



Agenda Date: 2/11/15
Agenda Item: 8C

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF PATRICK RYAN AND RYAN INCORPORATED, NEW JERSEY CLEAN ENERGY PROGRAM HOME PERFORMANCE WITH ENERGY STAR REBATE)	ORDER APPROVING SETTLEMENT
)	DOCKET NO. QS14121384

Parties of Record:

Patrick Ryan, pro se, on behalf of Patrick Ryan and Ryan, Incorporated
Joseph Gennello, Honeywell Smart Grid Solutions
Michael Ambrosio, Senior Vice President, Applied Energy Group, Inc.

BY THE BOARD:

This order considers a settlement agreement executed between Patrick Ryan and Ryan Inc. (collectively "Ryan") and Board Staff following an Order to Show Cause issued under this same docket on December 22, 2015 ("December 22nd Order"). Ryan submitted a response to the Order to Show Cause on January 2, 2015. Staff and Ryan subsequently held settlement discussions, which resulted in the proposed settlement agreement attached hereto.

BACKGROUND

The New Jersey Board of Public Utilities ("Board"), pursuant to N.J.S.A. 48:3-60, administers the New Jersey Clean Energy Program ("NJCEP"). NJCEP includes several programs that offer incentives to both residential, commercial and industrial customers of electric and natural gas utilities to invest in energy efficiency ("EE") and renewable energy ("RE") measures. Honeywell Smart Grid Solutions ("Honeywell") administers RE and residential EE programs. Applied Energy Group serves as the NJCEP Program Coordinator.

All contractors who participate in the NJCEP are subject to the Board's Contractor Remediation Procedures as outlined in In the Matter of the Comprehensive Energy Efficiency and Renewable Energy Resource Analysis for the years 2009-2012: Contractor Remediation Procedures, Docket No. EO07030203 (October 5, 2010).

The Home Performance with Energy Star ("HPwES") Program offers "whole-house" solutions to increase the comfort, safety and durability of residences. The HPwES Program is designed to transform the manner in which energy efficiency services are delivered to existing one (1) to

four (4) family homes and low-rise multifamily buildings. The HPwES Program recruits and trains Building Performance Institute ("BPI") certified and accredited contractors to install EE measures in existing homes. The program provides customers with up to \$5,000 in incentives and a buy-down to zero percent (0%) for loans up to a maximum of \$10,000 for the installation of qualifying measures.

Incentive tiers under the HPwES Program are based on the estimated Total Energy Savings ("TES") achieved through the installation of eligible measures. Tier 1 requires a homeowner to obtain a home assessment/energy audit by a BPI certified contractor, but does not provide any financial incentives to homeowners. Projects achieving a TES of at least ten percent (10%) but less than twenty percent (20%) are classified as Tier 2, and projects achieving a TES of at least twenty percent (20%) are classified as Tier 3 under the HPwES Program.

Respondent Ryan of Union, New Jersey participated in the HPwES Program as a BPI certified and accredited contractor. Between approximately August 2013 and December 2013, Ryan entered into a contract for the installation of certain energy efficiency measures in the residence of William Griffeth (the "Griffeth Project"). Honeywell, the New Jersey Clean Energy Program Market Manager (Market Manager) for the residential energy efficiency sector, identified defects with the Griffeth Project, as set forth in the December 22nd Order.

Prior to the December 22nd Order, on February 17, 2014 and September 8, 2014, the Market Manager notified Ryan of its findings with regard to the Griffeth Project, and informed Ryan of its recommendation that the Board impose on Ryan a one-year suspension from all NJCEP programs. In addition, the Market Manager advised Ryan that any new projects to the HPwES program required Board approval. At that time Ryan had ten projects that were pending with HPwES. As Ryan completed those projects, the NJCEP performed quality assurance/quality control on 100% of the projects. No deficiencies were identified and all of the ten projects conformed to HPwES program requirements. Ryan attempted to submit an eleventh project – the Byrd Project – but Staff disputed whether the project was on the list of pending projects. Ultimately, the Byrd project was rejected.

On March 5, 2014, and September 30, 2014, Ryan responded in writing, through counsel, disputing the Market Manager's findings and proposed enforcement activities. In response to the December 22nd Order to Show Cause, Ryan submitted a written response dated January 2, 2015 wherein Ryan disputed the allegations, and objected to the Board imposing a suspension. Ryan argued that they had not participated in HPwES since February 17, 2014, with the exception of the ten projects that the Market Manager agreed could be completed.

While this action was pending, Ryan and Board Staff (collectively, "the Parties") engaged in settlement discussions. The Parties reached a proposed settlement agreement ("Agreement") in resolution of both the Griffeth Project and Byrd Project to avoid the uncertainties and protracted nature of litigation. The Agreement is attached hereto.

The Proposed Settlement Agreement¹

The key provisions of the Settlement Agreement are as follows:

¹ Although summarized at some length in this Order, should there be any conflict between this summary and the Settlement Agreement, the terms of the Settlement Agreement control, subject to the findings and conclusion in this Order.

1. Ryan consents to placement in "inactive status" from the HPwES Program for a period of one (1) year, beginning February 17, 2014 and ending February 17, 2015, except for the completion of any pending HPwES projects that were expressly approved by the Market Manager in writing to Ryan.
2. Through this Agreement, Ryan requests, and Staff supports, Ryan's reinstatement to the HPwES Program effective February 18, 2015, contingent upon Ryan meeting the training requirements described in paragraph three below.
3. Reinstatement to the HPwES Program on February 18, 2015 is conditioned on Patrick Ryan's participation in mandatory in-person HPwES Program training approved by Board Staff. Board Staff will arrange for Ryan's training at a mutually convenient date and time. In the event the parties are unable to agree to a training date prior to February 18, 2015, Patrick Ryan must participate in training prior to re-activation in the HPwES program and no more than thirty (30) days after the effective February 18, 2015 reinstatement date. As a principal of Ryan, Patrick Ryan must ensure that all Ryan, Inc. staff that will participate in the HPwES Program are fully aware of the Program's requirements.
4. In addition, in accordance with HPwES protocols applicable to all HPwES contractors, Ryan will need to execute a current Contractor Participation Agreement, complete all BPI Gold Star requirements, and fulfill the HPwES Program's required BPI certificates prior to reinstatement. Nothing in the Agreement should be construed to waive Ryan's need to comply with all HPwES program requirements for participating contractors.
5. Regarding the Griffeth project, Ryan agrees, in the interest of resolving that issue and without accepting Staff's conclusions about that project, to reduce the total contract price by the \$4,000 expected incentive amount and make arrangements suitable to Mr. Griffeth for the balance of the expected HPwES loan amount. Ryan will provide a copy of the written arrangement with Mr. Griffeth to reflect that this has been accomplished prior to execution of this Settlement Agreement.
6. Regarding the Byrd project, Ryan agrees, in the interest of resolving that issue and without accepting Staff's conclusions about that project, to reduce the total cost of the Byrd project by the \$4,000 expected incentive amount and provide a copy of the written arrangement with Mr. Byrd to reflect that this has been accomplished prior to execution of this Settlement Agreement.

DISCUSSION AND FINDINGS

The Board, having reviewed the record and the Settlement Agreement in this matter, **FINDS** the agreement is reasonable, in the public interest, and consistent with Board policy. The Board also **FINDS**:

1. The Parties have negotiated a Settlement that resolves all issues in controversy and is consistent with the law.
2. The Settlement Agreement represents the entire agreement between the Parties.

3. The Parties agreed to the Settlement to amicably resolve the disputed matter without the necessity and expense of further litigation and in consideration of the promises and mutual obligations set forth in the Settlement Agreement.
4. The Parties entered into the Settlement Agreement voluntarily, as evidenced by their signatures or their representatives' signatures.

The Board **HEREBY APPROVES** the Settlement Agreement executed by the Parties in its entirety and **ADOPTS** the settlement terms and conditions attached hereto as though fully set forth herein. The Parties are **HEREBY ORDERED** to comply with the settlement terms. The Board's decision is limited to the instant matter and shall have no precedential value in future proceedings involving these or any other party.

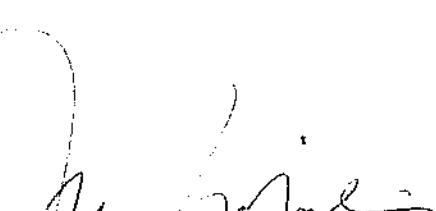
The effective date of this Order is February 23, 2015.

DATED: 2/11/15

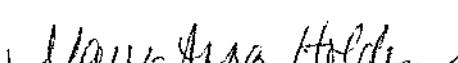
BOARD OF PUBLIC UTILITIES
BY:



RICHARD S. MROZ
PRESIDENT



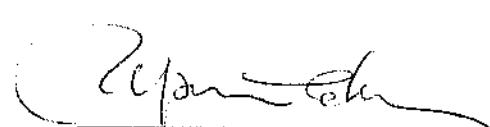
JOSEPH L. FIORDALISO
COMMISSIONER



MARY-ANNE HOLDEN
COMMISSIONER

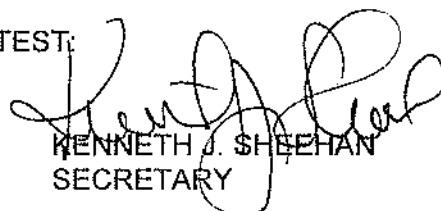


DIANNE SOLOMON
COMMISSIONER



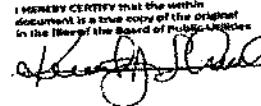
UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST:



KENNETH J. SHEEHAN
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 IN THE MATTER OF PATRICK RYAN AND RYAN INCORPORATED,
NEW JERSEY CLEAN ENERGY PROGRAM HOME PERFORMANCE WITH ENERGY STAR
REBATE - DOCKET NO. QS14121384

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AGREEMENT

This Agreement ("Settlement Agreement") is signed this 2nd day of February, 2015, by and between the New Jersey Board of Public Utilities ("Board") Staff of the Office of Clean Energy ("Board Staff" or "OCE") and Patrick Ryan and Ryan, Inc. ("Ryan").

RECITALS

WHEREAS, the Board administers the New Jersey Clean Energy Program ("NJCEP"), which includes the Home Performance with Energy Star ("HPwES") Program.

WHEREAS, Applied Energy Group ("AEG") serves as the Program Coordinator for the NJCEP Programs, and Honeywell, Inc., ("Honeywell") is the NJCEP Residential Energy Efficiency Market Manager responsible for managing the HPwES Program.

WHEREAS, Patrick Ryan holds accreditation with the Building Performance Institute ("BPI") and is a principal of Ryan, Inc., serving in the capacity of Secretary of the closed corporation.

WHEREAS, by Order dated October 5, 2010, Docket No. EO07030203, the Board established Contractor Remediation Procedures for the NJCEP.

WHEREAS, between approximately August 2013 and December 2013, Ryan performed Project P00000083718, in Westfield, New Jersey ("Griffeth Project") for which HPwES incentives were sought.

WHEREAS, Ryan sought to qualify the Griffeth Project for a Tier III HPwES incentive comprising a \$4000 rebate and a \$5000 zero interest loan to be applied to the total \$12,860 project cost.

WHEREAS, upon submittal of the Project to HPwES, questions arose as to the scope of work completed by Ryan and the Griffeth project's entitlement to Tier III incentive treatment. Staff has not paid an HPwES incentive for that project.

WHEREAS Ryan was notified in writing of the Market Manager's findings with regard to the Griffeth Project on February 17, 2014 and September 8, 2014, and of the Market Manager's recommended action against Ryan under the Board's Contractor Remediation Procedures.

WHEREAS, Ryan's access to HPwES software for the purpose of prospectively contracting with customers for the performance of new HPwES projects was halted on or about February 17, 2014, pending further examination of the within matter.

WHEREAS on March 5, 2014 and September 30, 2014, Ryan responded in writing, through counsel, disputing the Market Manager's findings about the Griffeth project and proposed enforcement activities. Between approximately March 2014 and December 2014, the parties attempted to settle this matter through their respective counsel.



WHEREAS, on May 2, 2014, Board Staff advised Ryan that Project No. P0000088620 ("Byrd Project") was ineligible for incentives under the HPwES Program. Ryan opposed those findings in writing.

WHEREAS, on or about December 11, 2014, Ryan notified Board Staff of its intent to proceed without counsel, and subsequently requested a meeting with the HPwES Program Manager which was granted and scheduled for February 5, 2015.

WHEREAS, prior to the February 5, 2015 meeting, Ryan and Board Staff scheduled a preliminary meeting on January 23, 2015, to continue settlement discussions. Based on progress made towards settlement at the January 23, 2015 meeting, the parties agreed to cancel the February 5, 2015 meeting.

WHEREAS, after substantial negotiations and in consultation with their respective counsel, Board Staff and Ryan (collectively, "the Parties") have individually and independently concluded that it is in their respective best interests to avoid the time and uncertainty of further proceedings and to settle and resolve the matters in controversy, as set forth above, subject to the terms of this Agreement.

NOW THEREFORE, in order to amicably resolve this matter without the necessity and expense of further litigation and in consideration of the promises and mutual obligations herein set forth, the Parties hereby agree as follows:

1. Ryan consents to placement in "inactive status" from the HPwES Program for a period of one (1) year, beginning February 17, 2014 and ending February 17, 2015 except for the completion of any pending HPwES projects that were expressly approved by the Program Manager in writing to Ryan.
2. Through this agreement, Ryan requests and Staff supports Ryan's reinstatement to the HPwES Program effective February 18, 2015, contingent upon Ryan meeting the training requirements described in paragraph three below.
3. Reinstatement to the HPwES Program on February 18, 2015 is conditioned on Patrick Ryan's participation in mandatory in-person HPwES Program training approved by Board Staff. Board Staff will arrange for Ryan's training at a mutually convenient date and time. In the event the parties are unable to agree to a training date prior to February 18, 2015, Patrick Ryan must participate in training prior to re-activation in the HPwES program and no more than thirty (30) days after the effective date of the Board Order approving this Agreement. As a principal of Ryan, Patrick Ryan must ensure that all Ryan, Inc. staff that will participate in the HPwES Program are fully aware of the Program's requirements.
4. In addition, in accordance with HPwES protocols applicable to all HPwES contractors, Ryan will need to execute a current Contractor Participation Agreement, complete all BPI Gold Star requirements, and fulfill the HPwES Program's required BPI certificates prior to performing work as a participating HPwES contractor. Nothing in this agreement

should be construed to waive Ryan's need to comply with all HPwES program requirements for HPwES participating contractors.

PROJECTS

5. The Griffeth Project

Regarding the Griffeth project, Ryan agrees, in the interest of resolving that issue and without accepting Staff's conclusions about that project, to reduce the total contract price by the \$4,000 expected incentive amount and make arrangements suitable to Mr. Griffeth for the balance of the expected HPwES loan amount. Ryan will provide a copy of the written arrangement with Mr. Griffeth to reflect that this has been accomplished prior to execution of this Settlement Agreement.

6. The Byrd Project

Regarding the Byrd project, Ryan agrees, in the interest of resolving that issue and without accepting Staff's conclusions about that project, to reduce the total cost of the Byrd project by the \$4,000 expected incentive amount and provide a copy of the written arrangement with Mr. Byrd to reflect that this has been accomplished prior to execution of this Settlement Agreement.

ADDITIONAL TERMS

RELEASE FROM LIABILITY

7. In consideration of the foregoing, Board Staff agrees to recommend Ryan's reinstatement to the HPwES Program as detailed herein. Staff will not pursue any additional adverse action against Ryan concerning the Griffeth and Byrd projects, to the extent such action would be permissible under the Contractor Remediation Order.
8. In consideration of the foregoing, Ryan shall also forever release, waive and forego any and all claims, demands, suits, allegations, complaints, penalties, or offsets, known or unknown, asserted or unasserted, actual or potential, that relate to or arise out of the allegations in this matter, against the Board, or any individual commissioner or employee, agent or contractor thereof in his or her official or personal capacity. Such waiver shall include but not be limited to any and all claims for damages, including lost revenue or profits, during Ryan's inactive status from the HPwES Program.

RIGHTS UPON MODIFICATION BY THE BOARD

9. This Settlement Agreement is further subject to the Board's issuance of a written decision and order in which the Board accepts this Settlement Agreement in its entirety and executes same without change, based on the mutual compromise by Ryan and Board Staff. If, for any reason, the Board wishes to impose new, altered, or additional conditions or changes to this Settlement Agreement, Ryan will have ten (10) business

days following receipt of said Board Order to accept or reject this Settlement Agreement based on the Board's proposed changes in same. This Settlement Agreement represents a mutual balancing of interests, contains interdependent provisions and, therefore, is intended to be accepted and approved in its entirety.

NO ADMISSION

10. The execution of this Settlement Agreement by Board Staff is for the sole purpose of avoiding costly and time-consuming litigation, and shall not be deemed an admission by Board Staff, the Board or any individual commissioner or employee thereof, or Ryan, of any violation of law, statute or regulation, or any wrongdoing whatsoever. The Parties shall bear all of their own costs.

ENTIRE AGREEMENT

11. This Settlement Agreement represents the entire agreement between the Parties concerning the matters addressed within. No condition or provision of the Agreement may be modified, waived or revised in any way except in writing executed by all parties and approved by the Board. Each party reserves the right to take necessary steps to enforce this settlement in the event of breach.

NO WAIVER

12. The waiver by any party to this Settlement Agreement of any right or remedy hereunder on any occasion shall not be construed as a waiver of any such right or remedy on any future occasion.

AUTHORITY

13. Each party represents that each person executing this Settlement Agreement on its behalf has been authorized to sign on behalf of the respective party and to bind it to the terms of this Settlement Agreement and that the respective Parties have the power and authority to perform their respective obligations as provided by this Agreement.

GOVERNING LAW, CHOICE OF FORUM AND JURISDICTION

14. This Settlement Agreement and its interpretation and performance shall be governed by the relevant laws of the State of New Jersey, without giving effect to its conflicts of law rules.

ACTION UPON BREACH

15. Each party reserves the right to take necessary steps to enforce this Settlement Agreement in the event of breach, including but not limited to action under the Contractor Remediation Procedures. A party alleging breach must give written notice to all parties detailing the breach within ten (10) days of discovery of the breach.



EFFECTIVE DATE OF THE AGREEMENT

16. If approved by the Board, this Settlement Agreement shall take effect upon service on all parties, or on February 18, 2015, whichever is later.

IN WITNESS WHEREOF, the undersigned state that the Parties have read and reviewed this Agreement and the Parties understand and agree to be bound by the terms herein.

Caro

Carolyn A. McIntosh
Deputy Attorney General
On behalf of the New Jersey Board of Public Utilities Staff

Dated: 2/12/15

Ryan

Patrick Ryan
Secretary/Treasurer, Ryan, Inc.

Dated: 1/30/2015

Ryan

Patrick Ryan
Individually

Dated: 1/30/2015

