

## Incentives Boost Green Projects

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Judging from various blue-ribbon report recommendations and financial incentives making the rounds in Trenton these days, the development of renewable energy is fast becoming one of the major cornerstones in New Jersey's efforts to achieve the state's greenhouse gas reduction goals.

As contemplated by the State's Energy Master Plan, which was released in final form last October, in order to meet the state's ambitious goals for reducing GHG emissions, projected statewide energy use will have to be decreased by 20% by 2020, while 30% of the state's electricity needs will have to come from Class 1 renewable energy sources.

Against this backdrop, there can be little doubt that New Jersey is quickly becoming a fertile ground for energy efficiency and renewable energy development projects able to capitalize on new legal and financial incentives that are beginning to sprout at the state and federal level.

Using money allocated to New Jersey's State Energy Program through the American Recovery and Reinvestment Act, the state is gearing up to dole out nearly \$74 million in grants and low-interest loans for both public and private innovative energy efficiency and renewable energy projects. According to the Governor's office, projects offering the greatest prospects of job creation and potential reductions in greenhouse gas emissions will be given priority in the awards process.

With deadlines for application submission approaching fast, environmental services companies and companies involved in renewable facility construction and development are scrambling to take advantage. One such grant program, announced on July 7th by the Governor's office, will provide more than \$20 million for a program administered by the New Jersey Board of Public Utilities to invest in renewable energy and energy efficiency projects at state office buildings and public colleges and universities, with grant applications due by August 7, 2009. In addition to grant and loan incentives, a host of other federal and state tax incentives are available to offset energy efficiency and renewable energy development costs.

In addition to financial incentives, the New Jersey Legislature is making forays into the energy efficiency and renewable energy development arena with legislative initiatives to encourage such projects. One example, aimed at removing legal barriers in public contracting laws to innovative funding approaches for such projects, came in the form of the Energy Savings Improvement Program (Public Law 2008, Ch. 83), which the legislature enacted in January as an amendment to the state's public contracting law, N.J.S.18A:18A-42. This amendment authorizes municipalities and counties to enter into power purchase agreements and performance contracts for terms of up to 15 years for construction of renewable energy generation facilities and equipment, as well as energy efficiency retrofits.

PPAs and performance contracts are innovative approaches that have long been offered by ESCOs to fund energy efficiency upgrades with long-term cost savings expected to be generated by the upgrades. The state hopes to encourage their use so as to spur more renewable energy construction projects and energy conservation retrofits in public buildings. The contracts are still required to follow competitive bidding procedures and must be awarded in accordance with guidelines issued by the BPU, which provides a method for computing and tracking energy cost savings and energy generation costs. In addition to these legal reforms, the state is also moving to provide funding to local governments for renewable energy and energy conservation projects.

A performance contract can be used, where necessary, as part of a mix of financing solutions that avoid or minimize or the need for public financing of energy equipment upgrades renewable energy construction projects, or energy conservation measures. In essence, a performance contract is an agreement offered by an ESCO whereby the ESCO (or a commercial lender) will advance the required capital, subject to a right of repayment that is paid from funds derived from cost savings generated by the improvements.

The contract describes the particular energy efficiency improvements to be made, associated costs, estimated energy to be generated and other savings, as well as the expected cost savings. In most cases, the cost savings are guaranteed, subject to the condition that the associated equipment is properly operated and maintained over the course of the contract. Typical performance contracts have a term of 10 to 20 years.

PPAs have been used in a similar way to finance (or partly finance) the construction of renewable energy production facilities, like solar panels, for public properties with long-term future cost-savings achieved by supplanting energy that otherwise would have to be purchased off the electrical grid. Since federal and state tax credits cannot be used by a public entity to help pay for renewable energy facility construction, such as solar panels, public agencies have sometimes granted concessions to ESCOs allowing them to install renewable energy production facilities on government property. This approach allows the ESCO to minimize the cost of facility construction in comparison with the cost that the governmental entity would incur to do the same.

The key for ESCOs seeking to secure PPAs and performance contracts with local governments is intimate knowledge of public contracting requirements, especially as they relate to performance contracting. State agencies have been providing guidance to local contracting officials on what to look for (and look out for) in such contracts, and have provided in some cases contracting models and advice on how to ensure contract integrity and maximize cost savings. The New Jersey Department of Community Affairs has also circulated an advisory to local governmental contracting officials advising them against rushing into such contracts without careful consideration of state contracting guidelines.

Another important source of revenue that may be used to leverage renewable energy facility and conservation projects is grant funding that will soon be made available from the proceeds of auctioning of carbon emissions allowances generated through New Jersey's participation in the Northeastern Regional Greenhouse Gas Initiative. The New Jersey Department of Environmental Protection, which has primary responsibility for implementing RGGI in New Jersey, is currently promulgating rules under the Local Government

Greenhouse Gas Reduction Program that will govern how these funds will be allocated to projects designed to promote local government agencies' efforts to reduce greenhouse gas emissions through energy efficiency, renewable energy, or distributed energy projects that will lead to measurable reductions in greenhouse gas emissions or energy demand.

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