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**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/)  
(609) 777-3300

## **NOTICE<sup>1</sup>**

**Docket No. QO20080531**

### **Energy Savings Improvement Program (ESIP) Straw Proposal**

#### **Comment Period and Public Stakeholder Meeting**

Pursuant to the "Open Public Meetings Act", N.J.S.A. 10:4-6 et seq., the New Jersey Board of Public Utilities ("NJBP" or "Board") gives notice of a public stakeholder meeting and invites all interested parties and members of the public to discuss the Energy Savings Improvement Program ("ESIP") Straw Proposal.

NJBP Staff ("Staff") is looking to evaluate and refresh the ESIP program by engaging with stakeholders on ways to improve the overall process, streamline submission of required documents, and develop transparent, easily understandable rules.

The public meeting will be held at the following date, time, and place:

**Date: Tuesday, September 8, 2020**

**Time: 10:00 a.m. – 1:00 p.m.**

**Held via webinar:** Please note that, in the interest of public health and safety, this meeting will be conducted via a webinar. You must register for the September 8 meeting before attending by clicking the following registration link:  
<https://register.gotowebinar.com/register/3996029184425862670>

#### **BACKGROUND**

In 2009, ESIP was first signed into law as a financing method for New Jersey's boards of education, public institutions of higher education, local government units, and State contracting agencies to implement energy conservation measures ("ECMs") as set forth under energy savings plans ("ESPs") (P.L. 2009, c. 4). On September 12, 2012, P.L. 2012, c. 55 was signed into law, which amended and further defined the ESIP process.

The ESIP allows for improving and retrofitting public facilities with ECMs without requiring that those public facilities provide new capital investments. The ESIP program accomplishes this

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by using the future value of energy savings to finance the up-front investment. Instead, the pre-qualified Energy Services Companies ("ESCOs") provide the up-front financing and are paid back, over time, from the savings that accrue to the public entity through reduced energy bills. Approved applicants can execute contracts up to 15 years in length (20 years with combined heat and power or cogeneration projects) that ensure that efficiency upgrades are installed in such a way that annual payments are lower than the savings projected, thus allowing entities that lack significant capital resources to finance the reduction of their energy consumption and energy bills.

While guidelines for the ESIP are currently in place, Staff is looking to update the program and re-establish program rules.

### **ESIP Straw Proposal**

The following topics related to the ESIP are included for stakeholder comment at the above-referenced stakeholder meeting and by written submissions. Staff invites stakeholders to respond to any or all questions, but asks them to please specify in their responses which question they are answering.

The questions below include references to the ESIP RFP Form, which can be found [here](#).

#### **A. Process Improvement**

Staff is considering streamlining the ESIP process and moving toward electronic submission of the various reports, documents, and necessary submissions to the Board.

1. Staff is considering additional Technical Assistance programs to facilitate entities' participation in ESIP. What, if any, additional Technical Assistance would be most helpful in encouraging more active and widespread ESIP participation, including solicitation drafting and application assistance?"
2. Staff proposes electronic submission of documents to ease the burden of submitting large files to the Board for review. Is this preferable to paper submission?
3. Should an entity be expected to also utilize electronic submission of documents for the RFP process? Is it a burden for government entities to set up a SharePoint site or the equivalent for dropping of large documents instead of the use of thumb drives, etc.? Can an entity's email systems accept these size files?
4. To help facilitate project kickoff, Staff proposes a project intake form and initial project meeting for all types of ESIPs. Items on the intake form will include applicant contact information, audit information, entity facility information, ESIP implementation method, etc. What other information would be valuable on the intake form?
5. Staff is considering developing an electronic ESIP project workbook that would contain forms related to an ESIP project. Would an online submission or a writable workbook that is emailed into the ESIP Coordinator be preferable?
6. The Board has the authority to require periodic submission of reports for an ESIP project. How often should Staff require updates on an ESIP?

7. Currently, the standard RFP to be used by all ESIP projects and program participants' Energy Savings Plans ("ESP") are posted on a public website. In the future, would it be beneficial to have an ESIP tracker that shows where a program participant is within the ESIP process after the RFP has been issued? Should performance related to the ESP be posted online as well?

### ***B. Project Components***

1. **Combined Heat and Power (CHP):** What should be the requirements for CHP systems in an ESP? Should NJBPU require a specified load served to approve the CHP? Post-installation, what should be the required run time hours for the unit?
2. **Installation Year Savings:** All ESIP projects should have either a 15- or 20-year payback term. Generally, the install year is not counted, but when items that yield immediate savings are counted, it can impact the total number of years for payback. To ensure the timeline does not go beyond the 15- or 20-year limit, should the savings from the install year be deducted from the timeline? In other words, if savings occur immediately, as they do with lighting upgrades, and are captured in the cash flow analysis during the "install year," should the same amount of time be deducted from the end of the overall ESIP project term?

### ***C. RFP Template***

The RFP template has previously served as the first step for many government entities in the ESIP process. The current template has been in use since 2009. As Staff looks to refresh the template, Staff sees an opportunity to increase the transparency for the public to understand the ESIP process, as well as update the template to reflect changes in procurement and other related components. The RFP is comprised of components that are under the jurisdiction of NJBPU, Department of Community Affairs ("DCA"), and the Office of the State Comptroller ("OSC").

1. Is there a clear understanding of the review process both by NJBPU and OSC (as captured in [LFN 2011-17, June 16, 2011](#)) prior to issuance?
2. As COVID-19 has impacted in-person meetings, is there enough information available on how to structure pre-bid meetings and access to facilities? Should additional time be built into the RFP process as a result? Should a different format be utilized?
3. Should the bid evaluation weight criteria stay the same? Should different scoring criteria be considered or the weighting be changed?
4. In responding to an RFP, an ESCO is currently required to use a base case of a 15-year pay back term with a 5 percent financing rate.
  - a. Would it be beneficial to use the going market value rate instead of 5%?
  - b. Should NJBPU review this established rate on an annual basis?
  - c. Should an alternative case be mandated along with the base case?

5. Currently Form V (“ESCO’s Preliminary Energy Savings Plan: ESCO’s Proposed Final Project Cost Form for Base Case Project”) within the RFP has criteria listed to help with the transparency of evaluating bids. Does anything on the form need further clarification or revision? How could the form more accurately reflect different bidders’ offerings?
6. Form V has an explanation within Notes 1 and 2. There has been some confusion over hard costs and what is included. How could this be better explained? Do ESCO fees and subcontractor fees need to be more clearly defined? If yes, how so?

#### ***D. Construction and Finance***

Staff is interested in continued transparency of the ESIP as the post-bid award moves into the project phase and seeks to implement a process for all entities to follow.

1. After financing is secured for a project, should all parties sign and submit a scope commitment form? How could such a form help avoid unnecessary changes to the project?
2. After financing is secured, should a program participant submit an updated cash flow analysis to the ESIP Coordinator?
3. For projects with solar power purchase agreements (“PPAs”) or entity-owned solar projects, the solar project costs cannot be included, but the savings can be. Should solar and storage be encouraged in ESIP projects even if there is limited monetary savings that can be applied to the overall ESIP?
4. The State is encouraging the deployment of electric vehicles and the electrification of buildings. How could an ESIP support these policy priorities?

#### ***E. Additional ESIP Projects for Same Program Participant***

A program participant may be interested in pursuing a second ESIP project. This may occur when the first project identified additional funds or ECMs, but did not implement them at that time.

1. What criteria should be used to evaluate a Phase II ESIP request? Should it follow the same steps as an initial ESIP for approvals? If a Phase II ESIP request is an extension of the original ESIP – for example, finishing the second half of buildings that were not addressed in the first phase – should a new bid be required? Should new intake forms be submitted with the proper back up?

#### ***F. Guidance***

NJBPU has primary jurisdiction over an ESIP, but it also falls under regulatory review by the OSC and DCA local finance regulations.

1. Should NJBPU develop a handbook for filling out the ESIP workbook with appropriate links to OSC and DCA requirements?

2. Currently, there is guidance in the form of a local finance notice. Should additional ESIP guidelines be developed by any of the regulating agencies? Should a workbook and/or ESIP project manual be implemented?
3. Operational and Maintenance savings in an ESIP require justification for approval. How many years should Operational and Maintenance savings be counted for if a hard cost is eliminated? Should the current O&M savings be limited to 5 years?
4. Should there be further transparency in the cash flow for escalators? How should compounded escalators be treated after ten years?
5. The ESIP program currently utilizes the Protocols to Measure Resource Savings adopted by the Board through *New Jersey's Clean Energy Program*™ on an annual basis as part of the annual budget setting process. Should the ESIP program require third party certifications to acknowledge that these protocols have been utilized as part of the verification process? Should an ESP be denied if this acknowledgement is not part of the certification?

### **G. Project Savings Guarantee**

Currently, a project's savings is measured and verified for the first year (after commissioning) at the expense of the entity. Any additional guarantee must be purchased by the local government entity.

1. Should a project's savings be guaranteed throughout the duration of the loan?
2. How can an entity doing a DIY ESIP project purchase a guarantee?

Commenters are encouraged to file their submissions electronically through the Board's External Access Portal upon obtaining a MyNewJersey Portal ID. Once you establish a MyNewJersey account, an authorization code is required which you can request by emailing the NJBPU's IT Helpdesk at [ITHELPDESK@bpu.nj.gov](mailto:ITHELPDESK@bpu.nj.gov). Members of the public may file comments regardless of whether they participated in the public meetings. Comments may also be submitted electronically to [Board.Secretary@bpu.nj.gov](mailto:Board.Secretary@bpu.nj.gov) in PDF or Word format with the subject ESIP Straw Proposal."

Please note that these comments are considered "public documents" for purposes of the State's Open Public Records Act. Stakeholders may identify information that they seek to keep confidential by submitting them in accordance with the confidentiality procedures set forth in N.J.A.C. 14:1-12.3.

**All comments must be received on or before the comment deadline of 5:00 p.m. ET on September 21, 2020.**

Aida Camacho-Welch  
Secretary of the Board

Dated: August 19, 2020

Persons interested in attending the above meeting who require special accommodations because of disability should contact the Office of the Secretary of the Board at (609) 292-1554 at least one (1) day prior to the meeting date so that appropriate arrangements can be made.