Agenda Date: 9/16/09
Agenda Item: 8B

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 EFFICIENCY AND RENEWABLE ENERGY RESOURCE ANALYSIS FOR 2009-2012: POLICY REGARDING CAPS ON THE LEVEL OF COMMERCIAL AND INDUSTRIAL PROGRAM INCENTIVES AVAILABLE TO ANY SINGLE ENTITY	)	ORDER DOCKET NO. EO07030203

(SERVICE LIST ATTACHED)

BY THE BOARD:

By this Order, the Board of Public Utilities ("Board") renders its decision regarding proposed changes to its policy concerning annual caps on the level of Commercial and Industrial (C&I) energy efficiency program incentives available to any single entity.

Background

The Electric Discount and Energy Competition Act of 1999 (EDECA) requires the BPU to determine the programs to be funded within the societal benefits charge, now known as the New Jersey Clean Energy Program (NJCEP). N.J.S.A. 48:3-60a(3). Among other considerations, EDECA requires that the Board make these determinations "with the objective of transforming markets." Ibid. By Order dated September 30, 2008, Docket No. EO07030203, the Board concluded its third Comprehensive Resource Analysis under EDECA; set funding levels of $245 million for 2009; and allocated that funding level to major program sectors, such as the C&I sector.

Recent changes to the C&I energy efficiency programs approved by the Board significantly increased the level of incentives available to those customers. Specifically, by Order dated January 8, 2009, Docket No. EO07030203 (January 8th Order), the Board approved 2009 programs and budgets for New Jersey's Clean Energy Program (CEP). In the January 8th Order, the Board approved an increase in the maximum available incentive from $200,000 to $500,000 for the C&I Construction program. The Board also approved changes to the Pay-for-Performance program, which increased incentives for certain classes of customers up to $2 million per electric account; $2 million per gas account; and an additional $1 million if a project installs a combine heat and power (CHP) system. As a result, a single Pay-for-Performance project is now eligible for an incentive of up to $5 million. These increased incentives available to C&I customers led the Office of Clean Energy (OCE) to consider whether a possible cap on the level of incentives available to any single entity was appropriate for the C&I programs.

The NJCEP offers limited incentives to customers that install energy efficiency measures. The proposed entity caps discussed below are intended to ensure that funds are available to multiple entities and that no single entity receives a disproportionate amount of the funding. For example, the rebate component of the 2009 budget for the Pay-for-Performance program is $21.766 million. If a single entity were to apply for the maximum level of rebate available of $5 million for two projects, the entity could consume almost half of the statewide rebate budget. OCE Staff believes this would result in a disproportionate level of the available statewide funding going to a single entity.

To maintain the fiscal integrity of the Customer On-site Renewable Energy (CORE) and focus on market transformation, the Board imposed limits on the amount of money allocated to individual solar projects by Order dated December 23, 2004, Docket No. EO04121550 (December 23rd Order). Specifically, the Board established a maximum rebate amount of $2.5 million per year, per entity, with eligibility for rebates limited to an aggregate amount not to exceed $5 million over two years. Once an entity received the aggregate of $5 million from the CORE program, that entity was not eligible for CORE funding until, at a minimum, one year had passed.

The December 23rd Order adopted a definition of a public entity, and by Order dated July 7, 2005, Docket No. EO04121550, the Board approved a definition of a private entity, to be used for determining the applicability of the CORE program entity cap.

In light of the foregoing, the OCE discussed the need for a possible entity cap with TRC, the C&I Energy Efficiency (EE) Market Manager. With the goal of ensuring that no single entity received a disproportionate amount of the available funding, TRC developed a proposed entity cap. The proposed entity cap was discussed at the August 18, 2009 meeting of the EE Committee of the Clean Energy Council. No participants in the EE Committee meeting objected to the proposed entity cap. Therefore, the OCE and TRC finalized the proposed entity cap for consideration by the Board.

The proposed C&I entity cap set out below utilizes the definitions of an entity previously approved by the Board in the above cited orders and uses the Orders approving CORE program entity caps as guidance.

Proposed C&I Program Entity Caps

The following sets out the C&I entity caps proposed by TRC:

In order to ensure that the C&I programs achieve their goals as equitably and efficiently as possible, a maximum annual per entity incentive cap shall be established which will be in addition to existing program incentive caps. The following summarizes the existing program incentive caps and proposed annual entity cap.

Existing Program Incentive Caps:

SmartStart Program - $500,000 per electric account and $500,000 per natural gas account, per calendar year. A customer is defined as a utility account.

Pay for Performance Program - $1 million per electric meter and $1 million per natural gas meter per calendar year. An additional $1 million is available for entities that include a CHP system as part of their Energy Reduction Plan and installed measures.

The annual incentive cap is $2 million per electric account and $2 million per gas account (plus up to $1 million for CHP) for the following types of customers: hospitals, certain non-profits, universities, governmental entities not receiving Energy Efficiency and Conservation Block Grants (EECBG) and affordable multi-family ("affordable" is defined as low income, subsidized, HUD, etc.).

A Pay-for-Performance project is defined as a single building owned by an entity, which has met Pay-for-Performance eligibility requirements and is, or will be, participating in the Pay-for-Performance program. If a project possesses more than one electric account and more than one gas account, the multiple electric accounts will be treated as a single electric account and the multiple gas accounts will be treated as a single gas account, and the project will be held to the above mentioned cap.

The Pay-for-Performance program will also accommodate campus-style facilities, which will be held to the above mentioned project and annual entity cap. That is, the campus will be held to the entity cap, not the individual buildings on the campus. A campus-style facility is one where all of the following conditions apply:

1 There are two or more Pay-for-Performance-eligible buildings that are located on the same or adjacent properties
2. Buildings are owned by a single company or organization
3. The campus is master-metered
4. The two or more Pay-for-Performance-eligible buildings will be submitted under one Energy Reduction Plan. The Minimum savings will not be calculated on the individual buildings but on the savings achieved in total for all the buildings included in the Energy Reduction Plan.

Definition of an Entity:

An entity is defined as follows:

- Public – having distinct and separate budgetary authority
- Public Schools – having distinct and separate budgetary authority
- Private – Non-residential companies including all related subsidiaries and affiliates regardless of separate EIN numbers or locations within New Jersey

Proposed 2009 Entity Caps:

If an entity brings more than one project through the NJCEP in one calendar year, in addition to the project caps defined above, that entity will be subject to an annual entity cap. Application approval (SmartStart) and Energy Reduction Plan approval (Pay-for-Performance) are the milestones used to determine the incentive. Therefore, those same milestones will be used in determining proximity to the entity cap.

Annual Entity Cap:

An annual entity cap of $4 million per entity, per year, or $5 million per entity, per year if the project(s) includes installation of a CHP project, shall be established through December 31, 2009. Projects developed by the State of New Jersey Office of Energy Services shall be exempt from any entity caps. Staff recommends that the Board revisit the issue of entity caps for 2010 and beyond in the context of the 2010 program and budget Order

Entity Cap "year":

The C&I program will use a calendar 12-month period for tracking entity cap limits. Once the entity cap limit for applications has been reached, based on approved applications or Energy Reduction Plans, the earliest an entity may apply for subsequent incentive funding is January 1st of the following year.

Incentives received under the SmartStart and Pay for Performance Programs count toward the annual incentive cap. Incentives received under the Local Government Energy Audit or TEACH Programs do not count toward annual incentive caps. Further, due to the size of the customer segment, there are no caps related to the Direct Install Program.

Furthermore, non-profits are defined as organizations that are exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

Discussion and Findings

The Board has previously approved entity caps for the CORE program as a means of ensuring limited rebate funding is allocated to multiple customers and that no single entity receives a disproportionate level of funding. The Board found that such entity caps were necessary to facilitate market transformation, one of the goals of EDECA. Given the increased rebates available to C&I customers, the Board concurs with OCE Staff that entity caps are appropriate for the C&I programs.

The Board has reviewed the entity caps proposed by TRC and **HEREBY FINDS** that the definitions of an entity are consistent with those previously approved by the Board for the CORE program. The Board **FURTHER FINDS** that establishment of an entity cap for C&I programs will further the goals of EDECA. The Board **FURTHER FINDS** that the proposed entity caps are reasonable and will ensure that no single entity receives a disproportionate share of the funding.

Therefore, the Board **HEREBY APPROVES** the C&I program entity caps set out above.

The Board **HEREBY DIRECTS** the Office of Clean Energy to assess the impact of the entity cap on the programs and budgets and to provide recommendations regarding whether the Board should continue the entity cap approved herein or modify the entity cap when the Board considered the 2010 programs and budgets.

DATED: 9/29/09

BOARD OF PUBLIC UTILITIES
BY:

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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

Kristi Izzo