

Stakeholder comment is a critical component of developing a reasonable, practical and cost-effective guide for the New Jersey Energy Resilience Bank (ERB). As a result, the New Jersey Board of Public Utilities (BPU) and New Jersey Economic Development Authority (NJEDA) are distributing for review and comment a draft of the proposed Application Challenge Process that is intended to be incorporated into the New Jersey Energy Resilience Bank Grant and Loan Financing Program Guide. Written comments from stakeholders will be evaluated in connection with finalizing the Application Challenge Process as a component of the Program Guide for the purpose of presenting the Application Challenge Process to the Boards of BPU and NJEDA for approval.

Energy Resilience Bank Application Challenge Process

It is the goal of all parties involved in the Energy Resilience Bank to conduct business in a professional manner. In the course of ERB's staff review of an application, ERB staff may reach out to the applicant for clarification or to request additional information. During this review process, ERB staff shall alert the applicant in writing if ERB staff assesses that the application fails to meet the required threshold criteria, as established in the appropriate Financial Guide for the applicant's industry, of the ERB program.

To the extent an applicant and ERB staff agree that there is no need to continue the evaluation of the application, the applicant may notify ERB staff in writing of the applicant's withdrawal of the application. If an applicant withdraws the application, ERB staff will acknowledge the withdrawal and discontinue further review of the application.

To the extent an applicant disagrees with ERB Staff's assessment that the application does not meet the threshold criteria, an applicant may request a formal letter summarizing the ERB staff's reasoning for said assessment within 30 days of the date of the ERB staff's assessment letter. The formal explanatory letter will list the reason(s) for ERB staff's conclusion that the application fails to meet the required threshold criteria. The applicant shall direct the request for a formal explanatory letter to the Deputy Director and the Executive Director of the ERB.

Although the BPU approves the SBC portion of the funding and the EDA approves the CDBG-DR portion of the ERB funding, consistent with their various areas of expertise, ERB financial staff will review and make recommendations about the financial and CDBG-DR aspects of an application and ERB technical staff will review and make recommendations about the technical aspects of an application. Thus, if, upon receipt of a formal explanatory letter, an applicant decides to challenge the financial and/or CDBG-DR findings, it will direct its challenge to the EDA, copying the BPU, and if it decides to challenge the technical findings, it will direct its challenge to the BPU, copying the EDA. Due to the sequential nature of the review process, with the technical review occurring first, it is possible that after the successful resolution of an explanatory

letter based on technical findings, an applicant may go through this process again with respect to financial / CDBG-DR findings. The following is the process that will be followed.

Challenge to Technical Findings

An applicant may challenge ERB's technical staff's assessment by submitting, in writing to the ERB's Deputy Director and Executive Director no later than 30 calendar days from the date of the ERB's explanatory letter, a response that sets forth how the applicant has met the technical criteria and a request that a hearing officer be appointed to review the application. Such challenges are not contested cases subject to the requirements of Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. Challenges that are timely submitted shall be handled by the BPU as follows:

1. The BPU President shall designate an employee of the BPU to serve as a hearing officer for the challenge. The hearing officer shall perform a review of the written record and consult with ERB subject matter experts. The hearing officer may hold a phone consultation with the applicant, and may consider new evidence or information that would demonstrate that the applicant met the requirements for the criterion on which ERB technical staff anticipated recommending that the application be denied.
2. Following the hearing officer's review, the hearing officer shall issue a written report to the ERB technical staff and the applicant containing his or her finding(s) and recommendation(s) on the merits of the challenge.
3. The hearing officer's report shall be advisory in nature and is not binding on ERB technical staff. Within ten days of its receipt of the hearing officer's report, ERB technical staff must notify the applicant in writing of whether ERB technical staff intends to accept, reject, or modify the report. If ERB technical staff anticipates a need for more than ten days to notify the applicant of its intention, ERB technical staff must, within that ten day period, provide the applicant with a reasonable date in writing by which it will provide the applicant with its decision. Such time frame, including the initial ten days, should not exceed thirty days from the ERB technical staff's receipt of the hearing officer's report.
4. Based on ERB technical staff's review of the hearing officer's report, and as appropriate, ERB technical staff shall continue its review of the application or present the application to the Board for final agency action (unless the applicant withdraws its application).
5. ERB technical staff's final recommendation to the Board shall include a copy of the hearing officer's report.

6. Final decisions rendered by the Board shall be appealable to the Superior Court, Appellate Division, in accordance with the Rules Governing Courts of the State of New Jersey.

Challenge to Financial Findings

An applicant may challenge the NJEDA's decision by submitting in writing to the NJEDA no later than 30 calendar days from the date of the denial letter, with an explanation as to how the applicant has met the financial and/or CDBG-DR criteria. Such challenges are not contested cases subject to the requirements of Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

Challenges that are timely submitted shall be handled by the NJEDA as follows:

1. The CEO of the NJEDA shall designate an employee of the NJEDA to serve as a hearing officer for the challenge and to make a recommendation on the merits of the challenge to the Board. The hearing officer shall perform a review of the written record, consult with NJEDA subject matter experts, and, if required by the hearing officer, or requested by the applicant, hold a phone consultation with the applicant. The NJEDA may consider new evidence or information that would demonstrate that the applicant met the requirements for the criterion on which they were declined.
2. Following completion of the record review and/or phone consultations, as applicable, the hearing officer shall issue a written report to the NJEDA Board containing his or her finding(s) and recommendation(s) on the merits of the challenge. The hearing officer's report shall be advisory in nature and is not binding on the Board. The CEO, or equivalent officer, of the NJEDA may also include a recommendation to the written report of the hearing officer. The applicant shall receive a copy of the written report of the hearing officer and shall have the opportunity to contact the hearing officer with any comments and exceptions prior to the matter being brought before the Board.
3. The Board shall consider the hearing officer's report, the recommendation of the CEO, or equivalent officer, if any, and any written comments and exceptions timely submitted by the applicant. Based on that review, the Board shall issue a final decision on the challenge. Such decision shall become effective 10 working days after the Governor's receipt of the minutes of the public meeting at which such decision occurs, provided no veto has been issued. The applicant shall have the opportunity to attend the public meeting at which the Board considers its challenge.
4. After consideration by the NJEDA board, if the financing includes SBC funds, the challenge will also be submitted to the BPU board for action.

5. Final decisions rendered by the Board(s) shall be appealable to the Superior Court, Appellate Division, in accordance with the Rules Governing Courts of the State of New Jersey.