Agenda Date: 3/18/16
Agenda Item: 8E

STATE OF NEW JERSEY

Board of Public Utilities
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CLEAN ENERGY

IN THE MATTER OF THE CLEAN ENERGY PROGRAMS AND BUDGET FOR FISCAL YEAR 2016 – FISCAL YEAR 2016 THIRD REVISED BUDGET AND CHANGES TO THE RESIDENTIAL NEW CONSTRUCTION PROGRAM	ORDER DOCKET NO. QO15040477

Parties of Record:

Maurice Kaiser, Honeywell Utility Solutions
Diane Zukas, TRC Energy Services
Michael Ambrosio, Applied Energy Group
Mark Mader, Jersey Central Power & Light
Timothy White, Atlantic City Electric
Sandra Eason-Perez, Orange & Rockland Utilities
Bruce Grossman, South Jersey Gas Company
Susan Ringhof, Public Service Electric and Gas Company
Andrew Dembia, New Jersey Natural Gas
Mary Patricia Keefe, Elizabethtown Gas
Stefanie A. Brand, Esq., Director, Rate Counsel

BY THE BOARD:

This Order memorializes action taken by the Board of Public Utilities ("Board") at its March 18, 2016 public meeting, where the Board considered certain revisions to the Fiscal Year 2016 ("FY16") budget for New Jersey's Clean Energy Program ("NJCEP")[1] and certain changes to NJCEP's Residential New Construction ("RNC") Program.

BACKGROUND AND PROCEDURAL HISTORY

In accordance with the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq. ("EDECA"), and by Order dated June 25, 2015 ("FY16 Budget Order"), Docket No. QO15040477, the Board approved FY16 programs and budgets for the NJCEP. In the FY16 Budget Order, the Board also approved the FY16 compliance filings of Honeywell International,

[1] The budgets approved in this Order are subject to State appropriations law.

Inc. ("Honeywell"), which manages the Residential EE and RE Programs, TRC Energy Solutions, Inc. ("TRC"), which manages the commercial and industrial ("C&I") EE Programs, the Office of Clean Energy ("OCE"), which includes the programs managed by the OCE and the New Jersey Economic Development Authority ("EDA"), and the electric and gas utilities (collectively referred to as "the Utilities"), which administer the low-income Comfort Partners Program.[2] The compliance filings included program descriptions and detailed budgets for each program.

By Order dated November 16, 2015, the Board approved revisions to the FY16 NJCEP budget to reflect a true up of actual and estimated FY15 expenses and commitments, as well as a true up of certain actual and estimated FY15 funding, and, by Order dated January 27, 2016, the Board approved a second set of revisions to the FY16 NJCEP budget, essentially reallocating funds to programs that were experiencing higher than anticipated participation levels. The FY16 NJCEP Budget, as revised according to the foregoing, is referred to as the "Current Budget" in the below table entitled "3rd Revised FY16 Energy Efficiency Program Budget."

On February 8, 2016, Staff provided the public with notice of and the opportunity to comment on Proposed Budget Revisions to the NJCEP and Proposed Program Revisions to the RNC Program (each as defined and discussed below and together collectively referred to as the "Proposed Revisions"). On that same day, the Proposed Revisions were also circulated to the EE Committee listserv and posted on the NJCEP website. Comments were due by February 22, 2016. The Proposed Revisions were also discussed at the February 22, 2016 meeting of the EE Committee and at the February 16, 2016 meeting of the RE Committee.

This Order makes revisions to the NJCEP Budget and to the RNC Program as set forth below.

PROPOSED FY16 BUDGET REVISIONS

Several programs have experienced higher than anticipated participation levels since the beginning of the 2016 fiscal year ("FY"). The following summarizes Staff's proposed revisions to the FY16 budget to address the higher participation levels (the "Proposed Budget Revisions"):

- **Residential New Construction**: The transfer of $2,845,000 into the RNC Program budget. The RNC Program received a large number of applications in August 2015 which exhausted the current rebate budget. Transferring funds into the RNC rebates budget will allow the RNC Program to continue to accept applications and remain open under the revised enrollment requirements described below under Proposed Program Revisions.
- **Home Performance with ENERGY STAR® ("HPwES"):** The transfer of $813,620.47 into the HPwES Program budget. The Program received a large volume of applications during the first half of FY16 as a result of incentive level reductions that were set to be implemented.
- **Energy Efficient Products ("EEP")**: The transfer of $3,658,620.47 out of the EEP Program and into a combination of the RNC and HPwES Programs as described above. This funding is available as a result of the lighting markdown promotions ending mid fiscal

[2] The new Program Administrator contract was awarded on December 1, 2015 to AEG. A transition plan is being implemented to transition responsibilities from the outgoing Market Managers to the incoming Program Administrator, AEG, and its team of subcontractors.

year (December 31, 2015) in anticipation of the transition to the Program Administrator. Sufficient funds remain in EEP to cover expenses through the remainder of FY16.

The Proposed Budget Revisions and resultant budgets are shown in the table below:

Summary of Proposed Budget Revisions
3rd Revised FY16 Energy Efficiency Program Budget

	Current Budget	Line Item Transfers	Revised FY16 Budget
Programs	**(a)**	**(b)**	**(c) = (a)+(b)**
Residential EE Programs			
Residential HVAC - Electric & Gas	$13,187,678.81		$13,187,678.81
Residential New Construction	$15,832,692.95	$2,845,000.00	$18,677,692.95
Energy Efficient Products	$19,449,665.72	($3,658,620.47)	$15,791,045.25
Home Performance with Energy Star	$37,038,090.33	$813,620.47	$37,851,710.80
Residential Marketing	$1,249,033.75		$1,249,033.75
Sub Total Residential	$86,757,161.56	$0.00	**$86,757,161.56**

PROPOSED PROGRAM REVISIONS TO THE RNC PROGRAM

Staff has proposed the following revisions to the RNC Program (the "Proposed Program Revisions"):

Historically, the RNC Program commits funds to projects as they are enrolled into the Program. Projects are enrolled in the Program for up to 12 months and have the ability to be re-enrolled after the 12 months expire, which can commit Program dollars for incomplete projects for several years. The Program has seen an unprecedented amount of applications submitted during the first quarter of FY16, resulting in a pipeline of approximately 4,500 applications requesting enrollment into the Program. This pipeline has exhausted all available funding in the RNC rebates budget and would require approximately $10 million to process based on the current enrollment requirements and method of committing funds at the enrollment stage.

For the remainder of FY16 Staff has proposed changes to the enrollment requirements and to the process for committing funds to projects. The proposed changes would reduce the funding required for the remainder of FY16 to approximately $2.8 million and would reduce the timing for which projects are enrolled in the Program. Furthermore, these changes are designed to ensure that funding is used for those projects most likely to be completed in FY16, which would allow the RNC Program to continue to enroll applications in FY16.

RNC Enrollment

- Single family projects would be required to submit a valid building permit and plans with the unit's address clearly referenced on each document in order to be enrolled. (The Program does not currently require these submissions.)

- Single-family projects must complete a pre-sheetrock inspection within 60 days of being enrolled.
- Multi-family, multi-family high rise, and multi-single projects must submit a valid permit and plans with the unit's address clearly referenced on each document in order to be enrolled.
- Projects enrolled between August 31, 2015 and June 30, 2016 would be given an application number without a commitment. Publicly funded projects that require proof of a commitment in order to be financed would receive a commitment.
- Enrolled projects would be subject to the program requirements and the incentive levels applicable at the time of their enrollment.

RNC Commitments

- Projects with existing funding commitments would be able to re-enroll one time and would be required to meet the enrollment rules in place at the time of re-enrollment. If a project could not meet the enrollment requirements the project would be deactivated and removed from the pipeline. The project would be allowed to re-enroll when it is able to meet the new enrollment requirements and would be eligible for the incentives in place at the time of re-enrollment.
- Commitments for multi-family/multi-single projects would now be valid for two years.
- Commitments for single family projects would continue to be valid for one year.
- Zero Energy Ready Home ("ZERH") projects that demonstrate progress towards completion would be eligible for a one-year extension.
- Projects that expire would be removed from the Program upon expiration. Any project that is removed from the Program would not be permitted to re-enroll without a waiver from the Program Administrator, i.e., AEG.

RNC Rebates:

- To the extent that Program funding is available, projects enrolled without a commitment would be paid in the order that the completed final incentive applications are received.
- In the event that incentive levels increase in a subsequent program year, enrolled projects would not be eligible for the higher incentive levels and would not be allowed to "deactivate" and re-enroll.

IECC 2015

The International Energy Construction Code ("IECC") 2015 was adopted by New Jersey's Department of Community Affairs on September 21, 2015 with an effective date of March 21, 2016. The new code significantly increases the level of energy efficiency as compared to the efficiency required by the IECC 2009. In addition to more stringent prescriptive requirements, the IECC 2015 introduces an alternative compliance path based on total building performance and termed the Energy Rating Index ("ERI"). The ERI compliance path was designed to exceed the IECC 2015 prescriptive requirements.

In its Uniform Construction Code ("UCC"), which incorporates most the IECC, New Jersey made optional, rather than mandatory, the IECC 2015 requirement for field testing of newly constructed homes to verify a maximum allowable air leakage of three air changes per hour ("3ACH50). However, the ERI compliance path requires field testing to demonstrate performance. The differing compliance requirements can result in significantly different performance levels depending on the compliance pathway chosen.

RNC Program requirements would be reconciled with the differing compliance requirements within the IECC 2015 as adopted through New Jersey's UCC, as set forth under the below subheadings, all effective on March 21, 2016, i.e., the effective date of New Jersey's adoption of IECC 2015.

RNC Incentive Tiers

Under the FY16 RNC Program rules, the Program currently incentivizes four tiers of energy efficiency for the construction of new single family and multi-family housing. However, Staff has proposed that, going forward, the Program should eliminate the numbering system and identify the tiers (from least to most energy efficient) as IECC 2015 ERI, ENERGY STAR, Zero Energy Ready Homes (ZERH), and ZERH + renewables (RE).

As indicated in the Incentive Table below, each tier must achieve a minimum Home Energy Rating System (HERS) score in order to be eligible for an incentive. The HERS Index is the industry standard by which a home's energy efficiency is measured. It is also the nationally recognized system for inspecting and calculating a home's energy performance.

In FY16, the current Tier 1 "ENERGYEfficient Home" incentive level was designed to anticipate the pending adoption of IECC 2015 and to allow builders to become familiar with the updated code requirements. Since the start of FY16, only four homes have enrolled in this tier, all of them single-family homes. With the adoption of IECC 2015, the RNC Tier 1, ENERGYEfficient Home is obsolete as homes built to this standard may not be as efficient as an IECC 2015 code-compliant home. Staff therefore has proposed eliminating the current Tier 1 "ENERGYEfficient Home" incentive level (including eligibility and incentives) from the RNC Program.

IECC 2015 ERI

The compliance requirements of IECC 2015 represent a heavy lift for New Jersey's construction industry. Homes built using the IECC 2015 ERI compliance path will result in a higher level of performance than homes built using the prescriptive path that do not perform field testing. Incenting builders to the ERI standard has the following benefits:

- Ensures a higher level of performance than homes built using the prescriptive path that opt out of field testing.
- Demonstrates the State's infrastructure to meet air leakage testing requirements.

The ERI targets (i.e. HERS Index targets) required by IECC 2015 are based on typical single family residences. Staff recognizes that these targets will be more difficult to meet for smaller dwelling units within multi-family housing.

Accordingly, Staff recommends providing a flat $750 incentive for any home that demonstrates compliance with the IECC 2015 through the ERI path. This incentive would serve as a stand-alone incentive for the lowest tier of efficiency, or an adder to ENERGY STAR or ZERH incentives. The Program would require that a code official verify that code compliance was achieved using the ERI path.

ENERGY STAR Home

The ENERGY STAR Program is designed to achieve 15% more energy efficiency than the building code. For states that have adopted IECC 2012 or IECC 2015, ENERGY STAR developed v3.1. Homes that meet ENERGY STAR v3.1 achieve a 15% increased energy savings above code. The U.S. Environmental Protection Agency ("EPA") recognizes that builders need 6-12 months to adjust to a new specification; therefore EPA doesn't enforce v3.1 until 12 months after IECC 2012 or 2015 adoption. Although ENERGY STAR v3.1 standards will not be enforced by EPA in New Jersey until April 1, 2017, Staff has recommended adopting the ENERGY STAR v3.1 standards upon the effective date of IECC 2015, i.e., on March 21, 2016. This would be consistent with the Program's history of providing incentives to transform the market, i.e. only when appliances/equipment/construction, etc. exceed the energy efficiency mandated by code.

Zero Energy Ready Home (ZERH)[3]

With the adoption of IECC 2012 and 2015, the U.S. Department of Energy ("DOE") Zero Energy Ready Home Program has more stringent energy performance requirements than the other Program paths. These requirements include both the ENERGY STAR v3.1 specification as well as the IECC 2015 insulation levels. Like ENERGY STAR, the DOE ZERH Program does not require the more stringent standards until one year following the effective date of the new code, i.e., until April 1, 2017. However, Staff has proposed adopting the ENERGY STAR v3.1 specification, as well as the IECC 2015 insulation levels, effective as of the same date as IECC 2015, i.e., on March 21, 2016.

Multi-Family High Rise (MFHR) Program

The EPA MFHR Program requires a 15% increased energy savings above code. With NJ's adoption of ASHRAE 90.1-2013 as part of its Construction Code, the baseline against which building performance is measured must be increased to reflect the new code. In addition to increased baseline performance, the adoption of the IECC 2015 triggered additional changes to the Construction Code. Until the impact of these changes can be fully understood, the EPA is allowing a program participant to choose the baseline against which to measure a building's performance while requiring a higher percent savings above code requirements for a baseline that is less than the current code. For example, if a state has adopted ASHRAE 90.1-2013, a building may comply with the MFHR Program by either performing at 15% better than ASHRAE 90.1-2013, 20% better than ASHRAE 90.1-2010, or 25% better than ASHRAE 90.1-2007. While there is the risk that it will be easier for participants to achieve a higher percent savings over the lower code, EPA recognizes that there is not enough experience with the new code at this time to ensure that buildings will indeed be able to meet 15% above ASHRAE 90.1-2013. Indeed, the NJCEP Pay for Performance Program has received feedback from program participants that the 15% over ASHRAE 90.1-2013 is quite difficult to achieve.

Accordingly, Staff has proposed following EPA's guidance to allow a baseline of the applicant's choice. This change would require that the NJCEP collect additional data from its applicants, including a project's baseline code and the percent savings above code that the applicant's

[3] Zero Energy Ready Home is a USDOE designation for a high-performance home which is so energy efficient that a renewable energy system can offset all or most of its annual energy consumption.

project has been designed to achieve. The incentive table would also be updated to align with the various baselines, as shown below.

New Financial Incentive Tables

New Financial Incentive Table for Single-Family, Multi-Single, and Multi-family Units

		Single-Family			Multi-Single			Multifamily		
HERS (Before Renewables)	*IECC2015 ERI Compliance*	ENERGY STAR Home	Zero Energy Ready Home	Zero Energy Home 100% Renewables	ENERGY STAR Home	Zero Energy Ready Home	Zero Energy Home 100% Renewables	ENERGY STAR Home	Zero Energy Ready Home	Zero Energy Home 100% Renewables
75								$625		
70					$1,125			$750		
65		$1,750			$1,313			$875		
60		$2,000			$1,500			$1,000		
55		$3,000			$2,250			$1,500		
50		$4,500	$6,500	$9,500	$3,375	$4,875	$7,125	$2,250	$3,250	$4,750
45		$7,250	$9,250	$12,250	$5,438	$6,938	$9,188	$3,625	$4,625	$6,125
40	$750	$10,250	$12,250	$15,250	$7,688	$9,188	$11,438	$5,125	$6,125	$7,625
35		$13,750	$15,750	$18,750	$10,313	$11,813	$14,063	$6,875	$7,875	$9,375
30		$17,250	$19,250	$22,250	$12,938	$14,438	$16,688	$8,625	$9,625	$11,125
25		$18,250	$20,250	$23,250	$13,688	$15,188	$17,438	$9,125	$10,125	$11,625
20		$19,250	$21,250	$24,250	$14,438	$15,938	$18,188	$9,625	$10,625	$12,125

New Financial Incentive Table for Multi-family High Rise

Baseline	Savings Before RE	Baseline	Savings Before RE	Baseline	Savings Before RE	Incentive Per Unit
	25%		20%		15%	$1,250
	30%		25%		20%	$1,500
90.1-2007	35%	90.1-2010	30%	90.1-2013 App G 2010 OR 2013	25%	$1,750
	40%		35%		30%	$2,000
	45%		40%		35%	$2,250

SUMMARY OF COMMENTS FROM PUBLIC STAKEHOLDERS AND STAFF RESPONSES

Written comments were submitted by Steven Winters Associates ("SWA"), MaGrann Associates ("MGA"), ReVireo ("RV"), EAM Associates ("EAM"), and the New Jersey Division of Rate Counsel ("Rate Counsel"). The following summarizes the comments and also provides Staff's responses to them:

Comment: RV, EAM, and Rate Counsel commented in support of the Proposed Budget Revisions.

Response: Staff appreciates the support.

Comment: SWA commented that its multi-family projects take considerably longer to plan, finance and construct than single-family projects, that what the commenter believed to be a registration life of 1 year therefore was a significant problem, and that therefore a longer registration life, such as 2 years, should be allowed for multi-family projects. EAM requested confirmation that currently enrolled multi-family projects do not expire.

Response: Staff notes that the Proposed Program Revisions include 2-year-long commitments for multi-family projects and appreciates the support for them. In addition, it is confirmed that multi-family projects enrolled as of the date of this Order do not expire.

Comment: MGA, EAM, and RV commented that the RNC Program needs to avoid the creation of a "Catch-22" by requiring that an RNC Program application include a copy of the relevant building permit, in that some permit issuers may require proof of enrollment in the RNC Program as part of their building permit application and in that DCA Bulletin 15-4 expressly requires the submission of a letter of enrollment from the RNC Program for certain permits. RV and EAM suggest that the Catch-22 could be avoided if the Program enrollment were to be conditioned on providing the building permit within 60 or 90 days of enrollment.

RV also commented that an enrollee who fails to meet the 60-day building permit deadline should always be allowed to re-enroll once it obtains the building permit. RV submits that this should be the case because the enrollee has very little control over the timing of the building permit and because Raters will be appropriately incentivized to dissuade applicants from applying too early by the desire to avoid unnecessary administrative work.

RV and EAM also commented that the NJCEP should show flexibility towards single family enrollees who miss the 60-day deadline for the successful completion of pre-sheetrock inspections, with RV suggesting that such enrollees should have an unlimited right to re-enroll at any time.

Response: Staff agrees that it should avoid creating a Catch-22. However, Staff also believes that the Program should avoid unnecessarily committing funds for unnecessarily long times and also should provide incentives for an applicant to diligently pursue its permits and inspections. Accordingly, Staff suggests the submission and Board approval of a revised compliance filing providing that:

1. Any applicant can apply to and receive from the RNC Program an application number, letter or other document acknowledging the applicant has applied to the Program ("Acknowledgment"), but making no commitment of funds, provided, however, that, as provided above at "RNC Commitments," commitments can be issued for publicly funded (e.g., HMFA) projects that require proof of a commitment in order to be financed ("Public Projects"). The Acknowledgment issued to non-Public Projects will have no expiration date; the commitments to Public Projects will expire as set forth elsewhere in the Program (e.g., 1 year for single-family projects).
2. An applicant for a non-Public Project can apply to be enrolled in the Program by submitting, among other things, a validly issued building permit. Although the enrollment application can be made any time after the issuance of the building permit, applicants should wait until they are less than 60 days away from their pre-sheetrock inspection. See #5 below. Upon enrollment, the enrollee will be given an enrollment number, letter or other document acknowledging the applicant has been enrolled in the Program ("Enrollment"). Enrollments for multi-family/multi-single/MFHR projects will expire 2 years from the date of Enrollment; Enrollments for single-family projects will expire 1 year from the date of Enrollment.

3. Staff recognizes that, as provided above at "RNC Enrollment," and regardless of #1 and #2 above, no financial commitments will be made for non-Public Projects Enrolled between August 31, 2015 and June 30, 2016.
4. While it is developing the FY 17 NJCEP Budget and Program requirements, Staff will consider and seek input as to whether it should re-commence, or in the case of Public Projects continue, making financial commitments as part of the RNC Program and, if so, on what terms and conditions.
5. An enrollee for a single-family project that misses its 60-day deadline (from Enrollment) for the successful completion of its pre-sheetrock inspection will be entitled to one 60-day extension from the expiration of the original pre-sheetrock inspection deadline, so long as the enrollee requests the extension before the expiration of the original deadline. If an enrollee otherwise believes it should be granted an extension, it can apply for a waiver with a showing of exceptional circumstances. Staff notes that, as provided above at "RNC Commitments" and "RNC Rebates," Enrollment and the expirations thereof can affect which incentive levels and enrollment requirements apply to a project.

Comment: MGA also commented that:

1. The reference to the address for multi-family projects should be changed from "unit's address" to "project's address" because plans for multi-family projects typically do not include specific units' addresses. EAM similarly commented that it can be difficult for projects, especially multi-family projects, to include unit addresses on their plans.
   MGA also requested clarification as to whether or not the Program is rescinding the existing requirement that projects be enrolled only immediately prior to the start of construction.
2. The $2,845,000 transferred into the RNC Budget should be sufficient to allow commitments, not mere enrollments, to be made between August 31, 2015 and June 30, 2016.
3. MFHR projects, in addition to multi-family and multi-single projects, should be eligible for the proposed 2-year commitments. However, RV commented that multi-single projects should be treated in the same manner as single family projects, not multi-family projects, because they are registered individually and follow construction timelines similar to single family projects.

Response: Staff's response is as follows:

1. Staff agrees and suggests the submission and Board approval of a revised compliance filing that change "unit's" to "project's."
   Staff intends to keep the existing timeline.
2. The $2,845,000 is not nearly sufficient for that purpose. As mentioned in the Request for Comments, the shortfall that would occur if the process for committing funds was not changed would be in the vicinity of $10,000,000, not $2,845,000.
3. Staff agrees that MFHR projects should be eligible and suggests the submission and Board approval of a revised compliance filing that includes language clarifying that MFHR projects are eligible for 2-year Enrollments or commitments, as the case may be. As to multi-single projects, their construction timelines are typically more similar to multi-family than to single-family projects and Staff therefore recommends the Board adopt Staff's original proposal to provide a 2-year Enrollment for multi-single projects.

Comment: MGA commented that a multi-family project that can demonstrate construction is underway at the expiration of the 2-year enrollment period should not lose its commitment. RV commented that an enrollee that fails to complete construction within the applicable 1- or 2-year enrollment period should be allowed to re-enroll without restriction, at least and especially if the subject project was enrolled prior to the entry of this Order. This is in part because RV claims that the RNC Program's unwritten rule has long been to enroll early and often.

Response: Staff agrees with MGA but respectfully submits that RV's position would fail to provide sufficient incentive for an applicant to apply only when construction is nigh and to diligently pursue the construction of its project. Accordingly, Staff suggests the submission and Board approval of a revised compliance filing providing that a project will be granted one extension of its Enrollment or commitment for a period equivalent to its original commitment or Enrollment if it demonstrates that its pre-sheetrock inspections had been successfully completed by the time of the commitment or Enrollment expiration and that the enrollee otherwise has diligently pursued construction.

Comment: EAM and RV commented that they support the elimination of the numbered RNC Incentive Tiers.

Response: Staff appreciates the support.

Comment: EAM commented that the RNC Program should look to make some accommodations to multi-family applicants attempting to comply with the IECC 2015 ERI compliance path.

Response: Staff agrees in principle and will work with the Program's stakeholders in order to try to identify accommodations that would also be consistent with the Program's missions.

Comment: Rate Counsel commented that it concurs with Staff's proposal to adopt the ENERGY STAR v3.1 standards upon the effective date of IECC 2015, i.e., on March 21, 2016.

Response: Staff appreciates the support.

Comment: MGA, EAM, and RV commented that projects being completed in accordance with earlier IECCs or commercial code requirements should be grandfathered.

As to ENERGY STAR, ZERH, and MFHR, MGA commented that projects being completed in accordance with permits based upon earlier requirements, such as IECC 2009 or ASHRAE 90.1-2010, should be required to comply only with the requirements that to-date have applied to projects being completed under those IECCs or requirements, e.g., ENERGY STAR v3.0, not the more stringent ENERGY STAR v3.1, or 15%, rather than 20%, above ASHRAE 90.1-2010. Similarly, MGA commented that the New Financial Incentive Tables should not be applied to projects being completed under permits based upon previous IECCs or code requirements.

Similarly, RV commented that it is unclear whether projects enrolled prior to March 21, 2016 (the effective date of IECC 2015) would be required to comply with ENERGY STAR v3.1 and that it would disagree with any such requirement. It would disagree because such projects would be providing the desired 15% increase over the construction code that applies to them; to require more of those projects would be unduly burdensome and unfair. RV commented finally that projects permitted under the 2009 Code should be accepted for enrollment through August 31, 2016, which it describes as the last day of FY 16.

Similarly, EAM commented that although it supports the elimination of the Tier 1 ENERGYEfficient Home Program, projects issued permits based upon previous IECCs or Codes should be allowed to enroll and receive incentives under the terms of that Program as it existed prior to the revisions addressed in the present Order.

MGA also commented that especially State-funded multi-family projects will be put in another Catch-22 if the Program applies the proposed March 21, 2016 rather than EPA's April 1, 2017 effective date for ENERGY STAR v3.1. MGA claims this is because such projects are funded and designed so far in advance of construction and it suggests that the Program should apply EPA's later effective date to at least those projects.

Response: Staff agrees that projects being completed in accordance with permits based upon previous IECCs or codes should be grandfathered. It also believes that delays in the permitting and construction processes are often not within the control of the builder and that therefore the grandfathering should not expire on August 31, 2016 or any other date but should instead continue to apply indefinitely. Staff suggests the submission and Board approval of a revised compliance filing that includes language to the foregoing effect.

Staff, however, disagrees with MGA's comment requesting a later ENERGY STAR effective date of State-funded multi-family projects. It disagrees because as a general matter Program funds should only be used to reward projects that are more efficient than what applicable codes would otherwise require. That said, an applicant/enrollee that believes its special case meets the Program's goals while not being in full compliance with some requirement of the Program can apply for a waiver with a showing of exceptional circumstances. Staff also notes that EPA has not yet developed a version of an ENERGY STAR Performance Target, as such, that would be applicable to MFHR projects; EPA is instead as an interim measure using Performance Targets based upon varying percentages above the different versions of ASHRAE 90.1.

Comment: EAM requested confirmation that projects enrolled at or prior to 5 pm on August 31, 2015 would be subject to the requirements and eligible for the incentives available at that time.

Response: Confirmed.

Comment: EAM and Rate Counsel commented that they support Staff's proposal to follow EPA's plan to allow applicant's to choose the baseline against which to measure their MFHR projects' energy efficiency. However, Rate Counsel also suggested that the Board set a date certain by which applicants would be bound to use an NJCEP-specified baseline.

Response: Staff appreciates the support, agrees with Rate Counsel's suggestion, and suggests the submission and Board approval of a revised compliance filing that provides that the NJCEP will require the application of a specific baseline within six months of EPA imposing such a requirement.

Comment: RV and EAM commented that Staff should not apply NJ-specific requirements, such as a prescriptive 3ACH50 air-sealing requirement, to the ENERGY STAR or ZEHR programs.

Response: Staff agrees that it should not apply 3ACH50 or other NJ-specific requirements to the ENERGY STAR and ZEHR Programs. Presently neither the EPA nor NJ impose a 3ACH50 requirement for the ENERGY STAR and ZEHR Programs. That said, Staff recognizes the ERI compliance path as a practical matter requires that 3ACH50 be verified. The requirement is included in the nationwide REMRate software (used when following the ERI compliance path) and is not a NJ-specific requirement.

Comment: MGA and RV commented that the P4P Program should be brought into better alignment with the MFHR Program in that both Programs are designed to incentivize builders of large buildings that are built to commercial codes but that are fundamentally residential in use and marketing. They suggest that the only "reason" there are two separate programs is that the P4P Program existed prior to ENERGY STAR MFHR, and they suggest that the more lucrative P4P incentives and the value of the ENERGY STAR brand would draw many more projects into a new Program that combined the best elements of each Programs into a single Program. In addition, EAM suggests that the MFHR ENERGY STAR Program should eliminate its exclusion of projects that exceed six stories.

Response: Staff believes that there may be considerable merit in MGA, RV, and EAM's comments. Over the next several months it will analyze them more carefully, discuss them with stakeholders, and possibly propose Program revisions.

Comment: RV commented that it strongly supports Staff's proposal to provide a $750 incentive for any project permitted through the ERI path.

Response: Staff appreciates the support.

Comment: MGA commented that Code officials' verifications may not always be specific enough to demonstrate compliance with a specific path, such as ERI, and therefore NJCEP should be somewhat flexible as to the type of documentation required to demonstrate compliance with the ERI path. Somewhat similarly, EAM commented that it will be difficult to obtain a letter from a code official verifying that code compliance was achieved through the ERI path, and it suggests that the Program should instead accept a Rater's report showing the same thing.

Response: Especially in light of DCA Bulletin 15-4, Staff agrees that it may be difficult or even impossible to obtain a Code official's verification of compliance through the ERI path and that therefore a Rater's report will be sufficient to document that a project meets the Program's ERI performance criteria. Of course, code officials would continue to determine whether a project complies with the applicable code(s).

Comment: MGA commented that Staff should consider ways to simplify the documentation and processes related to the RNC Program while at the same time maintaining robust Quality Assurance.

Response: Staff agrees and is constantly reevaluating the RNC and its other programs in the interest of simplification without sacrificing robust Quality Assurance.

STAFF RECOMMENDATIONS

As described above, Staff has considered the written comments and committee discussions regarding the Proposed Revisions.

As to the Proposed Budget Revisions, Staff has attempted over the last several years to better align program budgets with realistic projections of the level of funds that can be expended or committed in a FY. The intent is to minimize the funds collected from ratepayers and the resultant rate impacts.

Program participation levels are a function of several factors such as the state of the economy and the weather, for example. Staff has encouraged the practice of transferring funds from programs that are under budget due to lower than anticipated participation levels to programs with higher than anticipated participation levels. This practice minimizes the potential for funds to remain unspent or uncommitted at the end of the fiscal year.

The Proposed Budget Revisions are projected to allow certain beneficial programs to remain open to new applicants through the remainder of the FY without negatively impacting the programs from which funds are being transferred. Based on the above, Staff believes the Proposed Budget Revisions are reasonable and appropriate and recommends their approval.

As to the Proposed Program Revisions, Staff has proposed, and, in response to comments, refined, changes that will help to ensure continued funding for the most important, time-sensitive RNC projects and that appropriately conform Program requirements to the newly promulgated standards and codes.

Honeywell has submitted a revised compliance filing incorporating the Proposed Revisions, as refined in accordance with Staff's recommendations, as well as incorporating a detailed budget consistent with the Proposed Budget Revisions (the "Revised Compliance Filing"). Staff recommends approval of the Revised Compliance Filing.

DISCUSSION AND FINDINGS

Consistent with the contracts with the Market Managers and the Program Coordinator, the OCE has coordinated with the Market Managers and the Program Coordinator[4] regarding the Proposed Revisions. Staff, in conjunction with these contractors, discussed the Proposed Revisions at public meetings of the EE and RE committees to receive comments and input. The Proposed Revisions were circulated to the EE committee listserv and posted on the NJCEP web site and written comments from the public were accepted and meaningfully considered. Accordingly, the Board **HEREBY FINDS** that the process utilized in developing the Proposed Revisions was appropriate and provided stakeholders and interested members of the public adequate notice and the opportunity to comment on them.

The Board has reviewed the Proposed Revisions and Staff's recommendations regarding same, and **HEREBY FINDS** that the Proposed Revisions, as refined in accordance with Staff's recommendations, will benefit customers, are consistent with the EMP goal of reducing energy usage and associated emissions. Therefore, the Board **HEREBY APPROVES** the Proposed Revisions as refined in accordance with Staff's recommendations.

The Board has also reviewed Staff's recommendation that the Board approve the Revised Compliance Filing and **HEREBY FINDS** that recommendation to be reasonable and appropriate. Therefore, the Board **HEREBY APPROVES** Staff's recommendation to approve the Revised Compliance Filing.

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[4] See footnote 2 above.

This Order shall be effective on March 28, 2016.

DATED: 3-18-16

BOARD OF PUBLIC UTILITIES
BY:

RICHARD S. MROZ
PRESIDENT

JOSEPH L. FIORDALISO
COMMISSIONER

MARY-ANNA HOLDEN
COMMISSIONER

DIANNE SOLOMON
COMMISSIONER

UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST:

IRENE KIM ASBURY
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 CLEAN ENERGY PROGRAMS AND BUDGET FOR FISCAL YEAR 2016 - REVISED BUDGET & CHANGES TO THE RESIDENTIAL NEW CONSTRUCTION PROGRAM - DOCKET NO. QO15040477

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