Agenda Date: 6/18/10
Agenda Item: 8C

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

OFFICE OF CLEAN ENERGY

IN THE MATTER OF THE 2009 STATE ENERGY PROGRAM - AMERICAN RECOVERY AND REINVESTMENT ACT - FUNDING PLAN – REVISED MEMORANDUM OF UNDERSTANDING WITH THE NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY (HMFA); MEMORANDUM OF UNDERSTANDING WITH THE OFFICE OF ENERGY SAVINGS (OES); AND MEMORANDUM OF UNDERSTANDING WITH THE ECONOMIC DEVELOPMENT AUTHORITY (EDA)	ORDER DOCKET NO. EO09030210 DOCKET NO. EO09070542 DOCKET NO. EO09070543 DOCKET NO. EO09070544

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BY THE BOARD:

This Order memorializes action taken by the Board of Public Utilities ("Board") at its June 18, 2010 Agenda meeting.

BACKGROUND

President Obama signed the American Recovery and Reinvestment Act of 2009 ("ARRA"), Pub. L. No. 111-5, 123 Stat. 115, on February 17, 2009. ARRA is intended to stimulate the economy and to create as well as retain jobs by, among other things, investing in certain energy initiatives. To that end, section 410 of ARRA appropriates funding to the United States

Department of Energy ("USDOE") for the approval of additional formula-based grants through the State Energy Program ("SEP"), above and beyond the grants traditionally provided to the States through the SEP.

The SEP is a joint state-federal initiative intended to promote the conservation of energy, reduce the rate of growth of energy demand, and reduce dependence on imported oil. 42 U.S.C. § 6321. These goals are attained through the development and implementation of comprehensive state programs that are financially supported by the USDOE. Federal laws and regulations establish set criteria for participation and define, in general terms, how funds may and may not be used. 42 U.S.C. § 6321 et seq.; 10 C.F.R. § 420 et seq. States must comply with the USDOE rules governing these financial awards.

For ease of reference, the additional support for the State Energy Program through the ARRA shall be collectively referred to as SEP-ARRA.

The Board is designated as the State entity "to apply for, receive, and expend" federal funding made available to the State for energy initiatives, such as SEP-ARRA. See N.J.S.A. 52:27F-11m. An Initial Application for SEP-ARRA funds was submitted on March 23, 2009 on behalf of the State of New Jersey. The Initial Application was discussed at the Board's March 27, 2009 special agenda meeting. The second step of the application process required the Board to submit a comprehensive application package by May 12, 2009 to the USDOE. The Board prepared and submitted an application package conforming to the USDOE's instructions and containing all required information and attachments. At its May 14, 2009 Agenda meeting, the Board authorized the submission of the comprehensive application package to the USDOE, as within time.

The Board received approval of its comprehensive application package ("SEP-ARRA approval") from the USDOE on August 25, 2009. New Jersey was allocated $73,643,000 in SEP-ARRA funding pursuant to its SEP-ARRA approval, which provides for the following programs:

- Energy Efficiency Upgrades for State Buildings ($6M);
  Grants for State Sponsored Renewable Energy and Energy Efficiency Projects ($20.6M);[1]
  Energy Efficiency Programs through the Clean Energy Program ($17M);
  Financing Program for Residential Solar ($7M);
  Low-Interest Loan Program for Residential Energy Efficiency ("HESP") ($4M);
  Multifamily Energy Efficiency Improvement Pilot ("MEEIP") ($4M); and
  Grants for Energy Efficiency, Renewable Energy and Alternative Energy Applications ($15M).

Consistent with federal law, the programs included in the comprehensive application package were designed to supplement the State's existing programs, including certain of the New Jersey Clean Energy Program ("NJCEP"). 42 U.S.C. § 6323(d).

Legislation, L. 2009, c. 34, was enacted in March 2009 that appropriated $60 million from the Retail Margin Fund ("RMF") to support Combined Heat and Power ("CHP") projects. Id. at § 3.

[1] At its June 18, 2010 agenda meeting, the Board corrected its prior award in its Order dated October 26, 2009 In the Matter of Funding in the Amount of $20.6 Million from the State Energy Program of the American Recovery and Reinvestment Act for Competitive Grants Involving Innovative Energy Efficiency and Renewable Energy Projects by State Entities-Amended Award, BPU Docket No. EO09060470.

At its July 1, 2009 agenda meeting, the Board approved the issuance of a solicitation for a program funded through the Retail Margin to provide incentives to eligible large commercial and industrial customers in New Jersey for the development of CHP projects ("RMF-CHP Program"). The solicitation was posted on the Board and New Jersey Economic Development Authority's ("EDA's") websites on July 22, 2009. The solicitation requested that applications be filed by close of business on September 14, 2009. A total of 28 applications were submitted by the September 14, 2009 deadline. These applications represented $548,999,053 in total project costs for the 28 proposed CHP projects, $77,508,247 of which represented requested grant funding from the RM-CHP program. However, no awards were made due to severe budgetary constraints described below.

On February 11, 2010 Governor Christie issued Executive Order 14 in which he declared a state of fiscal emergency exists in the State of New Jersey by reason of the facts and circumstances set forth therein including a projected funding shortfall for State Fiscal Year 2010 of approximately $1.333 billion ("EO 14"). Pursuant to N.J.S.A. 52:27B-26, the Governor ordered the Director of the Division of Budget and Accounting within the Department of Treasury ("Treasury") to identify and place into reserve, funds sufficient to meet the State constitutional mandate to maintain a balanced State budget. On that authority, the Director of the Division of Budget and Accounting identified and placed in reserve an amount sufficient to ensure that the State budget remained balanced, including $128 million from the Retail Margin Fund and $158 million from the Clean Energy Trust Fund maintained for the NJCEP programs. The $158 million of Clean Energy funds were transferred to the General Fund pursuant to a supplemental appropriation to the FY 2010 Appropriations Act. The $128 million of Retail Margin Fund monies placed into reserve lapsed into the General Fund pursuant to General Provision No. 1 contained in the FY 2010 Appropriations Act.

The Board **FINDS** that such Clean Energy Funds and the Retail Margin Funds are unavailable to the Board. The Board further **FINDS** that, based on the number of applications submitted to the RMF-CHP program, a significant number of CHP projects would benefit from financial incentives.

EDA's SEP-ARRA Program

The SEP-ARRA plan allocated $15 million to the New Jersey Economic Development Authority ("EDA") to fund Grants for Energy Efficiency, Renewable Energy and Alternative Energy Applications. On April 22, 2010 EDA issued a solicitation for proposals which had a submission deadline of June 3, 2010. Only one applicant submitted a response to the solicitation and that application was subsequently disqualified by EDA. The Board **FINDS** that the solicitation for the EDA's SEP-ARRA Program did not result in the award of any ARRA funds and **CONCLUDES** that the entire $15 million must be reprogrammed in a way that can deliver on the economic stimulus objective and meet the ARRA requirements, including the ARRA timeframes. To this end, the BPU and EDA proposed developing a CHP program utilizing $18 million in SEP-ARRA funds.

On June 15, 2010, representatives of the Governor's Policy Office, Treasury, the Board, the Housing and Mortgage Finance Agency ("HMFA"), EDA, and the Office of Energy Savings ("OES") met to discuss the options for EDA's SEP-ARRA Program and agreed to recommend that up to $15 million of the SEP-ARRA funding allocated to the EDA be used to fund a new CHP program ("ARRA-CHP Program"). In addition, HMFA agreed to reduce its previously approved allocation of $15 million by up to $5 million in order to provide the remainder of the $18 million needed for this CHP program. In making this recommendation, it was recognized that EDA had partnered with the BPU in the RMF-CHP solicitation and would be in a position to issue a new solicitation for the ARRA-CHP Program in a timely manner. It was also recognized, based on the RMF-CHP solicitation, that there is significant demand for CHP projects and the demand for incentives for "shovel ready" CHP projects is estimated to be at least $18 million.

Staff recommends that a new ARRA-CHP program be developed as set forth herein and be administered by EDA as its ARRA program. The proposed new ARRA-CHP program would involve reprogramming the $15 million in ARRA-SEP funds allocated to the EDA plus an additional $3 million in SEP-ARRA funds reallocated from HMFA. The $3 million would require the reduction of the MEEIP and HESP budgets by $1.5 million each and the Residential Solar budget would remain the same. The reprogramming of the SEP-ARRA funds for EDA and reallocating the SEP-ARRA funds from HMFA will require submission of an Amendment of the BPU's SEP-ARRA Plan to the USDOE for approval as well as modifications to the existing Memorandums of Understanding ("MOU") with HMFA and EDA. It will also require a statutory reallocation of these SEP-ARRA funds by the Treasurer and OMB, pursuant to such authority in the State FY 2010 and FY 2011 Appropriations Act, upon approval of the Amended SEP-ARRA Plan by the USDOE.

EDA will develop, in cooperation with Board Staff, a new ARRA-CHP solicitation. This solicitation will utilize certain of the elements from the RMF-CHP program authorized by L. 2009, c. 34, § 3, but will differ in a number of material respects in order to satisfy relevant ARRA requirements, including, but not limited to the following. Since SEP-ARRA funds must be expended by April 30, 2012, applicants will be required to have all relevant permits either in hand or obtainable within specified time frames so that the project can be completed before the April 30th deadline. In addition the incentives will be restructured for up-front costs rather than performance rebates after the project is operational. The new ARRA-CHP program would only fund projects that can be reviewed, permitted, constructed and invoiced by April 30, 2012 as required by ARRA. The proposed program amendment to support the ARRA-CHP program is subject to approval by the USDOE. Final details of the ARRA-CHP program, once approved by USDOE, will be set forth in a solicitation to be issued by EDA.

Office of Energy Savings ARRA Program

The OES, working in conjunction with the State Division of Property Management & Construction ("DPMC"), had originally proposed to utilize SEP-ARRA funding for work with three Department of Human Services' facilities for energy savings initiatives. These campus-type facilities included the New Lisbon, North Jersey and Vineland Developmental Centers. The first energy audit at the New Lisbon Developmental Center, funded with existing State budget appropriations, commenced in the Fall of 2009 and was completed in February 2010. It has been determined by OES, after review of the audit findings, that the best approach for advancing this SEP-ARRA program and achieving all of the stipulated objectives, is to apply the ARRA grant funds allocated to OES, totaling $10.2 million from both the federal Energy Efficiency Conservation Block Grant and SEP-ARRA, for the recommended Energy Conservation Measures that were identified for the New Lisbon facility. In summary, these measures include installation of energy efficient lighting, sensors, chillers, boilers, and insulation throughout this campus, across 35 buildings and approximately 400,000 square feet of space. OES believes that this approach will deliver the most immediate impact on the economy, the environment, and improving the quality of living for facility occupants. An MOU with OES is required and should be substantially similar to those previously executed with HMFA and EDA. Staff has been working with OES to negotiate an MOU. Staff recommends that the Board authorize it to complete negotiations with OES and to submit to the Board an MOU in substantially similar form to the Board approved MOUs with HMFA and EDA regarding their ARRA programs.

SEP-ARRA FUNDS TO SUPPLEMENT CLEAN ENERGY PROGRAM FUNDING

Various programs in the NJCEP, including: Home Performance with Energy Star ("HPES") program; Local Government Energy Audit; and Direct Install have experienced a rapid increase in program participation and reached, or are about to reach, the entire budgeted amount of funds for those programs within the NJCEP. As a result of EO 14, General Provision 1 of the FY 2010 Appropriations Act, and the Supplemental FY 2010 Appropriations Act, see L. 2010, c. 19, certain state funds are unavailable to the Board to provide additional funding for these NJCEP programs. Staff has proposed reallocating NJCEP funds from under-spent program budgets within the NJCEP to these oversubscribed programs to allow these highly popular programs to continue to operate. However, sufficient funds are not available at a level that would allow for all of the NJCEP programs to continue. Accordingly, Staff proposes to supplement NJCEP funding for certain of the over-subscribed programs, which are linked to the Board's approved SEP-ARRA funded Energy Efficiency Programs ("EEP"). Staff's recommendations are discussed below.

The Board, by Order dated December 17, 2009, Docket No. EO07030203 ("2010 Budget Order"), adopted 2010 programs and budgets for the NJCEP including a budget of $42,214,569.88 for the HPES program. The HPES Program is one of the programs tied to the SEP-ARRA program Energy Efficiency Programs through the Clean Energy Program. As noted herein above, EO 14 resulted in the State Treasurer placing $158 million of funds from the Clean Energy Trust Fund into reserve. Following EO 14, Honeywell, the Market Manager for the HPES program, reported to the OCE the application rate for the CEP's Home Performance with Energy Star Program was increasing and that it believed it would reach the program budget limit for 2010 by mid-year. To address this concern, the OCE recommended several program changes that reduced incentive levels and proposed a reallocation of 2010 budgets from other programs to increase the budget for this program. The OCE simultaneously reduced other areas of the overall NJCEP budget, through various measures, to address the Clean Energy Trust Funds that were the placed into reserve which resulted in a net decrease to the 2010 Clean Energy Programs and Budgets of $97 million. By Order dated April 21, 2010 (April 21 Order), in the same docket, the Board approved a revised, increased budget of $54,196,613.57 for the Home Performance with Energy Star program and approved OCE's recommendations to reduce the NJCEP's overall budget by a net decrease of $97 million to ensure compliance with EO 14.

Following the Board's action to revise the budget, in late April 2010, Honeywell received over 1,000 applications for the HPES program, which immediately consumed the additional funding allocated to the program by the April 21 Order. With no available funds in the program budget, the HPES Program was suspended pending the allocation of additional funds necessary to continue accepting new applications. In addition, TRC recently reported that the C&I New Construction, C&I Retrofit, Local Government Energy Audit and Direct Install programs have either reached their budget limits or will do so in the very near future. As a result, the C&I New Construction and Local Government Energy Audit are also both currently suspended. The Board **HEREBY FINDS** that these programs experienced unanticipated increases in participation such that available budgeted funding was quickly exhausted.

At its June 18, 2010 agenda meeting, as memorialized in an Order dated June 21, 2010 in Docket No. EO07030203, the Board considered a number of additional revisions to the 2010 budgets intended to address this recent market activity and ensure that these beneficial programs continued. Following a thorough review of public comments and modifications proposed by the OCE, the Board acted to reallocate funding among several NJCEP programs to, among other things, increases to the budgets of the suspended programs, such as HPES.

The following table shows the 2010 budget changes in the programs affected by the April and June Orders and reflects an overall reallocation of approximately $25 million to the three programs listed below.

A	**B**	**C**	**D**	**E**
Programs	**2010 Budget**	**Revised 2010 Budget**	**2nd Revised 2010 Budget**	**D - B = E**
Home Performance w/ E Star	$42,124,569.88	$54,196,613.57	$62,000,347.08	$19,875,777.20
Local Gov. Energy Audit	$14,987,442.00	$11,232,385.46	$13,232,385.46	($1,755,056.54)
Direct Install	$17,695,999.00	$15,482,976.50	$24,532,976.50	$6,836,977.50
SUBTOTAL	$74,808,010.88	$80,911,975.53	$99,765,709.04	$24,957,698.16

The Board **FINDS** that program budgets for the HPES and Direct Install were increased by the Board's approval of a Revised 2010 Budget, by Order dated June 21, 2010 in Docket No. EO07030203, and that overall, approximately $25 million in NJCEP funds have been reallocated from other Clean Energy programs to the programs identified above since the Board adopted the 2010 Clean Energy Budget in December 2009. Based on recent experience, the Board **FURTHER FINDS** that the continued demand for incentives from HPES, LGEA and Direct Install at their current levels will likely exceed the available funding budgeted for those programs.

As noted above, the approved SEP-ARRA Plan committed $17 million to fund EEP as a program that would supplement existing NJCEP programs and increase the investment in energy efficiency in the State. It was anticipated that the majority of the $17 million would be used for whole building incentives for customers not currently eligible for incentives through the NJCEP, because they do not pay into the societal benefits charge ("SBC"), which provides funding for the NJCEP. EEP would expand the Home Performance with Energy Star, Pay for Performance, Local Government Energy Audit and Direct Install programs to those customers that receive their electricity from a municipal or cooperative electric utility and/or those that use heating oil or propane.

The approved SEP-ARRA Plan only provided EEP incentives for what would not be eligible for the NJCEP. For example, a police station that heats with oil and receives electricity from a municipal electric company that participates in LGEA would be funded through EEP using the SEP-ARRA. On the other hand, if that same building was heated with natural gas, but still had the same electric company, the gas measures would be funded through the NJCEP and the electric measures through the SEP-ARRA. If the building had natural gas heat and received its electricity through an Investor-Owned-Utility, all of the funding for LGEA would come from the NJCEP. As a result, some entities may receive incentives exclusively through the NJCEP or ARRA or may be forced to apply for both programs.

Although the initial intent was to provide incentives for customers ineligible for the NJCEP, the approved SEP-ARRA Plan contained an option whereby SEP-ARRA funding may be used for customers eligible for NJCEP incentives. The language in the approved Plan, with respect to EEP, provides the following:

> If the [SEP-ARRA] funding is not completely utilized for the aforementioned purpose (as set forth herein above) it may also be used for consumers that are eligible for the current Clean Energy Program incentives, but are not participating by providing supplemental incentives in addition to those offered by the Clean Energy Program (we would file an amendment if this happens).

Use of these funds to supplement the NJCEP program budgets will allow for the continuation of the NJCEP programs, which have or will reach their budget limit. At this time, Staff recommends the Board amend the SEP-ARRA Plan to use the portion of the SEP-ARRA funds that are not anticipated to be fully utilized to the NJCEP.

Furthermore, as the Plan is currently approved, some customers must apply to both the EEP program funded through the SEP-ARRA as well as the NJCEP. The Staff no longer believes that this policy is necessary to ensure that SEP-ARRA funds are supplementing and not supplanting State funds. The rapidly increased participation in certain programs within the NJCEP and the resultant depletion of existing NJCEP budgets for those programs eliminates the supplanting concern in this regard. In addition, if there are insufficient funds for the four programs tied to EEP, the lack of available budgeted NJCEP program funds could inhibit the timely expenditure of SEP-ARRA funds, a result contrary to immediate economic stimulus goals of ARRA. Moreover, this action to reallocate the EEP funds will retain and create jobs because of the rapid participation in these programs.

In addition, on April 21, 2010, the US DOE notified SEP-ARRA Grantees that it set a new near-term milestone whereby a minimum of 20% of SEP-ARRA funds are to be drawn down (funds expended/costed) before September 30, 2010. This directive from US DOE adds greater urgency to Staff's recommendation to modify the EEP program as set forth above in order to achieve the goals and meet the requirements of the SEP-ARRA Grant. Therefore, Staff recommends modification of the SEP-ARRA Plan to state that, going forward, the incentives for these projects be paid in full with SEP-ARRA funds rather than requiring customers to apply through both the EEP and the NJCEP.

ADMINISTRATIVE COSTS

Staff also recommends a reduction of the Energy Efficiency Programs through the Clean Energy Program budget by up to one million dollars to be used for administrative costs associated with the implementation of the SEP ARRA programs. The State FY 2010 Appropriation Act provide for administrative costs in the appropriation of ARRA funds consistent with ARRA and federal approvals. Presently the contract Program Coordinator, Applied Energy Group, and Market Managers, Honeywell and TRC, (collectively "contractors") have absorbed the project development costs in their existing budgets. On June 21, 2010 Treasury approved contract modifications for the contractors which permit the use of ARRA funds to pay for the administrative cost of implementing and administering the SEP-ARRA programs. This change is being proposed to reduce the strain on the NJCEP budget, which has been picking up much of the administration costs associated with the implementation of the SEP ARRA programs. Staff recommends that the SEP-ARRA Application be amended to reflect the reallocation of up to one million dollars from the EEP to pay for the administrative costs of implementing and administering the SEP-ARRA programs.

CONCLUSION

The Board **HEREBY APPROVES** Staff's recommendations set forth herein above. The Board **HEREBY AUTHORIZES** Staff to amend the SEP-ARRA application to address the aforementioned modifications to the EDA and HMFA programs, the OES modification and the Energy Efficiency Programs through the Clean Energy Program modifications for resubmission to USDOE and **AUTHORIZES** President Solomon to sign and submit the amended application. The Board **HEREBY AUTHORIZES** Staff to negotiate the modifications to the MOUs with EDA and HMFA which are necessary to implement the changes set forth herein and **AUTHORIZES** the Board President to execute the amended MOUs. The Board **FURTHER AUTHORIZES** Staff to complete negotiations with OES of an MOU, in substantially similar form to that already approved for EDA and HMFA and **AUTHORIZES** the Board President to execute the MOU with OES.

DATED: 7/15/10

BOARD OF PUBLIC UTILITIES
BY:

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ATTEST:
Kristi Izzo
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

IN THE MATTER OF THE 2009 STATE ENERGY PROGRAM - AMERICAN RECOVERY AND REINVESTMENT ACT - FUNDING PLAN – REVISED MEMORANDUM OF UNDERSTANDING WITH THE NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY (HMFA); MEMORANDUM OF UNDERSTANDING WITH THE OFFICE OF ENERGY SAVINGS (OES); AND MEMORANDUM OF UNDERSTANDING WITH THE ECONOMIC DEVELOPMENT AUTHORITY (EDA)

DOCKET NOs. EO09030210; EO09070542; EO09070543 and EO09070544

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