therefore suggest[s] that the Board review and reconsider regulations and policies relative to Clean Energy Program services, extensions of service and conversions for new construction housing in non-smart growth areas. It is South Jersey's opinion that these must be realigned in order to be fully supportive of the State's Smart Growth, Energy, Environmental and Affordable Housing policies. [South Jersey] believe[s] this current process coupled with the readoption of Chapter 3 regulations provides an excellent opportunity for the Board to take further action in this regard.

RESPONSE: The Board appreciates the commenter's recommendations. The many policies of the Board and the State will be reexamined in light of the Energy Master Plan and the Governor's goals on green house gas and energy efficiency. The Board would welcome further input from the commenter in these forums and those mentioned in this comment.

R. William Potter, Potter and Dickson.

By letter dated November 30, 2007, the Board received comments listing this docket number as well as several other docket numbers. Review of these comments reveals that they are


unrelated to Staff's recommendations, which are the subject of this Order. The Board will address these comments in the appropriate forum.

FINDINGS AND CONCLUSIONS

The Board HEREBY FINDS it is in the public interest to modify the Compliance Filings previously adopted in its Order of August 1, 2007 as set forth in the attached modified Compliance Filings of Honeywell International, Inc. and TRC, Inc. The Board HEREBY ADOPTS 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, 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 DIRECTS the OCE Staff to update the SmartStart Buildings Program, the Residential Gas and Electric HVAC Program, the Residential New Construction Program and CHP Program on its website and other media to reflect this Order.

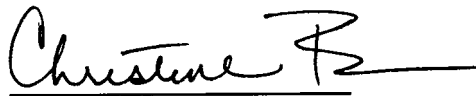
DATED: 12/27/07

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