



Agenda Date: 9/13/12

Agenda Item: 8B

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 THE NEW JERSEY)	Adoption of Revised Smart Growth
SMARTSTART BUILDINGS PROGRAM:)	Policy and Exemption Process to
REQUEST FOR EXEMPTION)	Allow Replacement Building for
)	Existing Structures
)	
)	Non-Docketed Matter

Parties of Record:

Gene McDonald, Westerly Road Church
Diane Zukas, TRC Energy Services
Michael Ambrosio, Applied Energy Group

BY THE BOARD:

This Order by the Board of Public Utilities ("Board") considers Petitioner Westerly Road Church's request for waiver of the Board's Smart Growth policy, pursuant to N.J.A.C. 14:1-1.2. Having reviewed the petition and the applicable law, the Board grants Petitioner's request for waiver based on the reasons set forth below.

BACKGROUND

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. Ibid. These programs are now called the New Jersey Clean Energy Program (the "NJCEP").

On March 4, 2003, the Board adopted certain program guidelines for residential and non-residential programs. I/M/O the N.J. Clean Energy Program, Docket No. EO02120955 (March 4, 2003) ("March 4, 2003 Order"). Specifically, to be eligible for certain energy efficiency incentives, applicants for Clean Energy program funding were required to comply with the program guidelines set forth in that order. Based on the March 4, 2003 Order, the guidelines for commercial energy efficiency programs provide that "incentives for new construction are available only in areas designed for growth in the New Jersey State Development and Redevelopment Plan. Id. at CHART I. See also TRC Energy Services (TRC), C&I Clean Energy Program, 2012 Program and Budget Filing 53 (2012) ("Compliance Filing").

Petitioner Westerly Road Church, ("Petitioner"), located in Princeton Township, Mercer County, is constructing a new building on a separate lot also located in Princeton Township. Petitioner submitted a Pay-for-Performance New Construction program application to TRC, the Commercial and Industrial Market Manager. TRC rejected the application based on the new building not being located in an area designed for growth.

Petitioner appealed TRC's decision to Applied Energy Group ("AEG"), the Program Coordinator, consistent with the existing dispute resolution policies. AEG discussed this matter with the Office of Clean Energy ("OCE"), which determined that Petitioner must formally request waiver of the NJCEP Smart Growth requirements, pursuant to N.J.A.C. 14:1-1.2. On August 7, 2012, in a letter addressed to the Secretary of the Board, Petitioner requested waiver of the Board's policy on not granting incentives to projects located in areas not designated for growth.

Petitioner's current building was built fifty-six years ago to accommodate a congregation of approximately 100 people. Since then, Petitioner has experienced a sizable growth in membership and now serves a congregation of approximately 500. Currently, Petitioner has insufficient space to administer Sunday school and after-service programs, which must be held outside, weather permitting. Further, parking for its members has become a major issue, because a significant portion must park on the residential street fronting the current property. Petitioner asserts that this is not only an inconvenience to its neighbors but also a safety issue.

Although Petitioner has outgrown the present facility, Petitioner maintains it is unable to expand in the residential zone due to zoning regulations favoring lower-density development. In order to continue to foster growth and better serve the community, Petitioner has purchased a property on the southeast corner of Bunn Drive and Herrontown Road, in Princeton Township, a commercially-zoned property which is large enough to accommodate Petitioner's growing congregation. Based on Petitioner's history with the community, Petitioner asserts that relocating to an area designated for growth but situated further away from its members is not a viable option.

DISCUSSION AND FINDINGS

Petitioner seeks to apply for incentives offered by the Pay-for-Performance New Construction program. Under current guidelines, new construction outside an area designated for growth that does not expand or replace an existing structure, is ineligible for program benefits. Compliance Filing, supra, at 54. Petitioner requests the Board waive its smart growth requirement for eligibility to receive program incentives.

Granting waiver under N.J.A.C. 14:1-1.2(b)(1) requires the Board to engage in a two-pronged analysis. First, the Board must consider whether Petitioner's request is in accordance with the general purpose and intent of the guidelines. Second, the Board must consider whether full compliance with the guidelines "would adversely affect the ratepayers of a utility or other regulated entity, the ability of said utility or other regulated entity to continue to render safe, adequate and proper service, or the interests of the general public." N.J.A.C. 14:1-1.2(b)(1).

To determine the general purpose of the Smart Growth guidelines, the Board first looks to its policy on the Smart Growth requirement. See I/M/O United Communities, L.L.C. – Exemption from underground extension regulations at N.J.A.C. 14:3-8.4 and Exception from Rules Governing Energy Star Homes Program, Docket No. EO09010039 (December 15, 2011); see also I/M/O the Clean Energy Program Customer On-site Renewable Energy (CORE) – Request for Extension of Completion Timeframe for Existing Commitment – N.J. Meadowlands Comm'n, Docket No. EO09070573 (April 21, 2011). As stated above, the March 4, 2003 Order instituted a policy of restricting commercial energy efficiency programs to applicants located within Smart Growth areas. However, on April 3, 2006, the Board found that it was in the public interest to modify its Smart Growth policy. I/M/O the N.J. Smartstart Buildings Programs, Non-Docketed Matter, (April 3, 2006) ("April 3, 2006 Order"). The Board noted that the Smart Growth policy adopted in its March 4, 2003 order, promoted the goal of smart growth to the detriment of maximizing energy efficiency. Id. at 1-2.

Among other things, the Board directed the Office of Clean Energy (OCE) to modify the policy from the March 4, 2003 Order by implementing a "good cause" exception, whereby the Board may grant exceptions to the Smart Growth requirements on a case-by-case basis, based on designated criteria. An applicant must demonstrate to the Board that both of the following criteria are met to qualify for the good cause exemption:

1. The project or activity served by the expansion or replacement would improve energy efficiency by exceeded minimum building code requirements and would complement the State's Renewable Portfolio Standard ("RPS") goals; and
2. Moving to an area designed for growth, as defined in N.J.A.C. 14:3-8.2, is not economically feasible for the applicant and would result in job loss in New Jersey.

The OCE has reviewed the criteria for granting a "good cause" exception to the Board's Smart Growth policy and notes that Petitioner's new building will be Leadership in Energy and Environmental Design ("LEED") certified and is designed to exceed the current energy code by 30% – double the requirement for incentives under the Pay-for-Performance New Construction program. In addition, Petitioner's significant energy efficiency reduces its energy demand overall. Petitioner's project therefore complements the State's RPS goals by lowering the State's energy demand from nonrenewable sources of electric generation, thereby reducing the environmental impacts of those sources' air pollutant emissions and the transport of those emissions. Cf. N.J.A.C. 14:8-2.1(a) (stating the goals of the State's RPS are to, among other things, "minimize the environmental impact of air pollutant emissions from electric generation; reduce possible transport of emissions and minimize any adverse environmental impact from deregulation of energy generation; and support the reliability of the supply of electricity in New Jersey.") Petitioner's energy efficiency also helps support the reliability of the supply of electricity in New Jersey by reducing demand. Ibid. Further, Petitioner cannot reasonably relocate to an area designated for growth, given its history in community and the growth it has

experienced there.¹ Therefore, the OCE recommends that the Board grant a one-time waiver of its Smart growth policy regarding applications for incentives under the Pay-for-Performance New Construction program.

Having reviewed Petitioner's request for waiver from the Board's Smart Growth policies, the Board **FINDS** that, based on Petitioner's representations, it has been located in Princeton Township for approximately fifty-six years, needs to expand to better serve its members as well as the community, and that constructing an expanded building outside of the area is not a viable option. The Board further **FINDS** that the new building will exceed existing building energy codes by 30%, helping to achieve the State's energy efficiency goals. Although Petitioner proposes new construction in an area not designated for growth and has not clearly stated how moving to an area designed for growth would result in job loss, the Board **FINDS** that Petitioner's proposed implementation of energy efficient technologies, is reasonably in accordance with the general purpose and intent of the guidelines. Therefore, the Board **FINDS** Petitioner satisfies the first prong of the Board's waiver test.

Waiver of the Board's Smart Growth policy also requires the Board to consider, among other things, whether full compliance with the Guidelines would adversely affect the public interest. N.J.A.C. 14:1-1.2(b)(1). In this case, strict adherence to the Board's Smart Growth policy would promote Smart Growth goals to the detriment of maximizing energy efficiency. The Board has previously found it to be in the public interest to relax its Smart Growth policy to achieve commercial energy efficiency objectives. See April 3, 2006 Order, supra, at 2. In this case, Petitioner is applying for incentives under the Pay-for-Performance New Construction Program which aims to promote high performance buildings that achieve significantly more energy cost savings than buildings built to the current energy code. Based on the unique facts of this matter, rigid application of the Board's Smart Growth policy would be contrary to the public interest, which would otherwise be well-served by the NJCEP's energy efficiency goals.

Accordingly, the Board **HEREBY FINDS** the second prong of the Board's waiver test has been satisfied.

The OCE further notes that typically, once an application is approved, an Energy Reduction Plan ("ERP") is then drafted prior to approval of the project in order to determine the potential incentive. Since Petitioner has indicated that construction was set to begin in August 2012, and given the anticipated timeframe for the Board to consider this matter, the OCE further recommends granting a waiver to allow the ERP to be submitted for review and approval after construction has begun.

CONCLUSION


Based on the above, the Board **HEREBY APPROVES** Petitioner's request for waiver of the Board's Smart Growth policies. TRC is **HEREBY AUTHORIZED** to process Petitioner's Pay-for-Performance New Construction application, provided all other program requirements are met except as addressed by this Order.

¹ OCE notes that one of the purposes on the Pay-for Performance New Construction program is to link incentives to energy efficiency, thereby "creating 'green collar' jobs and helping to develop the workforce necessary to achieve ambitious energy savings targets." Compliance Filing, supra, at 54.


The Board **FINDS** the Pay-for-Performance New Construction program guidelines require the approval of an ERP prior to commencing construction. Petitioner commenced construction in August 2012. As of the date of this order, sufficient time may not exist to submit and obtain approval of an ERP prior to commencing construction. Therefore, the Board **HEREBY AUTHORIZES** TRC to accept and consider Petitioner's ERP as within time, if submitted after construction of the new building has commenced.

DATED: 9/13/12

BOARD OF PUBLIC UTILITIES
BY:


ROBERT M. HANNA
PRESIDENT


JEANNE M. FOX
COMMISSIONER

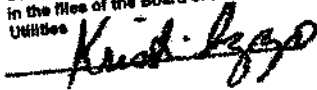

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COMMISSIONER


NICHOLAS ASSELTA
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MARY-ANNA HOLDEN
COMMISSIONER

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



NON-DOCKETED MATTER - IN THE MATTER OF THE NEW JERSEY SMARTSTART
BUILDINGS PROGRAM: REQUEST FOR EXEMPTION

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