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ESIP Program Updates

FR: New Jersey Board of Public Utilities (BPU) Staff

TO: The Public

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On July 1, 2021, the New Jersey Board of Public Utilities (BPU or Board) transitioned some of the Clean Energy Program energy efficiency (EE) programs to the State's investor-owned utilities. With this transition, the Board issued an Order on program implementation. Since that time, BPU Staff (Staff) has been working together on how the EE programs would work with the existing Energy Savings Improvement Plan (ESIP) law and program. During this period, stakeholders have also raised questions on the different impacts of State and federal policy. Staff wishes to clarify the following items:

Solar Policy

1) **Solar credits** – The ESIP law prohibits the Solar Renewable Energy Certificate (SREC) being utilized in the financing of an ESIP. In the past several years, the solar market has evolved to include a Transition Incentive (TI) Program and a Successor Solar Incentive (SuSi) Program. For clarification, renewable energy certificates produced from the TI and SuSi Programs are considered the same as SRECs in terms of ESIP financing because they are all derived from the generation of renewable energy and therefore cannot be utilized within an ESIP project. The law specifically states that similar attributes cannot be utilized:

   "*During the procurement phase of an energy savings improvement program, an energy services company's proposal submitted in response to a request for proposal shall not include a savings calculation that assumes, includes, or references capital cost avoidance savings, the current or projected value of a "solar renewable energy certificate," as defined pursuant to section 3 of P.L.1999, c.23 (C.48:3-51), or other environmental or similar attributes or benefits of whatever nature that derive from the generation of renewable energy, and any costs or discounts associated with maintenance services, an energy savings guarantee, or third party verification of energy conservation measures and energy savings."*

2) **Inflation Reduction Act** (IRA) – A provision within Direct Pay Option of the federal IRA allows local governments to receive an incentive if they purchase a solar system instead of participating in a power purchase agreement (PPA). If a photovoltaic (PV) system is purchased, an entity is eligible for a credit with a base rate of 6% value of the total system with an additional 24% credit if prevailing wage is included which results in a potential of a 30% credit. This provision may encourage public entities to own a solar PV as opposed to doing a PPA. If a public entity will be purchasing a solar PV as opposed to doing a PPA, they will

need to purchase a maintenance agreement. Neither the solar system nor the maintenance agreement can be financed within an ESIP. The ESIP law states:

> *"Lease-purchase agreements and energy savings obligations shall not be used to finance maintenance, guarantees, or verification of guarantees of energy conservation measures."*

ESIP Process

Staff and Utility Program staff are working cooperatively together to work on flagging and tracking ESIP projects. All entities must follow New Jersey Department of Community Affairs (DCA) guidance on utility programs, and BPU has the right to review ESIP-related incentives.

1) ESIP Intake Form - The ESIP Intake Form is a new requirement for the program and can be found on the website. All implementation methods (DIY, HYBRID, ESCO) will commence only when this form is submitted by a representative from the public entity to the ESIP Coordinator at ESIP@bpu.nj.gov. Once received, the Coordinator will schedule a call to explain the proper steps for each ESIP model. This allows for proper coordination amongst the BPU, Utility and entity representatives.

2) Preliminary Audit Validity- Since the preliminary audit serves to establish the baseline and current building conditions, Staff will accept an audit that is within 3 years of an ESIP RFP. An entity wishing to use an audit older than 3 years but less than 5 years may apply for consideration for use to the ESIP Coordinator. This includes LGEA and other sourced ASHRAE Level 2 Building and Level 3 audits.

3) Updated project forms- As a result of the transition, there have been several changes implemented to allow for projects to continue forward quickly.

> **a. Utility savings distinctions-** Staff is working with the utility program coordinators to ease the transition related to ESIP projects. Pilots are currently occurring in Public Service Electric and Gas Company's service territory. One program change is that all utility savings must be clearly marked on the forms with incentive estimates. DCA has given an opinion that local public contracting law does not allow for utility vendors to be utilized under the Direct Install or Engineered Solutions programs.
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> **b. 15% energy related spending -** The law allows for up to 15% of the energy savings contract to be a facility related improvement needed for the energy upgrades. Projects need to delineate on Form II the related improvements.

4) Utility Programs & ESIP ESCO model- If a project is an ESCO model and prior utility program discussions have occurred, an ESCO may provide the investment grade audit to the utility for review as the Engineered Solutions audit component. If the audit is accepted by the utility, then the incentives and energy conservations measures (ECMs) within the Energy Savings Plan (ESP) draft should be vetted with the utility and DCA prior to submission to the BPU. ECMs must be clearly delineated where a utility incentive will be sought, and the amount expected. No utility financing is to be utilized. It must remain cash flow positive and generate energy savings. The ESP will be submitted to the ESIP Coordinator for final review and approval, which will then be given to the utility again after approval. Upon successful bidding and installation, the incentive rebates can be submitted for by the entity to the utility.

5) Co-Op & ESIP – Under DCA rules, a local government may utilize a properly bid cooperative agreement to enter into a contract with an ESCO for an energy savings performance contract, known as ESIP, within New Jersey. There are nationally recognized as well as state-based coop contracts. The entity must still have a preliminary audit (LGEA or other ASHRAE Level II Audit) in order to enter into an ESIP.

6) PJM Demand Response - The ESIP law allows for a project to utilize the Regional Transmission Organization demand response program. Under the transition of programs, the utilities developed a demand response program to capture the savings from utility programs. As such, ESIP projects will only be allowed to bid into the demand response program for measures that did not receive utility program incentives.

7) Changes in procurement due to transition – Entities must confirm that they are aware of change to utility providers and will have to bid out vendors and may not use utility "prequalified" venders. Utility financing will not be considered available to ESIP projects. This language must be included in all ESPs and must be reviewed by the Public Entity: As of July 1, 2021, Board-approved utility EE programs replaced certain NJCEP offerings. Subsequently, the BPU is requiring that all ESIP projects consult with the DCA and follow all DCA guidance regarding the utilization of any utility incentive program in an ESIP project. Additionally, utility incentives must be detailed on ESIP forms.

8) DIY Method Clarification - While the original ESIP law states that the DIY model is to be used for HUD housing authorities, there has been some expansion over the years. In the DIY method, the local government unit takes the lead and is responsible for submitting all related documents. This approach involves the contracting unit properly procuring services from different organizations to perform the various elements of an ESIP (i.e., audit, ESP preparation, developing construction plans and specification, etc.). It is an alternative to the ESCO approach, where a single organization provides a wide range of services and can offer an energy savings guarantee. The entity will be responsible for procurement of services from different organizations to perform various elements of an ESIP. However, Staff clarifies that if an ESCO is hired by the entity to perform any component of the project, bidding/award details will be requested.

The chart below explains the differences between models.

Action	Responsible party in **DIY Model**	Responsible party in **ESCO Model**	Responsible party in **HYBRID Model**
Submit ESIP Intake Form	Entity	Entity	Entity
Schedule LGEA or Preliminary Audit	Entity	Entity	Entity or Engineer/Architect of Record (EoR)
ESIP RFP for an ESCO	NOT Req'd	Entity	Entity or EoR
Hire Firm to Perform IGA	Entity bids out for services	ESCO performs audit	ESCO performs audit
Development of the Energy Savings Plan; Apply for EE Incentives	Entity bids out for services; entity applies for incentives	ESCO	ESCO or EoR
Secure Financing	Entity (Financial Advisor)	Entity (Financial Advisor)	Entity (Financial Advisor)
Hire Third Party Auditor	Entity	Entity	Entity
Development of Construction Plans	Entity bids out for services	ESCO	ESCO or EoR
Bids and Specifications	Entity bids out for services	ESCO	ESCO or EoR
Manages the Construction Process	Entity	ESCO	ESCO or EoR
Measurement and Verification	Entity bids out for services	ESCO	ESCO or EoR
Reporting	Entity	Entity	Entity