Agenda Date: 5/29/13
Agenda Item: 8E

STATE OF NEW JERSEY
Board of Public Utilities
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CLEAN ENERGY

IN THE MATTER OF THE COMPREHENSIVE ENERGY EFFICIENCY AND RENEWABLE ENERGY RESOURCE ANALYSIS FOR THE YEARS 2009 - 2012: REVISED SMART GROWTH POLICIES

ORDER

DOCKET NOS. EO07030203 and EO10110865

Parties of Record:

Joe Gennello, Honeywell Utility Solutions
Diane Zukas, TRC Energy Services

BY THE BOARD:

In this Order, the Board considers proposed modifications to policies related to the payment of New Jersey's Clean Energy Program incentives in non-Smart growth areas.

BACKGROUND AND PROCEDURAL HISTORY

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. 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 ("CRA") of energy programs, which is currently referred to as the comprehensive energy efficiency ("EE") and renewable energy ("RE") resource analysis. Ibid. After notice, opportunity for public comment, public hearing, and consultation with the New Jersey Department of Environmental Protection ("DEP"), within eight months of initiating the proceeding and every four years thereafter, the Board determines the appropriate level of funding for EE and Class I RE programs that provide environmental benefits above and beyond those provided by standard offer or similar programs in effect as of February 9, 1999. These programs are now called New Jersey's Clean Energy Program (the "NJCEP").

By Order dated April 27, 2007, Docket No. EO07030203, the Board directed the Office of Clean Energy ("OCE" or "Staff") to initiate a third comprehensive EE and RE resource analysis proceeding and to schedule public hearings on program funding and funding allocations for the years 2009 through 2012. By Order dated September 30, 2008 (the "CRA III Order"), Docket No. EO07030203, the Board concluded this proceeding and set funding levels of $245 million for 2009, $269 million for 2010, $319.5 million for 2011, and $379.25 million for 2012. By Order dated December 22, 2010, Docket Nos. EO07030203 and EO10110865, the Board approved 2011 programs and budgets for the NJCEP ("2011 Budget Order") as well as the compliance filings of Honeywell International, Inc. ("Honeywell"), TRC, Inc. ("TRC"), the OCE, and the electric and gas utilities (collectively referred to as "the Utilities"). The compliance filings included program descriptions and detailed budgets for each program. By Order dated December 20, 2011, Docket Nos. EO07030203 & EO11100631V, the Board approved 2012 programs and budgets and by Order dated November 20, 2012, Docket Nos. EO07030203 & EO10110865 the Board approved eighteen month budgets for the period from January 2, 2012 through June 30, 2013.

By Orders dated March 4, 2003 and April 3, 2006, I/M/O the N.J. Clean Energy Program, Docket No. EO02120955 (March 4, 2003) ("March 4, 2003 Order")., and I/M/O the N.J. SmartStart Buildings Programs, Non-Docketed Matter, (April 3, 2006) ("April 3, 2006 Order"), the Board adopted policies regarding the availability of NJCEP incentives in both areas designated for growth and areas not designated for growth which are described more fully below. In this Order the Board will consider modifications to the policies set out in the March 4, 2003 and April 3, 2006 Orders.

PROPOSED CHANGES TO THE BOARD'S ELIGIBILITY REQUIREMENTS: SMART GROWTH

In the March 4, 2003 Order referenced above, the Board adopted a variety of "Smart Growth" related program guidelines applicable to both residential and non-residential customers. For example, the guideline applicable to commercial customers provided that "incentives for new construction [are] allowed only in areas designated for growth in the State Plan." Similarly, financial incentives for new residential homes were only available in areas designated for growth.

In the April 3, 2006 Order the Board modified its eligibility requirements to allow for financial incentives for replacement or expanded buildings in areas not designated for growth, provided that the replacement construction or expansion resulted 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 April 3, 2006 Order further clarified the guidelines to allow NJCEP incentives for hospitals, military facilities and municipal owned buildings in areas not designated for growth and provided for a "good cause" exemption whereby the Board may grant exceptions to the foregoing requirements on a case-by-case basis, based on designated criteria.

The OCE believes that any new construction in New Jersey should be as energy efficient as possible. The OCE is concerned that the Board's current guidelines, which do not provide for NJCEP incentives for most new construction in areas not designated for growth, could result in less energy efficient buildings being constructed in these areas, limit the ability to meet the State's energy savings goals set out in the State Energy Master Plan, and result in lost opportunities to reduce energy usage in the State. OCE believes that given all factors, the Board should consider modifying these guidelines.

NJCEP incentives are typically designed to pay a portion of the incremental cost of high efficiency verse standard efficiency equipment. They are intended to provide an incentive to upgrade to high efficiency equipment, not to cover the cost of installing or replacing equipment, for those that have already decided to build in a non-Smart Growth area. The same theory applies to the design of incentives for new construction. Any new construction in New Jersey should be as energy efficient as possible.

Based on the above, the OCE prepared a document that proposed modification of the Board's current policies to allow for NJCEP incentives anywhere in the State, including areas not designated for growth. Specifically, the OCE requested comments regarding whether the Board should modify its current policy to allow residential and non-residential new construction in these areas to be eligible for NJCEP financial incentives.

On September 27, 2011 Staff's proposal and request for comments was circulated to the EE and RE Committee listservs and was posted on the NJCEP web site.

Summary of Comments

Written comments were received from: Mr. John Jenks, Quantum Solar Solutions; Mr. Joseph Scarpa, Green Paradigm Realty, LLC; Mr. Will Kahane; Mr. Clay Rager, Rager Energy Consulting; Mr. Joseph Porrovecchio; the New Jersey Division of Rate Counsel (Rate Counsel); Mr. Lance Miller; NJ Future; South Jersey Gas Company (SJG); and Cape May County[1] The following summarizes the comments received and Staff's response to those comments.

Comment: Mr. Jenks agreed with the proposal to eliminate the restrictive policy of only providing incentives in Smart Growth areas. He stated that energy efficiency, regardless of location is important to meet the goals set for New Jersey. Energy efficiency should be encouraged across the State and not just in specific regions. Mr. Rager stated that new construction should receive incentives no matter where it is being done in the State.

Cape May County favors the NJCEP incentives for all eligible New Jersey customers. Cape May concurred with Staff that the NJCEP incentives do not serve as an incentive to build in areas not designated for growth but instead provides an incentive to install high efficiency equipment to those that have already decided to build in such an area. Cape May stated that in these economic times no business or citizen should be economically disadvantaged by any discriminating economic policy based on location within the State.

SJG shares the concern that continuing to prohibit incentives in areas not designated for growth will result in the construction of less energy efficient buildings and limit the state's ability to meet the Draft EMP efficiency goals. SJG stated it does not believe that a change in policy will provide incentives for developers to build in areas not designated for growth, but rather will provide incentives to install high efficiency equipment to those already building in these areas.

Response: The comments summarized above concur with Staff's proposal to modify the Board's Smart Growth policies.

Comment: Rate Counsel supports the extension of NJCEP program eligibility to areas not designated for growth. In addition Rate Counsel noted that since virtually all ratepayers pay the SBC, all customers should be eligible for SBC funded programs. Rate Counsel also noted two concerns. Specifically, Rate Counsel stated that the OCE should evaluate any changes to

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[1] United Communities LLC initially submitted comments by letter dated October 14, 2011 but subsequently withdrew them by letter dated December 12, 2011.

energy efficiency programs from the standpoint of cost-effectiveness and effect on program participation and budgets. While it is likely that expansion of the programs will not substantially impact the cost effectiveness of the programs, the OCE should conduct an analysis of the likely effects of the proposed changes on program budgets. Second, a program structure that gives higher incentives for lower square footage buildings is more consistent with state goals to cut overall energy use and greenhouse gas emissions.

Response: Staff concurs that an analysis of the impact of the proposed changes on program budgets should be performed. Staff notes that it is in the process of developing proposed FY14 programs and budgets for consideration by the Board and will coordinate with the Market Managers to assess the impact of this change on the program budgets. Staff also concurs that a program structure that gives higher incentives for lower square footage buildings is more consistent with state goals and notes that the current program is consistent with this objective.

Comment: Mr. Porrovecchio stated that Smart Growth Policies consistent with global climate change legislation and BPU Energy Master Plan initiatives should tie rebates to the USGBC LEED rating system and to sustainability where possible. New construction should be incentivized to be as efficient as possible using building energy model or other techniques that demonstrate the combined benefit of both low cost insulation and high performance mechanical equipment and appliances.

Response: Rebates for new construction provide incentives to construct buildings that exceed energy codes by 15%, which support a transition towards sustainability as recommended by Mr. Porrovecchio. Changes to the new construction program eligibility standards are outside of the scope of the instant proceeding which is seeking comments regarding the Board's Smart Growth policies. Comments regarding program design should be presented at the monthly EE or RE Committee meetings or as part of the annual process for developing NJCEP programs and budgets.

Comment: Mr. Scarpa stated that the Societal Benefits Charge (SBC) should not pay for any improvements in any areas not designated for growth. Any builder that does not build green has no business being in the 21st century construction industry. Alternatively, SBC funds should be directed to redevelopment of vacant buildings in areas designated for growth.

Response: For the reasons set out above and discussed further in Staff's recommendations below, Staff disagrees with the above comment.

Comment: Mr. Kahane stated that there should be a policy that allows solar farms to be built on existing brownfields and more importantly, to interconnect at the 69 kV level at the site of the brownfield, and to be considered as distribution, not transmission.

Response: Mr. Kahane's comment regarding solar farms is outside of the scope of the instant proceeding. Nonetheless, the Board notes that L. 2012 c.24, commonly referred to as the Solar Act of 2012 addresses issues relating to solar farms on brownfields. The Board further refers the commenter to its pending proceeding relating to N.J.S.A. 48:3-87(t), Docket No. EO12090862V.

Comment: Mr. Miller stated that Staff's proposal makes the case as to why energy efficient buildings should be constructed everywhere in the State. He states that this is correct, but the policy issue is how that should be done and who should bear the cost. While anyone can choose to build where they want, the issue is whether government programs should support that decision or whether the developer should bear the full cost of that development. Rewarding someone for building in an area that is not designated for growth places additional environmental and financial burdens on NJ citizens and is simply the wrong policy.

NJ Futures urged the OCE to withdraw its proposal to modify the Board's Smart Growth policies. NJ Futures states that the proposal would reverse the well-established policy of targeting financial incentives to Smart Growth areas. Encouraging construction in Smart Growth areas makes sense from the perspective of energy use. Residents in these areas typically drive less since destinations are closer and will help spur growth and create jobs without harming clean water, farmland and other natural assets. The Board's energy efficiency programs do not prevent people from developing land or living in the state's rural areas but represent a commitment to not subsidize development that causes sprawl, increases traffic and gobbles up open space.

NJ Futures noted that Governor Christie's administration is now putting the finishing touches on the State Strategic plan. NJ Futures recommended that the OCE should withdraw its proposal until it can be considered in light of the forthcoming State Strategic Plan.

Response: NJ Futures and Mr. Miller both oppose Staff's proposal to provide incentives for energy efficiency construction in areas not designated for growth. The premise of their argument is that NJCEP rebates provide an incentive to build in these areas. Staff disagrees with this premise.

The decision regarding where to build takes into consideration numerous factors. NJCEP incentives represent a portion of the incremental cost of upgrading a new building from meeting the minimum energy code to exceeding the code by 15% or more. The incentives represent a small portion of the construction costs and only a percentage of the marginal cost of upgrading to high efficiency equipment. The rebates are intended to provide incentives to builders that have already made the decision to build in a particular area to utilize construction methods that exceed the State's energy codes. Thus, Staff is not convinced that the NJCEP new construction incentives are a determining factor regarding whether or not to build in an area not designated for growth.

<u>Staff Recommendations</u>

The comments summarized above point to a clear difference of opinion regarding whether or not NJCEP incentives should be provided to new construction in areas not designated for growth. Those opposed argue that State policy should prohibit any incentives in these areas. Those in favor argue that incentives should be provided to increase energy efficiency anywhere in the State. A key factor to be considered is whether or not NJCEP incentives influence where new construction takes place.

Staff does not believe that NJCEP rebates provide an incentive to build in non-Smart Growth areas because building an energy efficient building that exceeds the energy code is more expensive than building a building that simply meets the code, regardless of the location. For example, if a standard efficiency air conditioner cost $4,000 and a high efficiency air conditioner cost $5,000, the NJCEP would pay a rebate of $500 or 50% of the incremental cost. The developer absorbs the remaining costs of exceeding code. The same logic applies to other measures and to both residential and commercial new construction. Incentives for the Residential New Construction program average approximately $2,000 to $3,000 per home. Thus, even with the NJCEP incentives, constructing an energy efficient building in a non-Smart Growth area is still more expensive than constructing a building that just meets the energy code. NJCEP incentives represent only a fraction of the overall cost of the energy efficiency measures and a very small percentage of the overall construction costs.

If, however, a decision has already been made to construct in a non-Smart Growth area, incentives may encourage the construction of buildings that exceed energy code. Importantly, the decision to locate outside the designated Smart Growth areas is often not a matter of choice, but rather a matter of necessity. Many businesses, including supermarkets, convenience stores, and others that provide local services, must locate near the customers they serve. In addition, the purchase of land and/or a facility and the move of an established business are more often than not economically infeasible. The State's interest is better served if such businesses are built to exceed the State's minimum energy code, which is a major objective of the NJCEP, whether the building occurs in or out of the areas designated as Smart Growth.

A specific example of this is Naturally Beautiful Plant Products, ("Naturally Beautiful"), located in Belvidere, Warren County, New Jersey. Naturally Beautiful is a family-owned business that has served the State and supported its surrounding local communities for over 40 years. The business has operated in its current location, near the New Jersey and New York metropolitan markets it serves, for over 14 years, and is planning energy efficiency upgrades to its existing 180,000 square foot facility, as well as a 213,000 square foot greenhouse expansion. The facility will utilize the latest energy saving technologies to grow clean, sustainable produce, incorporating energy efficient equipment that will allow it to exceed existing energy codes by 25% overall reducing electric and natural gas usage, as well as peak electric demand (kW). Naturally Beautiful indicates that the planned energy conservation measures, such as LED lighting, are not economically feasible without program incentives and that it is not economically feasible to move the existing facility to or construct a new facility in a designated Smart Growth area.

Additionally, in expanding its existing hydroponic and herbs division, Naturally Beautiful will reduce transportation on some of these items by nearly 3,000 miles, as these products are typically shipped from Arizona during the period from November to March. The jobs associated with this expanded activity, i.e., 30 full-time, long-term jobs as compared to traditional, seasonal agricultural positions, are therefore transplanted from Arizona to New Jersey. In addition, the project will create over 100 temporary jobs during construction.

Allowing for NJCEP incentives for new construction in areas not designated for growth should provide for the construction of energy efficient buildings without compromising the State's Smart Growth objectives. The impact on the State's goals for efficiency and conservation could be significant, particularly in economically burdened post-Sandy New Jersey, if NJCEP incentives are expanded to non-Smart Growth areas.

Based on the above, Staff recommends that the Board modify its policies to allow residential and non-residential new construction in areas not designated for growth to be eligible for NJCEP financial incentives.

DISCUSSION AND FINDINGS

When first considering this change, the OCE coordinated with the Market Managers, the NJCEP Program Coordinator and other stakeholders to develop proposed modifications to the Board's Smart Growth policies as they relate to the NJCEP. On September 27, 2011 the OCE circulated the proposed changes to the public for comment. The proposed changes were discussed at the September 20, 2011 and/or the October 11, 2011 meetings of the EE Committee. Accordingly, the Board **FINDS** that the process utilized in developing the proposed changes was appropriate and provided stakeholders and interested members of the public the opportunity to comment. The Board further notes that since these comments were sought, Superstorm Sandy has intensified the need for the Board to re-evaluate its Smart Growth policy. Superstorm Sandy resulted in significant economic hardship that causes the Board to view more favorably policies that will support rebuilding homes and businesses throughout the State, promote job creation, and encourage energy efficiency and conservation.

The Board has reviewed the changes proposed by Staff as well as the comments received regarding the proposed changes. This issue invokes strong positions both for and against the proposed changes. However, having considered the proposed changes and comments submitted, the Board **HEREBY FINDS** that modification of existing NJCEP program eligibility requirements will better promote the State's objectives of encouraging energy efficient new construction and encouraging and supporting job creation and post-Superstorm Sandy rebuilding efforts. Based on the above, The Board **HEREBY MODIFIES** its NJCEP program eligibility requirements such that any new construction or gut rehabilitation, or expansion of existing facilities, located anywhere in the State, will be eligible for NJCEP incentives. This revised policy is applicable to both residential and commercial construction.

Naturally Beautiful filed a Petition with the Board seeking an exemption to the NJCEP's current Smart Growth eligibility requirement. In light of the within determination by the Board, this petition is deemed moot and will be administratively dismissed by the Board. The Board anticipates that Naturally Beautiful will resubmit its application, which will be considered in the ordinary course.

This policy change is effective June 7, 2013 and applicable to any project that did not commence construction prior to the effective date of this Order. For buildings impacted by Superstorm Sandy, as defined in the Board's January 23, 2013 Order, Docket Nos. EO07030203 & EO1110631V, any construction that commenced after October 29, 2012 shall be eligible for NJCEP incentives. Honeywell and TRC shall include the modifications necessary to implement this change in their proposed FY14 compliance filings which the Board anticipates considering in June 2013.

This Order shall be effective on June 7, 2013.

DATED: 5/29/13

BOARD OF PUBLIC UTILITIES
By:

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PRESIDENT

JEANNE M. FOX
COMMISSIONER

JOSEPH L. FIORDALISO
COMMISSIONER

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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

IN THE MATTER OF THE COMPREHENSIVE ENERGY EFFICIENCY
AND RENEWABLE ENERGY RESOURCE ANALYSIS FOR THE YEARS 2009 - 2012:
REVISED SMART GROWTH POLICIES
DOCKET NOS. EO07030203 and EO10110865

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