



On October 5, 2010 the Board of Public Utilities approved new procedures related to remediation of NJCEP contractor issues. The new procedures will become effective 30 days from the date of the Order. Attached please find the Board Order which sets out the new procedures. Please contact the program managers, Honeywell or TRC, if you have any questions regarding the new procedures.



Agenda Date: 10/5/10
Agenda Item: 8C

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center – Suite 801
Newark, NJ 07102
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF COMPREHENSIVE ENERGY)
EFFICIENCY AND RENEWABLE ENERGY RESOURCE)
ANALYSIS FOR THE 2009 -2012: CONTRACTOR)
REMEDATION PROCEDURES)

ORDER
DOCKET NO. EO07030203

(SERVICE LIST ATTACHED)

BY THE BOARD:

This Order memorializes action taken by the Board of Public Utilities (“Board”) at its October 5, 2010 public meeting, where the Board considered proposed New Jersey Clean Energy Program (NJCEP) contractor remediation procedures.

BACKGROUND

The Board has issued numerous Orders that approved NJCEP program and budgets administered by Honeywell, the Market Manager for the residential energy efficiency and renewable energy programs, and TRC, the Market Manager for the C&I energy efficiency programs. Several of the programs including the Home Performance with Energy Star, Residential HVAC, C&I New Construction, C&I Retrofit and Renewable Energy Incentive Programs are designed to allow for participation by any third party contractor that meets the program requirements.

Honeywell and TRC have indicated to the Office of Clean Energy (OCE) that at times contractors have violated program procedures and that in some cases a contractor may consistently violate program procedures. Honeywell and TRC have pointed out that they do not currently have the authority to take action against contractors that violate program procedures or to prohibit a contractor from participating in a program even in an extreme case where fraud is involved.

To provide the Market Managers with additional ability to take action against contractors that violate program procedures, Honeywell and TRC developed proposed contractor remediation procedures which were submitted to the OCE for review. The OCE reviewed and provided comments on the draft proposal. A revised proposal was submitted which was discussed at the January 12, 2010 meeting of the Energy Efficiency (EE) Committee. There was general support for the proposal from the contractor community. Honeywell and TRC prepared a revised draft of

the proposed contractor remediation procedures which was circulated by the OCE for comment on August 4, 2010. Specifically, the draft contractor remediation procedures were posted on the NJCEP web site and circulated to the EE and RE committees list serves with a request for comments by August 18, 2010. The following summarizes the comments received on the proposed contractor remediation procedures.

Summary of Comments

Comments were received from Public Service Electric and Gas Company (PSE&G), Laury Heating Company (Laury), and EnergySolve.

PSE&G stated that the process seems fair and effective and has been needed for a long time. PSE&G also indicated that it does not understand how designating a payment to a contractor will eliminate financial loss to the customer.

Laury commented that: the standards need to be defined and that there needs to be an appeal process, not just an immediate suspension or probation; that there needs to be some warning or heads up that standards are not being met; that there needs to be some consideration for the work that is already in the pipeline after the change or corrections are made; and that there needs to be timeframes associated with each step and level including timeframes for reviews, probations and notifications. Lastly, Laury also requested "some sort of process" to address customers who abuse the system.

EnergySolve submitted a redlined draft of the proposed procedures. EnergySolve proposed that contractors be given 5 days to dispute a proposed probation and that if the Market Manager is not persuaded it can then notify customers. EnergySolve also commented that customers should not be penalized for contractor actions in cases where the work was performed satisfactorily.

Response: The OCE concurs with PSE&G's comment that such procedures are needed. As a point of clarification, designating an incentive payment to the contractor would result in the contractor not receiving a rebate payment if outstanding issues are not resolved. This would transfer the risk on non-payment of a rebate from the customer to a contractor.

Both Laury and EnergySolve recommended an appeals process and some warning that standards are not being met. The OCE concurs. The revised contractor remediation procedures set out below incorporate an appeals process and also clarify that the existing NJCEP dispute resolution procedures are applicable to the contractor remediation procedures. The proposed procedures already include "verbal guidance and email correspondence documenting the remedial actions to bring the contractor up to the expected operating levels" which the OCE believes meets the request that some warning that standards are not being met be given.

The OCE also concurs with EnergySolve's comment that customers should not be penalized for contractor actions. The proposed procedures, as drafted, are intended to as a disincentive for contractors, not customers. The OCE will coordinate closely with the Market Managers to ensure customers are not harmed by contractor actions.

Laury also commented that that there needs to be some consideration for the work that is already in the pipeline after the change or corrections are made; and that there needs to be timeframes associated with each step and level including timeframes for reviews, probations

and notifications. The OCE concurs that consideration should be given for work already in the pipeline. The procedures allow for pending work to continue subject to close supervision and inspection. The OCE also believes that the proposed procedures include sufficient timelines such as the length of any probation period and the number of days given for making recommended improvements. The revised procedures set out below provide contractors with 5 days to appeal any proposed probation. Finally, while OCE appreciates Laury's concern regarding customers who act irresponsibly, a process for that situation is beyond the scope of this proceeding.

The following sets out the proposed contractor remediation procedures that incorporate the above changes recommended by the OCE:

Proposed Contractor Remediation Procedures

One of the primary responsibilities of the Market Managers is to oversee the level of performance of the contractors that participate in the New Jersey Clean Energy Program (NJCEP). This involves two primary areas: adherence to program processes and the level of service delivery. The Market Managers will continue to support those companies who participate in the NJCEP at both the management and field/administrative staff levels. These procedures are applicable to contractors participating in any NJCEP energy efficiency or renewable energy program.

For all contractors involved in the programs, Board Staff understands that three types of contractor issues commonly arise:

1. Deficiencies in adhering to established guidelines and procedures (administrative and field services)
2. Failure to provide the services to the customer in a timely and professional manner as described in the program
3. Intentional misconduct outside the established guidelines and procedures.

The following table describes most types of contractor issues and the recommended actions to either remedy the problem or take appropriate actions relative to the involved firm. The areas of non-performance will affect the level at which they enter the matrix if the infraction is deemed serious by the Market Manager.

	Issue	Recommended Action	Follow-up
Level 1	<p>General quality of work not up to accepted standard (delivery as required). For example:</p> <ul style="list-style-type: none"> • Bad data on customer routinely provided • Miscounts • Wrong SEER/EER/HSFP numbers 	<p>Verbal guidance and e-mail correspondence documenting the remedial actions to bring the contractor up to the expected operating levels.</p>	<p>Provide more guidance on pending processes upfront, monitor their applications for improvement, retrain as needed</p>
Level 2	<p>Continued sub-par performance on process/field work issues. Continued sub-par performance is defined as submittal of any new applications or installation of any new measures, subsequent to the provision of Level 1 guidance defined above, that do not meet program standards.</p>	<p>Written probation letter is sent to contractor principal, copy to Program Coordinator for file. Defined timeline (30 days) given for making the recommended improvements based on the infractions to date. No issuance or approval of new jobs until quality is marked as improved by Market Manager. Probation includes no use of program forms, funding of co-op payments, use of logos or authorized software until fully reinstated. Contractor is given 5 days to dispute the probation by meeting in-person with Market Manager personnel to review all open work. If Market Manager is not persuaded within the 5 day period that the probation is not appropriate, the Market Manager must state that in writing and has the right to notify Customers whose applications are pending approval that their contractor is on probation. If imposed, Market Manager has the ability to remove contractor from any program list during this probationary period.</p>	<p>30 day probation period starts. If there are more problems during the probation period relative to program rules/processes, new projects are put on indefinite hold until the existing problems are resolved and Contractor would then be moved to Level 3. If work is improved as noted by Market Manager, notice of reinstatement sent and applications processed.</p>
Level 3	<p>No improvement in performance during 30-day probation period</p> <ul style="list-style-type: none"> • Continuation of above 	<p>Written notice of suspension, cc: OCE and Program Coordinator. Contractor is given 5 days to dispute the suspension by meeting in-person with Market Manager personnel to review all open work. For (C&I) rebates/incentives, all new applications must designate payment to contractor to eliminate potential financial loss to customer. No new assignment of work or new applications will be accepted. Contractors will be denied access to IT systems that submit new applications. For applications coming from contractors, customer will be notified of their status.</p>	<p>90 day suspension for any new work to be assigned/approved pending further investigation. Pending work to be closely supervised and inspected. Reinstatement only upon appeal, review, in-person meeting with MM personnel. Upon reinstatement the contractor will be returned to Level 2 with a 30 day probation period prior to being fully reinstated into the program</p>
Level 4	<p>Intentional misconduct</p> <ul style="list-style-type: none"> • Evidence of theft, larceny, fraud, drugs/alcohol abuse, forged-faked invoices, or other misconduct intended to be outside the program procedures. 	<p>Written notice of suspension, cc: OCE and Program Coordinator. Market Manager will provide notification to the Attorney General's office detailing the allegations, cc: OCE and Program Coordinator. No applications processed for any customer listing the involved contractor. Customers contacted by Market Manager to advise them of contractor status.</p>	<p>One year suspension. No reinstatement without petition for BPU approval.</p>

NOTE: Customers calling to file a complaint will be advised that they can also contact the Division of Consumer Affairs (Phone 973-504-6200 or visit www.njconsumeraffairs.gov). Further, all issues involving evidence of fraud or theft will be referred to the Office of the Attorney General.

Market Manager Administration of Contractor Complaint Resolution Process

- A) All issues regarding disputes and complaints relative to contractors need to have a hard copy paper trail (e-mail, customer letter, etc.). A copy of the complaint should be kept in the application folder with a scanned copy on a common hard drive, for future reference. The information required includes application number, date, complaint, resolution and any communications made to the involved contractor.
- B) Complaints involving a contractor need to be brought to attention of the Market Manager's Project Manager in all instances. If the complaint comes in from a source other than the customer, the Market Manager's Program Manager will reach out to the customer to verify and discuss the complaint. If the complaint is consumer-based, the customer may also wish to pursue other available avenues including the Division of Consumer Affairs.
- C) Once a contractor is at the Probation Level 2, all work in hand is monitored. That requires internal sign off by authorized Market Manger personnel prior to the incentive approval. All work (monitored and tracked at that Contractor level) is post inspected. All activity within the 30 day probation period is reviewed and shared with the involved Contractor at month end. If the work in hand is satisfactory, the Market Manager can reinstate the Contractor.
- D) If the contractor reaches the Probation Stage, the Market Manager will notify the Contractor in writing with a copy to the appropriate Market Manager personnel that they are on probation. In the event a new application is received that is related to the Contractor in question, a "notice of probation" letter will be sent to the customer advising that the involved Contractor is not approved to participate in the Program at this time. If the Program maintains a list of approved contractors, the contractor on probation may have their name removed from the list until the probation issues are resolved satisfactorily.
- E) If the Contractor improves their performance, they may be reinstated on a "probationary status" by the Market Manager.
- F) The Contractor will be suspended if another infraction occurs within 60 days of the end of the probation period as deemed by the Market Manager. A letter will be sent to the Contractor, with a copy to the Program Coordinator and OCE with the case history. Again, the same customer notification process would be in place as in item D above.
- G) The NJCEP has developed dispute resolution procedures which can be found on the NJCEP web site at; <http://www.njcleanenergy.com/main/board-public-utilities/board-public-utilities-0>. The existing dispute resolution procedures are applicable to any disputes regarding the contractor remediation standards set out above. A stay of any contractor suspension or probation issued by a Market Manager will be granted during the pendency of any related dispute filed with the Program Coordinator or informal complaint filed with the Office of Clean Energy. If all attempts to resolve an issue have been exhausted, pursuant to N.J.A.C. 14:1-1, contractors may file a petition with the NJ Board of Public Utilities.

The OCE has reviewed the proposed contractor remediation procedures and believes such procedures are necessary to maintain the integrity of the programs. As noted above, the contractor community generally supported the proposed procedures based on comments provided at the January 12, 2010 EE Committee meeting and the procedures proposed above were modified to address many of the written comments received. The OCE recommends that the Board approve the proposed contractor remediation procedures and authorize Honeywell and TRC to implement the procedures effective upon 30 days' notice to the contractor community.


DISCUSSION AND FINDINGS

The Board has reviewed the proposed contractor remediation procedures set out above. The Board believes that the programs require a certain level of rigor such that customers participating in the program have the confidence that the contractor they select is not a significant or consistent violator of program procedures. Further, the Board believes that the programs require procedures for the Market Managers to address issues related to contractor non-performance or in extreme cases fraud or theft. Such procedures do not currently exist.

The proposed procedures set out above distinguish between different levels of infractions and the recommended actions are appropriately related to the level of the infraction. Based on the above, the Board **HEREBY APPROVES** the contractor remediation procedures set out above and authorizes Honeywell and TRC to implement the procedures effective upon 30 days' notice to the contractor community.

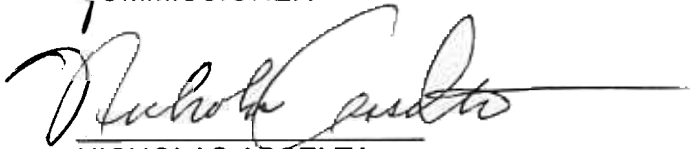
DATED: 10/5/10

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SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities
