



Agenda Date: 8/15/12

Agenda Item: 8H

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

CLEAN ENERGY

IN THE MATTER OF THE PETITION OF AGFA )  
CORPORATION PETITION APPEALING THE ) ORDER  
DECISION OF THE CLEAN ENERGY PROGRAM ) DOCKET NO. EO12040352V

**Parties of Record:**

**Barbara Drasheff**, Nicoll Davis & Spinella, LLP, on behalf of Petitioner Agfa Corporation  
**Stefanie A. Brand**, Director, New Jersey Division of Rate Counsel

BY THE BOARD:

Agfa Corporation ("Petitioner" or "Agfa") has filed a petition appealing the decision of the New Jersey Clean Energy Program ("NJCEP") that denied Petitioner a rebate under the NJCEP's SmartStart Building Custom Measure Program ("the Program").

**BACKGROUND**

On February 9, 1999, the New Jersey Electric Discount and Energy Competition Act ("EDECA"), N.J.S.A. 48:3-49 et seq., was enacted. L. 1999, c. 23, § 66. Among other things, EDECA empowered the Board to initiate a proceeding and cause to be undertaken a comprehensive resource analysis of energy programs, which is currently referred to as the comprehensive energy efficiency ("EE") and renewable energy resource analysis. Ibid. These programs are now called New Jersey's Clean Energy Program. Among the EE programs is the Commercial and Industrial ("C&I Retrofit Program," also referred to as the "SmartStart" or "SmartStart Buildings Program"). The C&I Retrofit Program includes both "prescriptive" measures, for which a fixed incentive is provide, and a program component referred to as the "Custom" program, which provides incentives determined on a customized, or project-by-project basis, for EE measures and technologies for which no prescriptive incentive is available.

The Program provides financial incentives to help C&I customers offset some of the added cost to purchase qualifying energy-efficient equipment, which provides significant long-term energy savings. The program maintains a list of pre-qualified measures, called prescriptive measures, on the NJCEP website. The program also allows incentives for innovative energy-efficiency measures, referred to as "custom measures," that are not on the prescriptive equipment incentive list. Custom measures must be approved by the Board's Market Manager before they qualify for an incentive.

For all custom applications, the cost of a custom project is compared to the industry or building code standard depending on the technology. For a complete equipment replacement, as is the case with Agfa, the Market Manager will review the incremental cost between the standard and the energy-efficient measure to determine the cost-effectiveness of the project. In Petitioner's case, the cost of the standard system exceeded the cost of the custom system as identified by Petitioner. The program incentives are intended to motivate customers to purchase a more efficient technology; however, if the cost of the more efficient technology is less than the cost of the standard, there is nothing for the Program to incentivize.

Beginning approximately July 1, 2011, according to Agfa, one of its engineers engaged in discussions with Program personnel and was directed to the SmartStart Buildings website. On or about September 21, 2011, Petitioner submitted an application to the Program using the 2011 Custom Electric/Gas application. Petitioner sought financial incentives for non-prescriptive energy efficient equipment that it installed as part of its manufacturing process for lithographic printing plates. According to the petition, Agfa has a facility located in Branchburg, New Jersey, where it makes lithographic printing plates for commercial printers and newspapers. The manufacturing process involves a process known as the Electro Chemical Graining process which, during certain steps, generates heat that needs to be rejected.

The application requires, as part of the supporting documentation, a statement of the cost of standard, less efficient measures. This information is used to calculate the additional cost incurred by the applicant in purchasing high-efficiency equipment which, in turn, forms an essential part of the incentive calculation. The Program Guide states that "Project viability, eligibility, and incentives are assessed on a case-by-case basis and may be determined as part of a technical study, which details energy and demand savings and project costs." In some cases, "custom measure applications may contain all of the information necessary for processing without the need for a formal technical study." By specifically referencing "project costs," the Program informs applicants that these costs are one important component in calculation of the incentive, if any.

On or about September 30, 2011, the Market Manager asked Agfa to clarify certain information in its application and provide additional documentation about cost details and comparative solutions. On October 19, 2011, Agfa represents that it sent a revised spreadsheet and details regarding the cost of standard measures to the Market Manager.

On or about October 27, 2011, the Program advised Agfa that its application did not meet the Program's custom measures eligibility requirements because the energy efficient option was less expensive than the standard approaches considered as alternatives and thus did not qualify for a custom incentive. On October 31, 2011, Agfa appealed the rejection of its application to the Program Coordinator, Applied Energy Group ("AEG").

On November 2, 2011, AEG affirmed the Program's decision on the grounds that the custom equipment did not exceed the baseline costs of projects with standard measures.

Custom projects are designed to encourage measures that are innovative and more energy efficient than today's standards, and have not yet been adopted as a prescriptive technology. They allow for a more comprehensive and creative consideration of projects that are more complex than the prescriptive measures, but involve less than a whole building design.

Unfortunately, in this project [the Market Manager] found that the custom proposed system is actually cheaper than the comparable baseline. The chiller is more expensive than the custom system, so [the Market Manager] came up with a negative incremental cost. There is no comparison for an incentive because the custom project not only costs less but also saves energy. Since the foundation of the Custom program is to provide incentives for energy efficient equipment with costs that exceed a standard efficiency measure, this project has failed to meet that criteria.

On April 27, 2012, Agfa filed this petition. Petitioner contends that it had no notice of the program requirement that in order to receive an incentive under the Program, the high efficiency equipment selected had to cost more than the standard equipment it considered as an alternative. Petitioner also alleges that it already deployed the equipment based on its belief that the equipment qualified for a rebate amount of \$100,000.

### **DISCUSSION AND FINDINGS**

The Board does not find Petitioner's argument about proper notice to be convincing. According to the 2011 Board approved TRC Compliance Filing, "Incentives are based on incremental costs (i.e., the additional cost above baseline equipment), in consideration of market barriers, changes in baselines over time and market transformation objectives."<sup>1</sup> This language applies to prescriptive measures and eligible custom measures. The Compliance filing was approved by the Board during its annual budget process in December 2010 and posted on the Office of Clean Energy website.

The 2011 SmartStart Program Guide ("Program Guide") also confirms that the project costs will be considered as part of the application review process. It states, "Project viability, eligibility, and incentives are assessed on a case-by-case basis" and may be determined based on a technical study or information provided in the application. Program Guide at 7. As noted above, the application specifically requires that comparative cost information for less-efficient alternatives be supplied. This requirement assists the Market Manager in determining the cost effectiveness of the project. The request for information also gives notice to all applicants that the project's cost will be considered as part of the determination of eligibility for incentives.

Further, the webpage for the Program's Equipment program states that incentives are intended to offset only a portion of the incremental cost of high-efficiency equipment: "New Jersey SmartStart Buildings provides financial incentives for qualifying equipment. These incentives were developed to help our customers offset some of the added cost to purchase qualifying energy-efficient equipment, which provides significant long-term energy savings." [www.njcleanenergy.com/commercial-industrial/prog](http://www.njcleanenergy.com/commercial-industrial/prog). Therefore, Petitioner's argument that it did not have proper notice is not persuasive.

In addition, Petitioner's argument that it has suffered a financial loss because it relied upon its belief that it would be eligible for incentives lacks merit. The application states: "Pre-approval

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<sup>1</sup> Available at

<http://www.njcleanenergy.com/files/file/Library/TRC%202011%20CI%20Program%20and%20%20Budget%20Filing%2011%2030%2010.pdf>, at page 5.

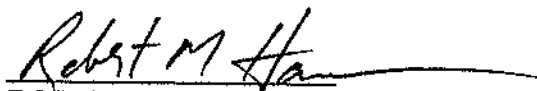
is necessary before equipment is purchased[.]<sup>2</sup> The 2011 Program Guide also states, "pre-approval is required for almost all incentives." Program Guide at 3. Thus, Petitioner knew or should have known that installation of its new equipment prior to receiving approval was done at its own risk.

Petitioner has replaced a less-efficient manufacturing system with a more efficient one and, by its own admission, has paid less for this equipment than it would have paid for equipment of standard efficiency. Even accepting Petitioner's claim that it failed to realize that it was not eligible for an incentive, Petitioner has experienced savings both in its initial investment in the equipment and in the decreased energy use as a result of that investment.

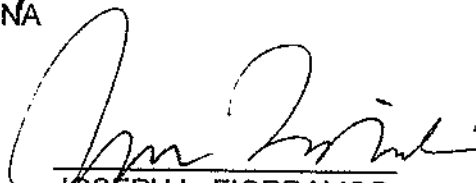
The Board **FINDS** that the NJCEP reviewed Agfa's application based on the proper eligibility standards. The Board **FINDS** that Petitioner invested in high-efficient equipment. The Board **FINDS** that this equipment cost less than standard alternatives considered by Petitioner. The Board **FINDS** that Petitioner knew or should have known that the rebates provided by the Program were intended to offset a portion of the incremental cost of high-efficiency equipment that cost more than less-efficient alternatives. Therefore, the Board **FINDS** no reason to reverse the decision of the NJCEP. The decision of the NJCEP is **HEREBY AFFIRMED**.

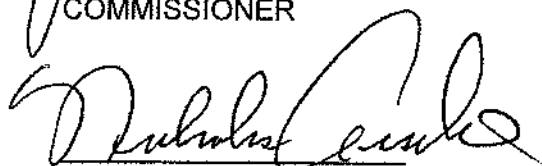
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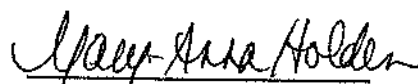
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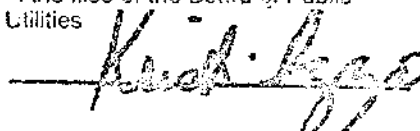
  
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ATTEST:

  
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



<sup>2</sup> Some exceptions exist for specific measures below a certain cost level but those exceptions are inapplicable here.

IN THE MATTER OF AGFA CORPORATION  
PETITION APPEALING DECISION OF  
THE CLEAN ENERGY PROGRAM

DOCKET NO. EO12040352V

SERVICE LIST

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