Agenda Date: 4/14/10
Agenda Item: 8E

STATE OF NEW JERSEY

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

DIVISION OF ENERGY &
OFFICE OF CLEAN ENERGY

IN THE MATTER OF ENERGY EFFICIENCY PROGRAMS AND ASSOCIATED COST RECOVERY MECHANISMS	)	DECISION AND ORDER DOCKET NO. EO09010056
IN THE MATTER OF THE PETITION OF NEW JERSEY NATURAL GAS COMPANY FOR APPROVAL OF ENERGY EFFICIENCY PROGRAMS WITH AN ASSOCIATED COST RECOVERY MECHANISM	)	DOCKET NO. EO09010057

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Jessica Campell and Alex Moreau, DAGs, Division of Law, Newark, New Jersey, on behalf of the Staff of the Board of Public Utilities

BY THE BOARD:

This Order addresses a request by New Jersey Natural Gas Company ("NJNG" or "Company") to assume funding responsibility for an energy efficiency program approved by the New Jersey Board of Public Utilities ("Board") in its Order dated July 17, 2009, Docket Numbers EO09010056 and GO09010057.

BACKGROUND

As stated above, on July 17, 2009, the Board approved a stipulation ("Stipulation") in this docket signed by the Company, Board staff ("Staff"), and the Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel") which set the terms under which the Company would begin providing certain energy efficiency services ("EE Program") to its customers and recovering for these services in rates ("July 17 Order"). One of the EE Programs covered by the Stipulation is the Home Performance with Energy Star ("HPES") program which provides customers with incentives for three tiers of efficiency measures for their homes, with ascending levels of extent and incentive levels: Tier I, an energy audit; Tier II, air sealing services; and Tier III, a comprehensive package of energy efficiency services, including insulation, HVAC measures, and other recommended measures. The level and operation of these incentives is described in Exhibits 1, 2 and 5 of the Stipulation.

On November 17, 2009, the Company filed a letter with the Board, copying Staff and Rate Counsel, requesting consideration of two proposed modifications to the HPES program included in the EE Program approved by the Board. The Company sought to provide Tier I audit services to customers, in place of those provided by the New Jersey Clean Energy Program ("NJCEP") which would be phased out in 2010, and to begin funding customer incentives for Tier II and Tier III measures.[1] The Company referenced the Stipulation's procedures for seeking a modification which require that the signatory parties be provided with written descriptions of the proposed modifications, their rationale, and narratives and schedules showing the impact upon the costs and benefits of the affected programs.[2] The Stipulation further states that if no objections are received within forty-five days, the Company shall present the proposed modifications to the Board. Stipulation at par. 15.

The Company having consented to an extension of the forty-five days, Rate Counsel filed objections to the proposed modifications on January 20, 2010. With respect to the Company's proposal to fund Tier II and Tier III measures, Rate Counsel made four arguments: that the Stipulation provided for Company funding of these incentives only if the NJCEP needed budget relief and that no such showing had been made; that the Company had not provided documentation of participation rates in support of its claim that its funding of incentives would increase participation; and that even in the event that NJCEP funds were near exhaustion, the first source of additional funding should be the transfer of unused funds from other NJCEP energy efficiency programs, pointing to the use of such transfers to supplement program budgets in previous years. Lastly, Rate Counsel stated that funds to pay for the Tier II and Tier III incentives would likely be diverted from funds for the Company's own zero-financing program for HPES, resulting in a reduction of the number of installations and energy savings under that portion of its program.

By letter dated February 22, 2010, the Company stated for the first time that it had notified the other parties to the Stipulation of its proposal to fund HPES Tier II and Tier III incentives only as a courtesy, and that the Stipulation itself provided for the Company's funding of these incentives as of January 1, 2010 citing Exhibits 1 and 2 to the Stipulation ("NJNG-1", "NJNG-2"). The Company further stated that the costs of these incentives were included in the $16.6 million investment approved by the Board in the July 17 Order, citing to Exhibit Five ("NJNG-5") in which the costs of "HPES Seal-Up" and "HPES Rebate" are identified among the costs approved as part of the budget.

In a response filed on February 25, 2010, Rate Counsel asserted that the Stipulation expressly identified the proposed funding of Tier II and Tier III incentives as a "modification" that "could" be made. NJNG-1 at 1. Rate Counsel also reiterated its argument that funding responsibility could shift to the Company only to provide budget relief to NJCEP and that, in the event there was such a need, NJCEP budgeting history indicated that funds could be transferred from unspent funds for other programs. Rate Counsel noted that Staff had not provided any evidence that additional funding for HPES was not available.

[1] The Company subsequently withdrew its proposal to provide HPES audit services.
[2] The Company did not attach schedules to its letter.

The Company responded on the same day, stating that the intent of the parties had been to include the transfer of funding responsibility to the Company as of January 1, 2010 within the Stipulation, and that the use of the term "modification" did not change that intent. In addition, the Company stated that it had fully complied with the Stipulation's requirements for proposing a modification by filing its letter and by providing all parties with a chance to review and respond to its proposal.

Staff has reviewed the parties' submissions and noted Rate Counsel's concerns with respect to a demonstration of program demand, the need for budget relief for NJCEP, and the possibility of providing such relief through the transfer of unspent funds to HPES from other NJCEP programs. Staff submits that the information on program demand and funding available from the reports of Honeywell International, Inc., the Board's market manager for residential energy efficiency programs, responds to these concerns.

The market manager's reports, available on the NJCEP website, indicate that approved installations and projected approvals and expenditures for 2010 evidence a rising demand such that NJCEP budgeted funds for HPES are projected to be exhausted well before the end of calendar year 2010. The Clean Energy Program Financial Report for January 2010, available under Financial Reports on the NJCEP website, demonstrates that as of the end of January, expenditures and outstanding commitments equaled over $16 million, or almost 40% of the $42 million annual budget. [3]

Staff also investigated the possibility of meeting the projected HPES budget shortfall by transferring unused funds from other NJCEP energy efficiency programs. However, by Executive Order 14, issued on February 10, 2010, Governor Christie declared a fiscal emergency in the State of New Jersey, and ordered the Director of the Division of Budget and Accounting within Treasury to identify and place into reserve funds sufficient to ensure that the State budget would remain in balance. On that authority, Treasury placed $158 million of the Clean Energy Trust Fund into reserve. Those funds were previously a part of the NJCEP 2010 budget, so that implementation of the Executive Order requires the Board to modify the 2010 NJCEP budget to align the budget with currently available funds.

This $158 million reduction from an approved 2010 NJCEP budget of approximately $555 million represents a reduction in funding of roughly 28%. On March 18, 2010, the Board's Office of Clean Energy ("OCE") posted for stakeholder input a straw proposal for measures to reflect this loss, including elimination, scaling back, and deferral of programs, including HPES ("Straw Proposal"). The program reductions in the Straw Proposal, as modified by consideration of stakeholder input, will be presented to the Board for its consideration.

Given the unique circumstances of the current calendar year's budget, Staff submits that historical funding patterns do not provide useful guidance. Surplus funds available for transfer to HPES are unlikely to be located in any of the NJCEP programs at this time.[4]

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[3] See, www.njcleanenergy.com/files/file/Library/Monthly%20PTG%20Report-%20$20January%202010.pdf

[4] The Board notes that the Straw Proposal included as one source of funding to help preserve HPES funding, "[c]oordinate with NJN to pay T2 & T3 incentive to participants in their service territory ($5M)." Straw Proposal at 5.

Staff has reviewed the Company's claim that there will be no change in its investment in its EE Program and no additional rate impact for its customers and believes it to be valid. The Stipulation approved by the Board identifies the costs of the HPES Seal-Up (Tier II incentives) and HPES Rebate (Tier III incentives) within the exhibits. NJNG-5 at 1, lines 1-2. In a separate line item, the Board approved the cost of the provision to customers of zero-percent financing for certain Tier II and Tier III measures. Ibid. Since these costs were included in the budget, the rates derived from the associated revenue requirements should not change barring some unforeseen circumstance. Also based on that review Staff concluded that the costs of the line item for zero-percent financing will not be shifted to cover the costs of providing incentives for Tier II and Tier III.

Staff recommends approval of the Company's petition to begin funding Tier II and Tier III of the HPES program.

DISCUSSION AND FINDINGS

In approving the Stipulation, the Board noted the benefits to customers of improved energy efficiency, including reducing energy costs over the long term and providing the most cost-effective means of lowering power plant emissions of air pollutants. The Board also recognized the need for more "whole building" approaches that identify and implement all cost-effective efficiency measures – the type of approach exemplified by Tier III of the Home Performance with Energy Star program. In addition, the Board placed the development of these filings in the context of the long-range goal to "successfully and efficiently transition the State's energy efficiency programs to the utilities and effectively put the State on track to meet its 2020 energy consumption targets." July 17 Order at 9-10.

The Board **FINDS** that the funding of the HPES Tier II and Tier III incentives by the Company is in accordance with the goal of shifting the State's energy efficiency programs to the utilities. Based on its review of the record and Staff's recommendation, the Board **FINDS** that a rising demand for the HPES program is projected to exceed NJCEP funding before the end of this calendar year. The Board further **FINDS** that due to the NJCEP loss of $158 million in funding from its budget for calendar year 2010, the possibility of transferring funds from other EE programs to HPES to make up the projected shortfall is remote.

Therefore, the Board **HEREBY APPROVES** the Company's request to begin funding the incentives for Tier II and Tier III of the HPES program for its customers, effective as of first day of the month following the date of this Order.

The Board **DIRECTS** the Company to report upon these modifications in its Monthly Activity Reports, as required by the Stipulation.

DATED: 4/16/10

BOARD OF PUBLIC UTILITIES
BY:

LEE A. SOLOMON
PRESIDENT

JEANNE M. FOX
COMMISSIONER

JOSEPH L. FIORDALISO
COMMISSIONER

NICHOLAS ASSELTA
COMMISSIONER

ELIZABETH RANDALL
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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